



CITY OF KIRKLAND
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MEMORANDUM

To: Kurt Triplett, City Manager
From: Marilynne Beard, Assistant City Manager
Date: February 17, 2011
Subject: ANNEXATION UPDATE

RECOMMENDATION:

City Council receives a briefing on interlocal agreements that will be presented to the City Council for consideration prior to June 1, 2011.

BACKGROUND DISCUSSION:

The purpose of the study session is to begin the presentation of the interlocal agreements that will be needed to implement annexation and to provide an update on related activities. There are several interlocal agreements that are needed to fully implement the annexation. This memo will address interlocal agreements currently under discussion.

Wild Glen Condominium Annexation

As mentioned in earlier reports to the City Council, the staff has been working with King County and Fire District #41 to use the interlocal method of annexation for the Wild Glen Condominiums. Wild Glen represents one parcel that should have been included in the City's notice of intent to the Boundary Review Board but which was omitted based on conflicting map data between King County and Kirkland. Unless this parcel is annexed, it will be the only remaining parcel in Fire District #41 which would otherwise dissolve. State law now provides for annexations by interlocal agreement if the affected fire district, annexing city and county agree. Last year, the City sent letters to the Fire District and King County expressing interest in annexing the parcel using the interlocal method. Both King County and the Fire District responded affirmatively to the request. During this same period, City staff has worked with the Wild Glen Homeowners Association and they are anxious to proceed.

Over the past several months, staff has been drafting the interlocal agreement and mapping the sequence and timing of events that need to occur with the goal of making the Wild Glen annexation effective at the same time as the larger annexation. To our knowledge, this is the first time this method of annexation has been used and so we are "charting new territory." Generally, the actions that need to take place from this point forward are:

1. The City, Fire District and King County governing bodies need to approve an interlocal agreement (ILA) to proceed with the annexation. In the case of King County, a thirty day public notice requirement applies. All jurisdictions would need to approve the interlocal before the end of March. The ILA will be presented to the Kirkland City Council on March 15.
2. Once the ILA is approved which includes an agreement to the boundaries of the area to be annexed, the City must file a notice of intent with the King County Boundary Review Board describing the proposed annexation. Unlike the larger annexation currently pending, the Boundary Review Board does not have jurisdiction over this annexation.
3. Following the filing of the notice of intent, the City must approve an ordinance annexing the area. This must be done at least 45 days before the effective date of annexation. In order for the Wild Glen annexation to coincide with the larger annexation, the City Council must approve the ordinance at the April 5 meeting.

Attachment A is a draft interlocal agreement. The form of the interlocal agreement follows the outline prescribed by state law (Attachment B). The draft ILA has gone through the first round of review and edits from all three jurisdictions. Staff anticipates presenting a substantially similar ILA to the City Council on March 15 for approval.

King County Interlocal Agreement – Transition of Development Services

The interlocal agreement between the City and King County is composed of multiple ILA's that are in the process being consolidated and reviewed by County and City legal staff. There are three main elements of the consolidated ILA:

- Governance – Transition of authority, jurisdiction and services.
- Development Services – Transition of land use and building permits.
- Property – Transfer of property and maintenance responsibilities for road-related properties, surface water management facilities and properties, parks, open space and greenbelts.

This ILA will also contain any agreement between with the County and the City for monetary assistance from the County. Staff expects to present a list of funding assistance requests to the King County Executive on March 8 when a delegation from the City Council and staff are scheduled to meet with the Executive and his staff. Staff proposes to bring elements of the ILA to the City Council over the next months as the details are better known and policy direction is needed.

In the January quarterly update, staff presented a brief overview of the transfer of permitting services and now have a draft ready for Council review (Attachment C). The ILA will generally describe how permits in process will be handled after the effective date of annexation, how vesting will occur and how fees will allocated. The objective is to provide a smooth transition of services that is as transparent to the customer as possible. The following narrative describes the basic elements of this portion of the ILA by section.

Section 1: Building permits:

- Complete building permit applications filed with the County prior to June 1 will be vested with County regulations.
- Except as noted below, if a building permit has been issued by the County prior to June 1, the County will complete inspections and process the permit to completion.
- If a building permit has been issued by the County, but the applicant hasn't called for an inspection prior to June 1, the City may elect, on a case by case basis, to handle inspections and process the permit to completion.
- If an application has been submitted to the County but the County hasn't issued a permit prior to June 1, the County will complete the review until the permit is ready to be issued. The permit then will be forwarded to the City for issuance, inspections and processing to completion.
- In reviewing building permits, the County will consult with the City on administratively appealable decisions.
- Following annexation, the County will process minor applications that implement Commercial Site Development permits issued prior to June 1.
- For permits issued by the County prior to annexation, the County will review and decide upon requests for revisions prior to final construction approval. The County will consult with the City on significant revisions.
- Following annexation, all applications to vary road or drainage standards will be decided by the City Public Works Director.

