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# CITY OF KIRKLAND

## CITY COUNCIL



Amy Walen, Mayor • Penny Sweet, Deputy Mayor • Jay Arnold • Dave Asher  
Shelley Kloba • Doreen Marchione • Toby Nixon • Kurt Triplett, City Manager

### *Vision Statement*

*Kirkland is an attractive, vibrant and inviting place to live, work and visit.  
Our lakefront community is a destination for residents, employees and visitors.  
Kirkland is a community with a small-town feel, retaining its sense of history,  
while adjusting gracefully to changes in the twenty-first century.*

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## AGENDA

### KIRKLAND CITY COUNCIL MEETING

#### City Council Chamber

#### Tuesday, November 18, 2014

#### 6:00 p.m. – Study Session

#### 7:30 p.m. – Regular Meeting

COUNCIL AGENDA materials are available on the City of Kirkland website [www.kirklandwa.gov](http://www.kirklandwa.gov). Information regarding specific agenda topics may also be obtained from the City Clerk's Office on the Friday preceding the Council meeting. You are encouraged to call the City Clerk's Office (425-587-3190) or the City Manager's Office (425-587-3001) if you have any questions concerning City Council meetings, City services, or other municipal matters. The City of Kirkland strives to accommodate people with disabilities. Please contact the City Clerk's Office at 425-587-3190. If you should experience difficulty hearing the proceedings, please bring this to the attention of the Council by raising your hand.

**EXECUTIVE SESSIONS** may be held by the City Council only for the purposes specified in RCW 42.30.110. These include buying and selling real property, certain personnel issues, and litigation. The Council is permitted by law to have a closed meeting to discuss labor negotiations, including strategy discussions.

**PLEASE CALL 48 HOURS IN ADVANCE** (425-587-3190) if you require this content in an alternate format or if you need a sign language interpreter in attendance at this meeting.

**ITEMS FROM THE AUDIENCE** provides an opportunity for members of the public to address the Council on any subject which is not of a quasi-judicial nature or scheduled for a public hearing. (Items which may not be addressed under Items from the Audience are indicated by an asterisk\*.) The Council will receive comments on other issues, whether the matter is otherwise on the agenda for the same meeting or not. Speaker's remarks will be limited to three minutes apiece. No more than three speakers may address the Council on any one subject. However, if both proponents and opponents wish to speak, then up to three proponents and up to three opponents of the matter may address the Council.

1. *CALL TO ORDER*
2. *ROLL CALL*
3. *STUDY SESSION*
  - a. North Kirkland Fire Station Siting
4. *EXECUTIVE SESSION*
  - a. To Review the Performance of a Public Employee
5. *HONORS AND PROCLAMATIONS*
  - a. GIS (Geographic Information System) Day Proclamation
6. *COMMUNICATIONS*
  - a. *Announcements*
  - b. *Items from the Audience*
  - c. *Petitions*
7. *SPECIAL PRESENTATIONS*
  - a. Semi Annual Fall 2014 Employee Service Awards Recognition

**QUASI-JUDICIAL MATTERS**

Public comments are not taken on quasi-judicial matters, where the Council acts in the role of judges. The Council is legally required to decide the issue based solely upon information contained in the public record and obtained at special public hearings before the Council. The public record for quasi-judicial matters is developed from testimony at earlier public hearings held before a Hearing Examiner, the Houghton Community Council, or a city board or commission, as well as from written correspondence submitted within certain legal time frames. There are special guidelines for these public hearings and written submittals.

**RESOLUTIONS** are adopted to express the policy of the Council, or to direct certain types of administrative action. A resolution may be changed by adoption of a subsequent resolution.

**ORDINANCES** are legislative acts or local laws. They are the most permanent and binding form of Council action, and may be changed or repealed only by a subsequent ordinance. Ordinances normally become effective five days after the ordinance is published in the City's official newspaper.

**PUBLIC HEARINGS** are held to receive public comment on important matters before the Council. You are welcome to offer your comments after being recognized by the Mayor. After all persons have spoken, the hearing is closed to public comment and the Council proceeds with its deliberation and decision making.