Section 2: Land use permits:

- Land use applications submitted to the County and vested under County land use regulations prior to June 1 will continue to be processed by the County.
- If a land use application does not require a public hearing, the County will submit a report and recommendation to the City Planning Director and the Planning Director will make the decision.
- If a land use application requires quasi-judicial approval and the hearing was held but a decision was not made prior to annexation, the County will continue processing the application though the final decision, except that decisions requiring approval by a legislative body will be forwarded to the City for City Council action.
- If a land use application requires quasi-judicial approval and the hearing has not been held prior to annexation, the public hearing will be held by the City Hearing Examiner. The Hearing Examiner will make the final decision, unless it is a decision requiring approval by a legislative body, in which case the decision will be made by the City Council.
- The County will continue to review and decide on any applications associated with subdivisions, short plats and binding site plans that have received preliminary approval prior to annexation, if the application was submitted prior to June 1. Applications submitted after June 1 will be processed by the City.
- Following annexation, all applications to vary road or drainage standards will be decided by the City Public Works Director.
- The County will review and decide upon requests for changes to approved engineering plans up to the time that construction approval is issued. Subsequent requests for changes to the plans will be decided by the City.

Section 3: List of Projects, Notice of Meetings, and Permit Data

- The County will provide to the City information and records pertaining to development activity.

Section 4: SEPA Review

- Beginning on June 1, the City will become the SEPA lead agency for development activity in the annexation area.
- SEPA appeals will be heard and decided under City procedures.
- If a SEPA determination has not been issued prior to June 1, the determination will be issued by the City. The County will not take action on the permit until the SEPA determination has been issued and completed. The County will provide assistance to the City.

Section 5: Administrative and Ministerial Processing

- Clarifies that all County review under the ILA is administrative and ministerial in nature.

Section 6: Code Enforcement

- The County will provide information to the City on active code enforcement cases.
- Following annexation the City will be responsible for all general code enforcement.
- The County will continue to enforcement conditions of approval for permits processed by the County under the ILA.

Section 7: Financial Guarantees

- Financial guarantees posted with the County will be turned over to the City for those permits for which the City assumes responsibility. The County will retain and administer the guarantees for permits for which it retains responsibility.
- The City will be responsible for assessing and administering new financial guarantees.

Section 8: Processing Priority

- The County agrees to process permits with the same level of service as other County permits.

Sections 9: Fees and Reimbursement

- City will adopt legislation authorizing the County to charge fees for applications the County continues to process following annexation. The County is authorized to collect and use the authorized fees.
- The City agrees to pay the County for work on applications for which the County is not authorized to collect fees. *[Note: The City will need to adopt an ordinance requiring applicants to cover these payments.]*
- The County will submit to the City a portion of fees collected by the County to cover any work the City will be undertaking.

- The County will pay the City an amount equal to any unused impact fees collected by the County from projects in the annexation area.

Section 10: Duration – The agreement will be in effect until December 31, 2015.

Section 11: Termination – Either party may terminate the agreement with 30 days notice.

Section 12: Extension – The City and County may agree to extend the agreement until December 31, 2019.

Section 13: Application Process – The City agrees to prepare a public information document describing the handling of applications under the agreement.

Sections 14 – 20 deal with various administrative aspects of the agreement.

Fire District #41 Interlocal Agreement with King County

Although the City is not a party to this ILA, staff have worked with the District and the County to facilitate the ILA which will transfer a 1.8 acre parcel in Big Finn Hill Park to the Fire District for the a new fire station. In exchange, the District will construct a 20-stall parking lot for park users. Plans to consolidate two fire stations into one location have been contemplated for several years with community outreach coordinated by the Fire District. The new station site will be able to serve a larger area with better response times. Originally, the station was to be sited on Lake Washington School District property at Finn Hill Junior High. When it was determined that the location had storm drainage and site distance issues that would result in significantly more cost, the District pursued other locations. The proposed site is located on 1.8 acres of Big Finn Hill Park which covers over 200 acres of active recreation, trail and open space.

At this point, the general language of the ILA has been drafted and reviewed by King County and the Fire District. Initial site evaluation work is being completed to confirm that the parcel is suitable for the fire station and parking lot. Initial work on the site gave rise to a number of calls from local residents who were not aware that the parcel was under consideration. King County and the Fire District are responding to those calls and the District has a public outreach meeting scheduled for March 8th. This is in addition to the public meetings held several years ago regarding the fire station consolidation project and presentations made to the Denny Creek Neighborhood Alliance more recently. Until now, it was not clear that the parcel could be conveyed or that it was an appropriate site for the station (and more work is needed). Traffic studies, response time modeling and now geotechnical work are being performed before the interlocal is presented to the respective governing bodies for consideration. Staff will continue to keep the Council apprised of the progress on the property transfer and the project.

Summary and Direction Needed

Staff is requesting feedback from the City Council so that any needed revisions can be incorporated before City Council takes action.

DRAFT**DRAFT****ATTACHMENT A
DRAFT**

INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND, FIRE DISTRICT #41
AND KING COUNTY REGARDING THE ANNEXATION OF THE WILD GLEN AREA

This Agreement is made and entered into this _____ day of _____, 2011, by and between the City of Kirkland ("City"), Fire District #41 ("District") and King County ("County"), collectively known as the Parties.

WHEREAS, because of conflicting information regarding the boundaries of the City's potential annexation area, the Wild Glen condominium complex territory ("Wild Glen") within the District and County was not annexed by the City at the time of the City's annexation of the Juanita, Finn Hill and Kingsgate areas ("JFK annexation"); and

WHEREAS, the City, District and County believe Wild Glen, which is adjacent to the JFK annexation area and would be the sole remaining territory to be serviced by the District if this annexation did not occur, should therefore be annexed to the City; and

WHEREAS, RCW 35A.14.480 authorizes a city, fire district and county to enter into an interlocal agreement to effect annexation of unincorporated areas within a fire district to a city on the terms therein contained; and

WHEREAS, to initiate the process of negotiating such an interlocal agreement, the City was required to give notice to the District and the County of its interest in doing so, which occurred on October 26, 2010; and

WHEREAS, the County and District each agreed negotiations for the annexation of Wild Glen by interlocal agreement should begin by letters dated November 12, 2010 and December 2, 2010, respectively; and

WHEREAS, the Parties have concluded these negotiations and are ready to enter into this interlocal agreement ("Agreement"); 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,

NOW, THEREFORE, by their signatures below, the Parties hereby enter into this Agreement regarding the annexation of Wild Glen by the City.

1. Effective date for this annexation. The Parties agree the ordinance effecting this annexation, attached as Exhibit A and herein incorporated by reference, shall provide an effective date for the annexation on the same day as the effective date for the JFK annexation but immediately thereafter, which is currently set for June 1, 2011 ("Effective Date").

2. Boundaries of the area proposed for annexation. The boundaries of the Wild Glen territory proposed for annexation, consistent with the boundaries as set forth in Exhibit A, are described as follows:

That portion of Section 19, Township 26 North, Range 5 East W.M. in King County, Washington described as follows:

Beginning at the northwest corner of the Northeast Quarter of the Northeast Quarter of said Section 19;

Thence east along the north line of said Section 19 and the south limits of the City of Bothell as established by City of Bothell Ordinance Number 225 to the west margin of 100th Avenue NE;

Thence south along the west margin of 100th Avenue NE to the northerly margin of Simonds Road Northeast;

Thence northwesterly along the northerly margin of Simonds Road Northeast to the west line of said Northeast Quarter of the Northeast Quarter of Section 19 and the limits of the City of Bothell as established by City of Bothell Ordinance Number 960;

Thence north along said west line to the Point of Beginning.

3. Public hearing on the Annexation Ordinance. As required by RCW 35A.14.480(1)(c), the public hearing on the ordinance effecting the annexation of Wild Glen is hereby set to occur at the regular meeting of the Kirkland City Council on April 5 ~~March 1~~, 2011
4. Notice of Intention to be filed with the Boundary Review Board. After the Parties have all signed this Agreement, the City will file the Notice of Intent required by RCW 35A.14.480(1)(c) with the Boundary Review Board. However, as further provided therein, the jurisdiction of the Board may not be invoked for this annexation.
5. The goals of this Agreement are as follows:
 - a. For the District to transfer all of its revenues and assets to the City on dates as required by law or on the Effective Date for revenues or assets not addressed by law. The City will not transfer any of its assets or revenues to the District because, after this annexation and the JFK annexation, the District will no longer have any area where it is responsible for providing fire protection or emergency medical services and, therefore, will no longer need any assets or revenues. The City will be responsible for all District debt payments as of the Effective Date and intends to leave a proportionate share of the District's levy in place until the debt is retired.
 - b. As required by RCW 35A.14.480(2)(a)(ii), there will be no negative impacts to service in Wild Glen at least through the budget cycle in which the annexation

occurs. This goal will be met because the City already provides fire protection and emergency medical services in Wild Glen pursuant to a contract between the City and District and the City will continue to provide service at the same level as there required.