**8. CONSENT CALENDAR**

- a. *Approval of Minutes:*
  - (1) October 30, 2014 Special Meeting
  - (2) November 3, 2014 Special Meeting
  - (3) November 5, 2014 Special Meeting
- b. *Audit of Accounts:*
  - Payroll* \$
  - Bills* \$
- c. *General Correspondence*
- d. *Claims*
- e. *Award of Bids*
  - (1) Intelligent Transportation System (ITS) Implementation Phase IB Project, Prime Electric, Inc., Bellevue, Washington
- f. *Acceptance of Public Improvements and Establishing Lien Period*
- g. *Approval of Agreements*
  - (1) Resolution R-5081, Approving the City of Kirkland's Allocation For the North East King County Regional Public Safety Communications Agency (NORCOM) Budget.
- h. *Other Items of Business*
  - (1) Roster of Process IVA Miscellaneous Zoning Code Amendments
  - (2) Park Lane Pedestrian Corridor Enhancements Phase 2 and Water Main Replacement Project – Pre-Award of Bid
  - (3) Report on Procurement Activities
  - (4) Surplus of Equipment Rental Vehicles and Equipment

**9. PUBLIC HEARINGS**

- a. *Preliminary Property Tax Levies:*
  - (1) O-4464, Establishing the Amount of Property Taxes To Be Levied For the Year 2015, the First Year of the City of Kirkland's 2015-2016 Fiscal Biennium.
  - (2) O-4465, Establishing the Amount of Property Taxes To Be Levied For the Year 2015, To Pay the Fire District 41 Debt Service Assumed as a Result of Annexation of the North Juanita, Finn Hill and Kingsgate Neighborhoods on June 1, 2011.
- b. *2015-2016 Biennial Budget*

10. UNFINISHED BUSINESS

- a. Resolution R-5082, Adopting the 2014 Surface Water Master Plan.
- b. Northshore Utility District Franchise Agreement Extension
- c. Resolution R-5083, Authorizing the City Manager to Execute a Puget Sound Emergency Radio Network Operator Interlocal Cooperation Agreement to Provide For the Implementation of a New Regional Emergency Radio Network System.
- d. Transportation Master Plan Update: Impact Fees
- e. Sound Cities Association (SCA) Open Seats/Appointments to 2015 Regional Boards and Committees

**NEW BUSINESS** consists of items which have not previously been reviewed by the Council, and which may require discussion and policy direction from the Council

11. NEW BUSINESS

- a. Resolution R-5084, Authorizing the City Manager to Execute a Lease, Use and Occupancy Agreement With Seattle Tilth For Property Commonly Known as McAuliffe Park Located at 10824 NE 116<sup>th</sup> Street, Kirkland, Washington.

12. REPORTS

a. City Council Reports

- (1) Finance and Administration Committee
- (2) Planning, and Economic Development Committee
- (3) Public Safety Committee
- (4) Public Works, Parks and Human Services Committee
- (5) Tourism Development Committee
- (6) Regional Issues

b. City Manager Reports

- (1) Calendar Update

**ITEMS FROM THE AUDIENCE**

Unless it is 10:00 p.m. or later, speakers may continue to address the Council during an additional Items from the Audience period; provided, that the total amount of time allotted for the additional Items from the Audience period shall not exceed 15 minutes. A speaker who addressed the Council during the earlier Items from the Audience period may speak again, and on the same subject, however, speakers who have not yet addressed the Council will be given priority. All other limitations as to time, number of speakers, quasi-judicial matters,

13. ITEMS FROM THE AUDIENCE

14. ADJOURNMENT



**CITY OF KIRKLAND**  
**Fire & Building Department**  
**123 Fifth Avenue, Kirkland, WA 98033**  
**425.587.3650 [www.kirklandwa.gov](http://www.kirklandwa.gov)**

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## **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Safety Facilities Steering Team

**Date:** November 6, 2014

**Subject:** NORTH KIRKLAND FIRE STATION SITING UPDATE

## **RECOMMENDATION**

It is recommended that City Council:

- Receives an update on the North Kirkland Fire Station Siting (also known as Finn Hill Station Siting) and
- Provides direction on the selection of a site as the preferred location to construct a new fire station.

## **BACKGROUND INFORMATION:**

At the Study Session meeting of August 6, 2014, City Council was presented with the Finn Hill Siting Analysis Report (Report), as prepared by the City's consultant, TCA Architecture & Planning (TCA). The Report evaluated consolidated single station and dual station options. The single station alternative proposed replacing Fire Station 24 and 25 with one station located in the northwest part of the City with a focus on reducing response times primarily on Finn Hill. The consolidated station option would reduce response times in most areas of Finn Hill but would increase response times in some other areas. The dual station model proposed maintaining Fire Station 25 at its current location and building a new station within a specific response coverage area in order to reduce fire and emergency medical service response time in the Finn Hill and Juanita areas of north Kirkland.