- c. The City and District have discussed a division of assets and agree that all of the assets will be transferred to the City in accordance with Subsection 5(a) above. Further, that there will be no impact on fire and emergency medical services to citizens inside or outside Wild Glen because the City currently provides service in both areas and will continue to do so.
- d. Capitalizing on the existence of the Wild Glen Condominium Homeowner's Association, to which every resident of Wild Glen belongs, the City has been able to communicate with those affected by this annexation through this organization and has held informational public meetings regarding this annexation. The City will schedule an additional informational public meeting after this Agreement is approved.
- e. The City will fulfill the capital facilities obligations of the District within the District after the Effective Date in the same manner as they are fulfilled in the rest of the City outside Wild Glen. The County's capital facilities obligations within Wild Glen, if any, will remain unchanged.
- f. All of the City's current development regulations will apply and be enforced in Wild Glen on and after the Effective Date as provided in Ordinance 4196. To the extent the County has development regulations that remain in effect after the Effective Date, these regulations will apply and be enforced by the County. The District will have no development regulations applicable in Wild Glen after the Effective Date.
- g. On and after the Effective Date, the City will be responsible in Wild Glen for roads and traffic impact mitigation, surface and storm water management, coordination and timing of comprehensive plan and development regulation updates, outstanding bonds and special or improvement district assessments, annexation procedures, distribution of debt and revenue sharing for annexation proposals, code enforcement, inspection services, financial and administrative services, consultation with other service providers, including water sewer district all as addressed by the laws and policies and procedures of the City. The County will be responsible for all of the foregoing subject areas that fall within the purview of the County's jurisdiction, if any, after that date. The District, having no further territory to serve, will have none of these obligations.

- h. To the extent applicable, the transition to services being provided to Wild Glen by the City instead of the County will be done in accordance with the Interlocal Agreement between the City of Kirkland and King County Relating to the Annexation of the Juanita-Finn Hill-Kingsgate Annexation Area now being negotiated by the City and County.
6. Term. The term of this Agreement is in perpetuity from the date first written above.
7. Effect of this Agreement. Because the Parties have reached agreement on the enumerated goals addressed herein, pursuant to RCW 35A.14.480(3), this Agreement is not subject to referendum. Consequently, not sooner than forty five days after passage of the annexation ordinance (Exhibit A), not including the day of passage, Wild Glen will become a part of the City on the date fixed in that ordinance, which is currently June 1, 2011.
8. Indemnification. Each of the Parties shall defend, indemnify and hold the other Parties, their officers, officials, employees and agents harmless from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from that other party's negligent acts or omissions in performing under this Agreement. No party will be required to defend, indemnify or hold the other party harmless if the claim, suit or action for injuries, death or damages is caused by the sole negligence of that party. Where such claims, suits or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each party's own negligence. Each party agrees that its obligations under this subparagraph include, but are not limited to, any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this reason, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Parties only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
9. 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.
10. Assignment. The Parties shall not assign this Agreement or any interest, obligation or duty therein without the express written consent of the other Parties. However, the District and County agree their consent is not required if the City assigns the Agreement to any regional fire authority created by the City.
11. 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 Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: Kurt Triplett

To the County:
King County Performance, Strategy
and Budget
401 Fifth Avenue, Suite 801
Seattle, WA 98104
Attn: Dwight Dively, Director

To the District:
Fire District #41
P.O Box 817
520 Kirkland Way, Suite 400
Kirkland, WA 98083-0817
Attn: Ken Davidson

or to such other respective addresses as the Parties 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.

12. Miscellaneous.

- a. All of the terms in this Agreement shall extend to and bind the legal successors and assigns of the Parties.
- 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 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 the Parties shall substitute a provision that most closely approximates that which was invalidated without being invalid itself.

- 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 all Parties.
- i. Copies of this Agreement shall be filed with the King County Auditor's Office by the City.
- j. Each party has had the opportunity to consult with counsel in connection with this Agreement. Each of the provisions of this Agreement represents the combined work product of all Parties. 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.
- k. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument

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

CITY OF KIRKLAND

FIRE DISTRICT #41

By: _____
Kurt Triplett, City Manager

By: _____

Approved as to form:

Approved as to form:

City Attorney

District Counsel

KING COUNTY

By: _____

Approved as to form:

Prosecuting Attorney

ATTACHMENT B

RCW 35A.14.480

Annexation of territory served by fire districts — Interlocal agreement process.

(1)(a) An annexation by a code city proposing to annex territory served by one or more fire protection districts may be accomplished by ordinance after entering into an interlocal agreement as provided in chapter [39.34](#) RCW with the county and the fire protection district or districts that have jurisdiction over the territory proposed for annexation.

(b) A code city proposing to annex territory shall initiate the interlocal agreement process by sending notice to the fire protection district representative and county representative stating the code city's interest to enter into an interlocal agreement negotiation process. The parties have forty-five days to respond in the affirmative or negative. A negative response must state the reasons the parties do not wish to participate in an interlocal agreement negotiation. A failure to respond within the forty-five day period is deemed an affirmative response and the interlocal agreement negotiation process may proceed. The interlocal agreement process may not proceed if any negative responses are received within the forty-five day period.

(c) The interlocal agreement must describe the boundaries of the territory proposed for annexation and must be consistent with the boundaries identified in an ordinance describing the boundaries of the territory proposed for annexation and setting a date for a public hearing on the ordinance. If the boundaries of the territory proposed for annexation are agreed to by all parties, a notice of intention must be filed with the boundary review board created under RCW [36.93.030](#). However, the jurisdiction of the board may not be invoked as described in RCW [36.93.100](#) for annexations that are the subject of such agreement.

(2) An interlocal annexation agreement under this section must include the following:

(a) A statement of the goals of the agreement. Goals must include, but are not limited to:

(i) The transfer of revenues and assets between the fire protection district and the code city;

(ii) A consideration and discussion of the impact to the level of service of annexation on the unincorporated area, and an agreement that the impact on the ability of fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;

(iii) A discussion with fire protection districts regarding the division of assets and its impact to citizens inside and outside the newly annexed area;

(iv) Community involvement, including an agreed upon schedule of public meetings in the area or areas proposed for annexation;

(v) Revenue sharing, if any;

(vi) Debt distribution;

(vii) Capital facilities obligations of the code city, county, and fire protection districts;

(viii) An overall schedule or plan on the timing of any annexations covered under this agreement; and

(ix) A description of which of the annexing code cities' development regulations will apply and be enforced in the area.

(b) The subject areas and policies and procedures the parties agree to undertake in annexations. Subject areas may include, but are not limited to:

(i) Roads and traffic impact mitigation;

- (ii) Surface and storm water management;
- (iii) Coordination and timing of comprehensive plan and development regulation updates;
- (iv) Outstanding bonds and special or improvement district assessments;
- (v) Annexation procedures;
- (vi) Distribution of debt and revenue sharing for annexation proposals, code enforcement, and inspection services;
- (vii) Financial and administrative services; and
- (viii) Consultation with other service providers, including water-sewer districts, if applicable.

(c) A term of at least five years, which may be extended by mutual agreement of the code city, the county, and the fire protection district.

(3) If the fire protection district, annexing code city, and county reach an agreement on the enumerated goals, the annexation ordinance may proceed and is not subject to referendum. If only the annexing code city and county reach an agreement on the enumerated goals, the code city and county may proceed with annexation under the interlocal agreement, but the annexation ordinance provided for in this section is subject to referendum for forty-five days after its passage. Upon the filing of a timely and sufficient referendum petition with the legislative body of the code city, signed by qualified electors in a number not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation must be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW [29A.04.330](#). Notice of the election must be given as provided in RCW [35A.14.070](#), and the election must be conducted as provided in the general election laws under Title [29A](#) RCW. The annexation must be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition to the annexation.

After the expiration of the forty-fifth day from, but excluding, the date of passage of the annexation ordinance, if a timely and sufficient referendum petition has not been filed, the area annexed becomes a part of the code city upon the date fixed in the ordinance of annexation.

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Exhibit C—Development Services Agreement Provisions

1. Pre-annexation Building Permit Applications Filed with King County.

1.1 Except as otherwise provided for herein, the County shall continue to review on behalf of the City all vested building-related permit applications filed with the County before the Effective Date that involve property within the Annexation Area in accordance with this section:

1.2 For the purposes of this Exhibit C, building-related permits include but are not limited to building permits, mechanical permits, fire systems/fire sprinkler permits clearing and grading permits, and Right-of-Way Permits. Review by the County shall occur in accordance with the regulations to which the applications are vested. Any decision regarding whether or when an application has vested shall be made by the City.

1.3 Except as provided in Section 1.9, if a vested permit has been reviewed and issued by the County prior to June 1, 2011, the County shall complete all reviews and inspections. The County shall confirm payment of required impact fees and notify the City that all impact fees have been paid.

1.4 If a vested permit has been partially reviewed through the close of business on May 31, 2011 but the permit has not been issued, the County shall complete the review then shall transfer the permit to the City for issuance and post-issuance administration and inspection. If any fees, including impact fees, are to be collected upon permit issuance, the City would be entitled to assess and collect those fees.

1.5 The County's review of building-related permits shall include rendering decisions to approve, condition or deny such applications; conducting inspections; issuing correction notices, certificates of occupancy, permit extensions and completion of extensions; and evaluating compliance with approval conditions that extend beyond issuance of a certificate of occupancy. The County agrees to consult with the City prior to rendering any administratively appealable building-related permit decision. Appeals of building related permit decisions, if any, shall be processed by the City in the same manner as appeals of land use permits are addressed in Section 2.4; provided that the City and County may agree to have the County conduct such appeals on behalf of the City in particular instances where such processing by the County would further the orderly transition envisioned by this Agreement.