The City's consultant identified twenty-two possible sites for consideration by a Station Siting Steering Team (Team) that was formed early in the Report preparation process. The Team, consisting of the consultant with sub-consultants, upper City management staff and representatives from the Finn Hill Neighborhood Association, chose three sites to be presented to City Council for consideration for the consolidated station option. Two additional sites were subsequently added to the list for consideration of a dual station option based on the recommendations contained in the City's Standard of Coverage and Deployment Plan (SOCPD)

At the August 6 Study Session, City Council supported the dual station option in order to provide better response times to more residents without losing any service to Finn Hill and

directed further study of the two added properties on NE 132nd Street and 100th Ave NE. The City Council asked staff to broaden the dual station analysis to other properties in the area. At that same meeting City Council also directed staff to provide:

- More information on response time impacts for added sites and potential traffic impacts,
- Additional information on financing options, and
- A follow-up and/or interpretation of the terms and intent of the Interlocal Agreement between the City and the defunct Fire District 41.

#### Current List of Potential Sites (Now A – F)

In addition to the two dual station sites identified during the August 6, 2014 Study Session, located on southeast and northwest corners of the intersection of 100<sup>th</sup> Avenue NE and NE 132<sup>nd</sup> Street, four additional potential sites are being presented for consideration by City Council. Originally, potential consolidation station sites were identified by numbers 1-22. The added sites under consideration for the dual station option were given the numbers 23 through 28. To avoid confusion with the existing Kirkland Fire Stations and the previous consolidated station sites, the dual station sites have now been reordered by letters A through F instead. All future documents and presentations will refer to the sites by letter. The list of all sites under consideration at this time is now as follows:

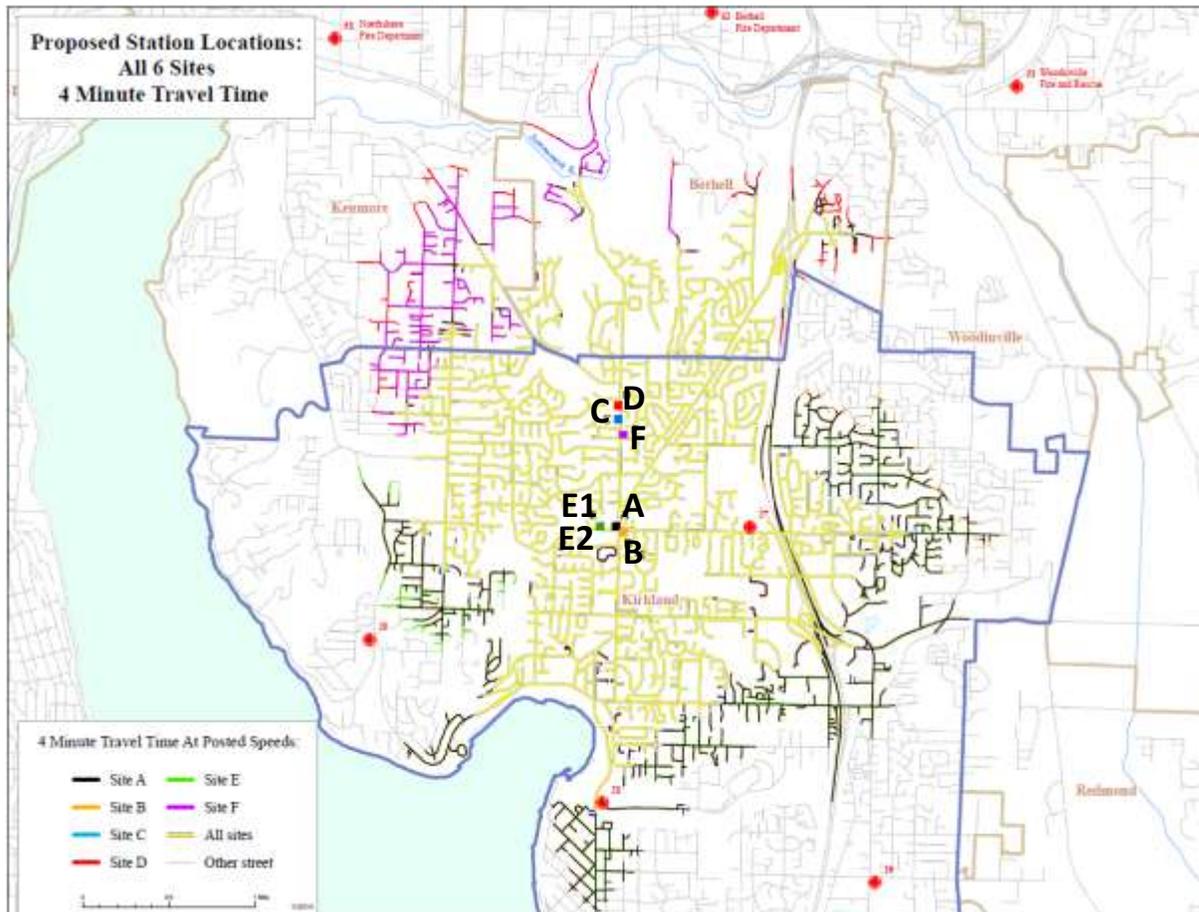
**Table 1 – Site Locations**

Site ID	Address	Area (Acres)
A	9950 NE 132nd St	0.71
B	10007 NE 132nd St	1.40
C	14207 100th Ave NE	2.39
D	14237 & 14239 100th Ave NE	1.09
E1	9820 NE 132nd St	1.09
E2	9820 NE 132nd St	2.52
F	14000 block of 100th Ave NE	1.27

Original     New

Site E1 would be a lot line adjustment and purchase of the majority of the parking lot in the southern half of the Rite Aid property. Site E2 would be purchasing the entire Rite Aid property, including the building.

**A discussion of the pros and cons of each of these sites will be provided at the study session. Staff analysis indicates that Sites E1, E2 (Rite Aid sites) and Site B (Juanita Community Church) are the most viable options. The goal of the presentation is for the Council to narrow the number of sites and select a final preferred site if possible.**

Response Times Comparison for Potential Sites

**Figure 1: Four Minute Response Map**

Figure 1 above shows all six proposed sites each color coded and labeled A through F, as per shown on Legend; the northern Kirkland city boundary is outlined in blue. The colors of the streets shown on the map indicate the distance on those streets that can be reached from each specific site within the adopted four minute emergency response travel time. The yellow-green color in the center is the distance that can be reached from any of the six sites within four minutes. The color of the streets extending beyond the yellow-green color represent the limit for the four minute response from each site.

Analysis of the map shows sites C, D and F (several blocks north of NE 132<sup>nd</sup> Street) provide improved response to the northwest area of Kirkland and to an area outside of the City of Kirkland border. Sites A, B, E1 and E2 provide improved response to the northwest area of the City in addition to areas within the City of Kirkland to the west, east and south.

Please refer to Attachments A through F for a larger individual view of the Four Minute Travel Response maps for each of the proposed sites.

Estimated Project Costs and Funding

When the District's original Consolidated Fire Station Project transitioned to the City in 2011, it was funded from approximately \$1.2 million in District cash reserves and \$4 million in limited general obligation debt issued by the District for a total of \$5.2 million. In 2009 the District had a cost estimate produced and, at that time, the rough order of magnitude for the total cost of the Project was \$5.26 million. That cost was based on an 8,406 square foot station with under \$2 million in building costs, plus soft costs of \$1.55 million and approximately \$1.74 million in site development costs. Prior to the City's assumption of the District, it was operating under the premise that there was not going to be a cost for land. In 2009 and beyond, the District was pursuing two potential sites at a Lake Washington School District property and at Big Finn Hill Park. As a result, the District's estimate did not include funds for property purchases..

As noted above, the Fire District's originally envisioned Consolidated Fire Station project did not include a budget for acquiring land, as there were then two potential low or no-cost land options being pursued. In order to bring the District's 2009 building and site development costs to current dollars, an escalation rate of 17.5% for seven years (2009 to June, 2015) has been applied to the earlier base estimate. The result is a project cost increase of nearly \$1.2 million, with a revised "Base" project total (in today's dollars) from \$5.26 to \$6.46 million. In addition, the two original "free" sites were subsequently deemed unsuitable and could have only served as consolidated stations sites. Therefore the cost of land acquisition for a new fire station must now be included in updated costs for the Project.