1.6 The County shall receive and process any permit applications made following annexation that implement conditions of a Commercial Site Development permit issued by the County prior to annexation. County permits that implement conditions of a Commercial Site Development permit include those related to site, drainage, and infrastructure issues, but not building permits. After May 31, 2011, the City of Kirkland shall receive and process building permit applications and ancillary permit applications, such as fire and mechanical permits, that are necessary for completion of an approved project permit.

1.7 The County shall review and make a recommendation to the City on requests to renew County permits within the Annexation Area that are approaching their expiration date without having completed the permitted activity. The City shall render any final decisions on such requests.

1.8 For those building related permits issued by King County prior to June 1, 2011, the County shall review and render decisions on requests for changes or revisions to approved construction documents up to the time that either a certificate of occupancy is issued or final construction approval has been issued for the project. If after May 31, 2011 a request for a change or revision to an approved construction document is deemed by the County to be significant (e.g. the original house plan is substituted by a substantially different house plan), then a new application to the City shall be required. The County shall consult with the City to help determine what is deemed a "significant" change or revision. Following issuance of the certificate of occupancy or final construction approval, requests for revisions to the approved set of plans shall be referred to the City to process as new permit applications.

1.9 If a permit has been issued by the County and the applicant has not submitted a request for inspection to the County by May 31, 2011, the County shall inform the City and the City shall have the opportunity to assume responsibility for remaining inspections for and administration of that permit. If the City elects to assume such responsibility, the permit, along with unexpended permit fees associated with the permit, shall be transferred to the City. The permit will be administered subject to all terms and conditions established by the County, unless revisions are subsequently requested by the applicant and approved by the City.

1.10 The County shall review and make recommendations to the City's Public Works Director or his designee on applications to vary adopted road or drainage standards that are made in conjunction with a building related application being reviewed by the County pursuant to this Agreement. All final decisions on such variance applications shall be rendered by the City.

2. Pre-annexation Land Use Permit Applications Filed with King County.

2.1 Except as otherwise provided for herein, the County shall continue to review on behalf of the City all vested land use permit applications filed with the County before the Effective Date that involve property within the Annexation Area. Review by the County shall occur in accordance with the regulations to which the applications are vested. Any decisions regarding whether or when an application has vested shall be made by the City.

2.2 For those vested land use applications that do not require a public hearing prior to issuance, the County will continue to process such applications and shall make a report and recommendation to the City's Planning Director or his designee based upon the regulations under which the applications are vested. Any decisions to approve, deny, or approve with conditions such applications shall be made by the City's Planning Director or designee and will be processed pursuant to the City's applicable land use review and appeal procedures.

2.3 Notwithstanding any other provision of this Exhibit C, applications for any rezone and any associated permit applications shall be referred to the City for all further processing.

2.4 For those vested land use applications that require quasi-judicial or legislative approval, e.g., preliminary subdivisions or conditional uses, or which involve appeals of administrative decisions, the County shall continue to review the application as follows:

A. If the public hearing on the application was held prior to June 1, 2011, the County shall complete the review up to and including the point of final decision, provided that decisions requiring approval by a legislative body shall be forwarded to the City for City Council action.

B. If the public hearing on the application was not held prior to June 1, 2011, the public hearing shall be scheduled before the City's Hearing Examiner and the City's Hearing Examiner will make the final decision, provided that decisions requiring approval by a legislative body shall be decided by the City Council. Such applications will be processed pursuant to the City's applicable land use review and appeal procedures.

2.5 For those vested subdivision, short plat and binding site plan applications that have received preliminary approval prior to annexation, the County shall continue and complete post-preliminary review up to and including the point of making a decision on the specific application(s) submitted for review prior to June 1, 2011. All subsequent post-preliminary approval applications shall be submitted to and decided by the City. For purposes of this section, post-preliminary review includes: engineering plan approval, final plat, short plat or binding site plan approval, and construction inspection approval.

2.6 The County shall review and make recommendations to the City's Public Works Director on applications to vary adopted road or drainage standards that are made in conjunction with a land use application being reviewed by the County pursuant to this Exhibit C. All final decisions on such variance applications shall be rendered by the City.

2.7 The County shall review and render decisions on requests for changes to approved land use permit engineering plans up to the time that final construction approval has been issued for the project. Following issuance of final construction approval, requests for changes to the approved set of plans shall be referred to the City. As-built drawings of the final approved construction shall be forwarded to the City.

3. List of Projects, Notice of Meetings, and Permit Data.

3.1 Beginning upon the effective date of this Exhibit C, monthly thereafter, and on June 1, 2011, the County will prepare and send to the City a list of all vested building, land use and associated ancillary permit applications pending within the Annexation Area. The list shall include the status of the projects as it is shown in the County Permit system. This information shall be provided until all permits on the list have been finalized, expired or otherwise completed.

3.2 The County shall notify the City of all technical screening meetings, pre-construction conferences and engineering pre-submittal meetings for projects being reviewed by the County under this Exhibit C. Such notice shall be provided promptly upon scheduling of the meeting. The City may participate in these meetings to learn more about the project and to offer comments.

3.3 The County shall provide the City with a copy of files and records of all land use and building permit applications processed under this Exhibit C upon completion of permit review, termination of Exhibit C under Section 11, or expiration of Exhibit C, whichever comes first.

3.4. The County shall provide to the City digital files of historic and open permit data for the Annexation Area that is in the County's permit database. The County's obligation shall be to provide the data in the format used by the County. It shall be the City's obligation to convert the data in such a way as to meet the City's needs. The County shall provide a subsequent and final download, showing all data through May 31, 2011, by June 1, 2011.

3.5 No later than June 15, 2011, the County shall provide to the City a list of all traffic impact fees and fees in lieu of park dedication collected by the County for development activity where all site improvements and building construction have not been completed prior to the Effective Date.

4. SEPA Compliance.

4.1. In order to satisfy the procedural requirements of SEPA, beginning on June 1, 2011, the City shall serve as lead agency for all Annexation Area building permit and land use applications, including those being processed by the County pursuant to this Exhibit C. The City has designated and identified the City's Planning Director as the SEPA Responsible Official to make threshold determinations and to supervise the preparation and content of environmental review for projects within the City.

4.2. Any and all appeals from SEPA threshold determinations and other SEPA matters relating to projects within the Annexation Area shall be heard and decided by the City pursuant to City Code procedures.

4.3. For those permit applications requiring a SEPA determination and for which a SEPA determination has not been issued prior to June 1, 2011, the County will not take final action upon the application until the City's SEPA Responsible Official has acted. The County agrees to provide technical and administrative SEPA assistance to the City's SEPA Responsible Official on that project. Such assistance may include, but is not limited to:

- Review of an applicant's environmental checklist and collection of relevant comments and facts;
- Preparation of a proposed SEPA threshold determination with supporting documentation for approval, which will include citations to a) King County Code provisions that compliance with will negate a probable significant adverse impact, and b) King County Code substantive authority for recommended mitigation measures;
- Publication and notice by the County on behalf of the City's SEPA Responsible Official;
- Preparation and submittal of a written review and comment on any appeal received on a SEPA threshold determination recommended by County staff to the City's SEPA Responsible Official;
- Attendance at appeal hearings to testify with respect to analysis of environmental impacts, mitigation measures and the environmental review process;
- Preparation of any required draft, final, addendum or supplemental EIS for approval of the City's SEPA Responsible Official; and
- Coordination of adopted or required SEPA measures of mitigation with project review staff.

4.4. Any decision whether to condition or deny an application on SEPA grounds shall be made by the City.

5. Administrative and Ministerial Processing. County review specified in this Exhibit C is intended to be of an administrative and ministerial nature only. Any and all final recommendations on legislative or quasi-judicial decisions or decisions of a discretionary nature shall be made by the City's designated decision maker and processed pursuant to the City's applicable review and appeal procedures.

6. Code Enforcement.

6.1. Beginning on the Effective Date , and then monthly thereafter, the County shall provide the City with a list and brief explanation of all Annexation Area code enforcement cases (including those pertaining to surface water codes) under review by the County at the time of annexation. The City shall be responsible for undertaking any code enforcement actions following the date of annexation. The County shall provide the City with copies of any Annexation Area enforcement files requested by the City.

6.2 Code enforcement abatement actions necessary to eliminate public health or safety hazards shall be the sole responsibility of the City.

6.3 The County is authorized on behalf of the city to enforce conditions of approval for those permits that the County processes pursuant to this Agreement.

7. Financial Guarantees.

7.1 Any financial performance guarantee that is intended to secure compliance with project conditions that are being or will be reviewed by the City shall be posted with the City, which shall have sole authority and discretion over its release and/or enforcement.

7.2 Any financial performance guarantee that has been posted prior to June 1, 2011, in order to guarantee compliance with conditions that are being reviewed or inspected by the County pursuant to this Exhibit C shall be retained by or posted with the County. The County is authorized to release such financial guarantees where it determines that conditions for release have been satisfied provided that all required maintenance/defect financial guarantees have been posted with the City. In making such decisions whether to release a financial guarantee instrument, the County may at any time seek direction from the City.

7.3 Except for those projects on which the County has prior to the Effective Date assessed required financial performance guarantees, the City shall have sole discretion and responsibility on the assessment of financial performance guarantees required of an applicant to secure compliance with permit or development-related requirements. The City shall have sole discretion and responsibility on the release and enforcement of such financial performance guarantees required of the applicant to secure compliance with permit or development-related requirements.

7.4 The County will not release any financial performance guarantees until the permittee has secured the required maintenance/defect financial guarantees or equivalent for the benefit of the City. The County will not release any maintenance/defect financial guarantees until the City has reviewed the

development-related improvements with the County inspector and agrees that the financial guarantees should be released.