The following table provides the currently estimated range of all Project costs including escalation, site acquisition and building (based on an 8,406 square foot station), together with their respective estimated site development costs and applicable soft costs for the potential sites now under consideration:

**Table 2 – Land, Site Development and Building Costs (at 8,406 sq. ft.)**

	2009	2015	Site A	Site B	Site C	Site D **	Site E1- Part	Site E2-Full	Site F
	Mid School	Mid School	Gas station	Church	Residential 1	Residential 2	Rite Aid	Rite Aid	Public
Acres			.71 ac	1.4 ac	2.39 ac	1.09 ac	1.09 ac	2.52 ac	1.27 ac
Land	-	-	1,200,000	2,000,000	2,587,500	NA	1,187,010	2,744,280	1,275,000
Site Dev	1,741,347	2,046,083	1,344,338	1,532,393	1,231,835	NA	1,001,606	1,001,606	1,391,238
Bldg (8,406 SF)	1,974,832	2,320,427	2,320,427	2,320,427	2,320,427	NA	2,320,427	2,320,427	2,320,427
Total	3,716,179	4,366,510	4,864,765	5,852,820	6,139,762	NA	4,509,043	6,066,313	4,986,665
Soft Cost 48% *	1,547,788	2,095,924	2,335,086	2,809,353	2,947,085	NA	2,164,340	2,911,829	2,393,598
Grand Total	\$ 5,263,967	\$ 6,462,434	\$ 7,199,851	\$ 8,662,173	\$ 9,086,847	NA	\$ 6,673,383	\$ 8,978,142	\$ 7,380,263
<i>Change from 2009 Base</i>		\$ 1,198,467	\$ 1,935,885	\$ 3,398,206	\$ 3,822,880	NA	\$ 1,409,416	\$ 3,714,176	\$ 2,116,297

\* 2009 District soft costs at 41.65%; 2015 escalated/planning number at a more typical 48%

\*\* Deemed too narrow to meet fire station access requirements.

As shown on Table 2, the addition of land costs plus site development and soft costs add a minimum of approximately \$1.41 million (Site E1) to as much as \$3.82 million (Site C) when compared to the District's 2009 estimated "Base" cost of \$5.26 million without land. For comparison purposes, all cost in Table 2 are for the "Base" 8,406 square foot station originally envisioned by the District, which is now likely too small for current/modern fire station needs and code requirements, as discussed below under Programmatic Requirements.

Traffic Impact Considerations

A cursory review for potential traffic issues has been performed as a part of the Siting Study and no adverse effects have been noted for any of the prospective sites. Despite public perception, fire stations do not generate significant traffic impacts. In 2013, Station 27, the City's busiest fire station, responded to 3164 fire and emergency medical calls, or less than 10 per day. Station 21 at Forbes Creek Drive responded to 1045 calls in 2013 (less than 3 per day) and Station 25 on Finn Hill responded to 596 calls (less than two per day). The new station will be responding to calls that would have otherwise been taken by 27, 25 and 21, so there may be some shift in which roads are impacted, but not likely any significant increase in overall traffic impacts. However, a full traffic analysis report, as well as a Phase I Environment assessment, will be conducted as part of a formal "due-diligence" property acquisition process.

Programmatic Requirements

In the years that have passed from when District first envisioned a new fire station, National Fire Protection Association (NFPA) recommendations and requirements, State Energy Code requirements, and the recommendations found within the City's recent Standard of Coverage and Deployment Plan bear out the fact that an 8,406 square foot building is most likely not adequate to provide the programmatic needs of a modern fire station. Current fire station requirements for functionality, disaster preparedness supply storage and other space requirement updates may result in a more practical station size up to 30-40% larger. Such an increase in overall building size could result in an additional increase in overall Project costs in the range of \$850,000 to \$2.8 million, depending on the final programmatic attributes chosen for a new facility, with total project costs as shown in Table 3.

**Table 3 – Land, Site Development and Building Costs (at different Program Requirements)**

	2009	2015	Site A	Site B	Site C	Site D **	Site E1- Part	Site E2-Full	Site F
	Mid School	Mid School	Gas station	Church	Residential 1	Residential 2	Rite Aid	Rite Aid	Public
Base 8,406 sq. ft	5,263,967	6,462,434	7,199,851	8,662,173	9,086,847	NA	6,673,383	8,978,142.24	7,380,263.20
Low Range Prog. Requirements (\$850K)			8,049,851	9,512,173	9,936,847	NA	<b>7,523,383</b>	9,828,142	8,230,263
High Range Prog. Requirements (\$2.8M)			9,999,851	11,462,173	<b>11,886,847</b>	NA	9,473,383	11,778,142	10,180,263

Staff and the City's consultant continue to work on the final programmatic station requirements and needs and will return to City Council at a future meeting to discuss those specific elements. No City Council action is being requested on the programmatic aspect of the fire station at the November Study Session; however, staff does confirm that five of the six currently listed prospective sites will support a modern fire station of a size consistent with current national codes and other requirements. Site D cannot accommodate these elements.

Financing Options

As previously stated, the City currently has the former District's \$5.2 million set aside toward a new North Kirkland fire station. The use of these funds is governed by an Interlocal Agreement (ILA) entered into by the City and the District prior to annexation. The ILA, in part, provides that any proceeds from selling either of the fire station properties formerly owned by Fire District 41 must be used to pay down the outstanding debt; please see more discussion on the ILA below in this memo.

As part of the preliminary 2015-2016 budget, the City Manager recommended setting aside an additional \$3 million in funding toward the fire station project from sales tax receipts above the budgeted amounts based on the one-year lag policy. As outlined above, this recommended amount may still result in a funding gap depending the building's final size and programmatic elements.

There are a variety of approaches that can be considered to close any remaining new station funding gap, as well as the currently unknown costs of retaining and renovating Station 25, including:

- The General Capital Contingency is projected to have a balance at the end of 2016 of about \$4.9 million. A portion of this reserve could be used toward the unfunded costs, however, that would slow the replenishment of General Purpose reserves and potentially provide less flexibility to address unforeseen needs in other capital projects.
- REET revenues have been coming in stronger than budgeted due to the high volume of real estate transactions occurring within the City, resulting in an undesignated REET balance of at least of \$4 million. These funds have not been programmed in anticipation of the Capital Improvement Program process that is planned for 2015 to incorporate the capital needs identified through the Kirkland 2035 process and master plan updates. If these funds are used toward the fire station project, they will not be available to be programmed based on the emerging needs from that process.
- Councilmanic (non-voted) bonds could be issued to fund the shortfall, with debt service being paid using General Fund resources. The on-going debt service would then become a required priority of general fund revenues.
- Voted bonds (an excess levy) could be placed on the ballot for public safety needs that could include this shortfall and other capital needs using 20-year bonds. An excess levy requires a 60% affirmative vote and validation.
- A levy lid lift could be placed on the ballot for public safety needs, requiring a 50%+1 majority, which could be used to support 9-year bonds for the project shortfall and station renovations.

Once a final site is selected, a refined cost estimate for each of the programmatic elements can be produced. Staff will then return to the Council for a decision on which elements, if any, should be included in the final station design and then a final new station budget will be developed.

#### Interlocal Agreement with Fire District 41

The ILA between Fire District 41 and the City of Kirkland provides for the City to assume responsibility for a "Fire Station Consolidation Project", combining two existing stations (Station 24 and 25) into one central new station located on Finn Hill. As noted above, the Station Consolidation Project was to be funded from approximately \$1.2 million of District cash reserves and \$4 million in limited general obligation debt that the District issued prior to the annexation of the Finn Hill, Juanita and Kingsgate areas.

In the intervening period, the City started and suspended the siting process for a consolidated Finn Hill fire station while it completed the Standard of Coverage and Deployment Plan. These efforts identified an option for constructing and staffing a new Station 24 coupled with leaving Station 25 open and operating as a "dual station" option. The station siting process was then restarted with an evaluation of both the consolidated "single station" and "dual station" options. The cost of either option on any of the sites identified above is significantly more than the current Project budget of \$5.2 million. The current planning-level estimated range for a completed Project, including land and all associated costs, is \$7.5 million to \$11.9 million.

The ILA requires that the proceeds of selling Stations 24 and 25 can only be used to pay down the debt service on the bonds. It also provides that, if the City elects to retain one or both of the stations, the City is required to apply an amount equal to the fair market value of the property to the District's debt service. Such a payment would likely make it financially infeasible to fund the dual station option in the near term. However the intended purpose of the ILA was for the City to build a new fire station to provide better response to the Fire District #41 service area. The Coverage and Deployment Plan identifies the dual station option as the most effective way to provide the fastest response times to the greatest number of residents formerly served by Fire District #41. The dual station option is therefore entirely consistent with the purpose of the ILA. Given the preferred dual station option and the funding shortfall, staff is developing a process for amending the requirement so that any proceeds from the sale of a station can only be used toward the station options under consideration, but not tied to reducing debt service. In addition, the City would like to modify the provision related to retaining a station in the event that Station 25 is not sold and continues to be used to provide services to Finn Hill.