7.5 Notwithstanding the foregoing, upon special written request by the City, the County may agree to assist the City in determining whether to enforce or release particular financial guarantees. Such assistance from the County shall not include the initiation or undertaking of legal actions.

8. Processing Priority. Within budgetary constraints, the County agrees to process pre-annexation building and land use applications in accordance with the County's administrative procedures, at the same level of service as provided to County applications.

9. Fees and Reimbursement.

9.1 Fees. The City shall adopt legislation authorizing the County to charge applicants fees in amounts currently specified or hereafter adopted in King County Code Title 27 for applications processed by the County in accordance with the terms of this Agreement.

9.2 In order to cover the costs of providing services pursuant to the terms of this Agreement, the County is authorized to collect and retain such application and other fees authorized by the County fee ordinances adopted by the City pursuant to Section 9.1 above, or as may be modified at some future date by the County and the City.

9.3 In order to cover the costs of providing review, technical and administrative assistance, and other services not otherwise reimbursed pursuant to this Agreement, including but not limited to providing testimony at public hearings, the City shall pay the County at such hourly rate as specified in the version of King County Code Title 27 in effect at the time the services are performed. The County shall not seek reimbursement under this Section for review services performed on an individual permit application where the County has already been compensated for such services by the receipt of permit application review fees. The County shall provide the City with quarterly invoices for assistance and services provided, and the City shall tender payment to the County within thirty days after the invoice is received. The City shall retain the right to pre-authorize the County services contemplated by this Section 9.3, including the estimated cost of such services. Such pre-authorization by the City must be in writing. If the City does not provide pre-authorization, then the County shall neither provide nor invoice such services.

9.4 For permit applications initiated with the County and later forwarded to the City for completion, the County shall submit to the City a portion of any fees, including impact fees, collected by the County to cover the work that becomes the responsibility of the City. The fees shall be submitted concurrently with the forwarding of the applications. The amount of fees to be transferred shall be determined on a case by case basis.

9.5 No later than, August 1, 2011, the County shall pay to the City an amount equal to the total traffic impact fees and fees in lieu of park dedication collected by the County for development activity where all site improvements and building construction have not been completed prior to the Effective Date.

10. Duration. This Exhibit C shall continue until December 31, 2015, unless otherwise terminated in accordance with Section 11 or extended in accordance with Section 12 of this Agreement.

11. Termination. Either party may terminate this Exhibit C for good cause shown upon providing at least thirty (30) days written notice to the other party. Upon expiration or termination of this Exhibit C, the County shall cease further processing and related review of applications it is processing under this Exhibit C. The County shall thereupon transfer to the City those application files and records, posted financial guarantee instruments, and unexpended portions of filing fees for pending land use and building-related applications within the Annexation Area. Upon transfer, the City shall be responsible for notifying affected applicants that it has assumed all further processing responsibility.

12. Extension. The City and County may agree to extend the duration of this Exhibit C through December 31, 2019 or to a date prior thereto. In order for any such extensions to occur, the City shall make a written request to the County not less than sixty (60) days prior to the otherwise applicable expiration date. Any agreement by the County to the proposed extension(s) shall be made in writing. If the parties have not agreed to the extension in writing by the otherwise applicable expiration date, this Exhibit C shall expire.

13. Application Process. The City will prepare a document describing the handling of applications based upon this Exhibit C. Both the City and the County will have that document available for applicants.

14. Indemnification, Hold Harmless and Defense.

14.1 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 Exhibit C. 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 or 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.

14.2 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 Exhibit C. 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.

14.3 The City and the County acknowledge 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

shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

14.4 The County does not assume liability or responsibility for or in any way release the City from any liability or responsibility that arises in whole or in part from the existence or effect of City ordinances, rules, regulations, policies or procedures. If any cause, claim, suit, action or proceeding (administrative or judicial), is initiated challenging the validity or applicability of any City ordinance, rule or regulation, the City shall defend the same at its sole expense and if judgment is entered or damages awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorneys' fees.

15. Personnel. Control of County personnel assigned by the County to process applications under this Exhibit C shall remain with the County. Standards of performance, discipline and all other aspects of performance shall be governed by the County.

16. Administration. This Exhibit C shall be administered by the County Director of the Department of Development and Environmental Services or his/her designee, and by the City's Planning Director or his/her designee.

18. Legal Representation. The services to be provided by the County pursuant to this Exhibit C do not include legal services, which shall be provided by the City at its own expense.

19. Notice of Annexation Area Processing. In the event that the City intends for the County to conduct permit review in any future City Annexation Area pursuant to this Exhibit C, the City shall exercise its best efforts to provide the County with written notice of its intent no less than sixty days prior to the date County processing of such Annexation Area applications would occur.