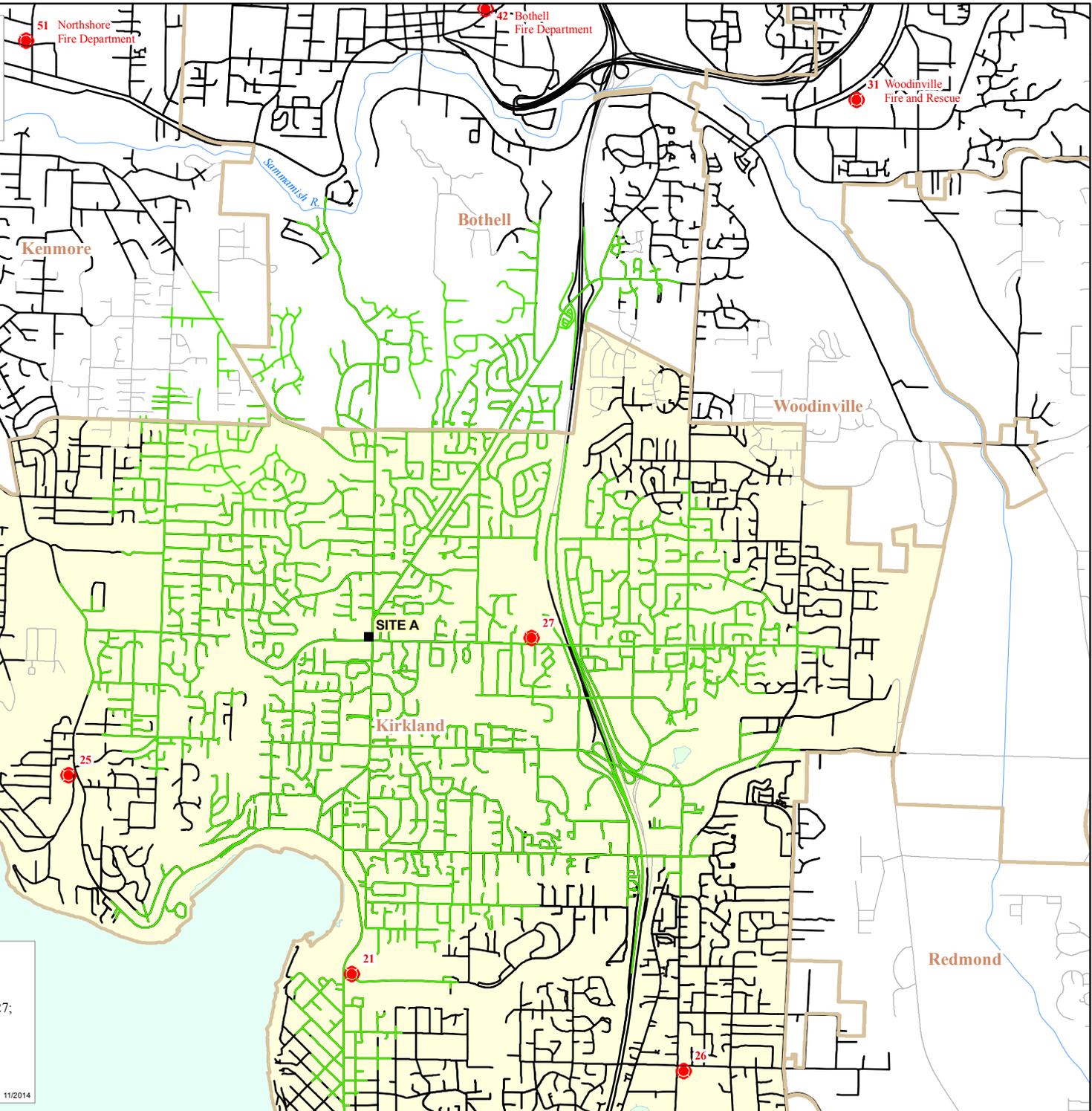
Staff has been in contact with the Bond Counsel of the Fire District to establish a process for revising these provisions. The City Council's only authority as the successor to Fire District 41 is to set the levy associated with outstanding debt. Councilmember Toby Nixon (formerly a Commissioner at Fire District 41) has indicated that the intent of the Fire District was to ensure that funds were applied to enhancing services within the Fire District and that he and the other former Commissioners would be supportive of the changes if that was the outcome. Bond Counsel suggested that the former District Commissioners and the Kirkland City Council hold a public hearing to discuss the changes and jointly agree to modify the provisions. The City has contracted with Bond Counsel to define the specific steps and documents to support this process, which staff expects to bring forward in January 2015. The City would also need to notify the bond holder of the change (it is currently held by an institution), but it is likely that they will not object since it does not in any way impact the security of the revenue source that supports the bonds.

#### City Council Direction

Staff is seeking City Council direction on a final determination of a preferred site to construct a new fire station in North Kirkland at the November 18, 2014 study Session. Additional discussions regarding programmatic building elements, resultant station sizing and updated costs estimates will be scheduled for future City Council meetings.

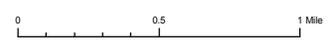
Attachments A – F: Four Minute Travel Time Maps, Sites A - F

# Proposed Station Locations: Site A 4 Minute Travel Time



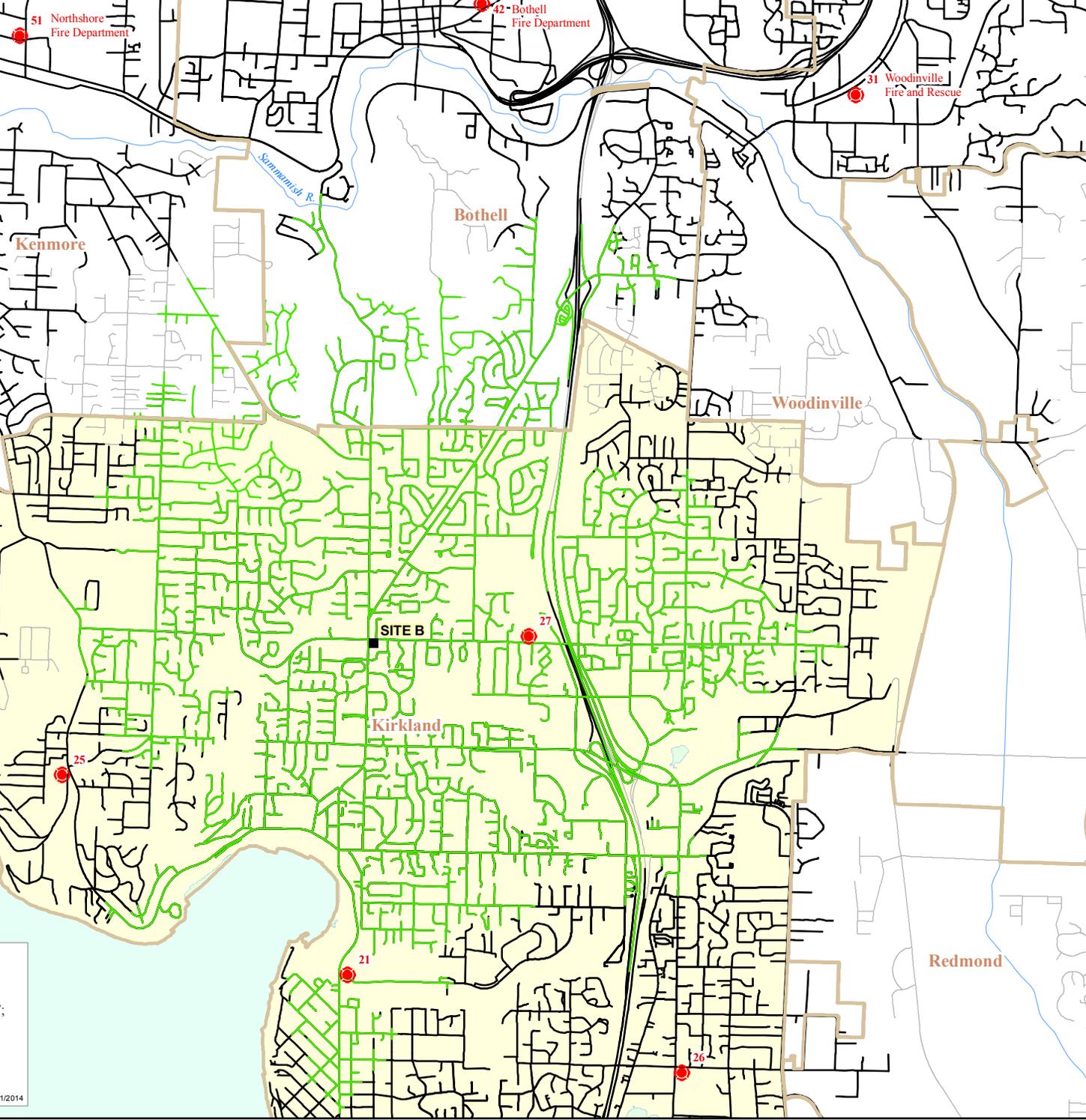
### 4 Minute Travel Time At Posted Speeds:

- Current coverage: Kirkland stations 21, 25, 26, and 27; NFD Station 51; BFD Station 42; WFR Station 31
- Proposed Site A



11/2014

# Proposed Station Locations: Site B 4 Minute Travel Time



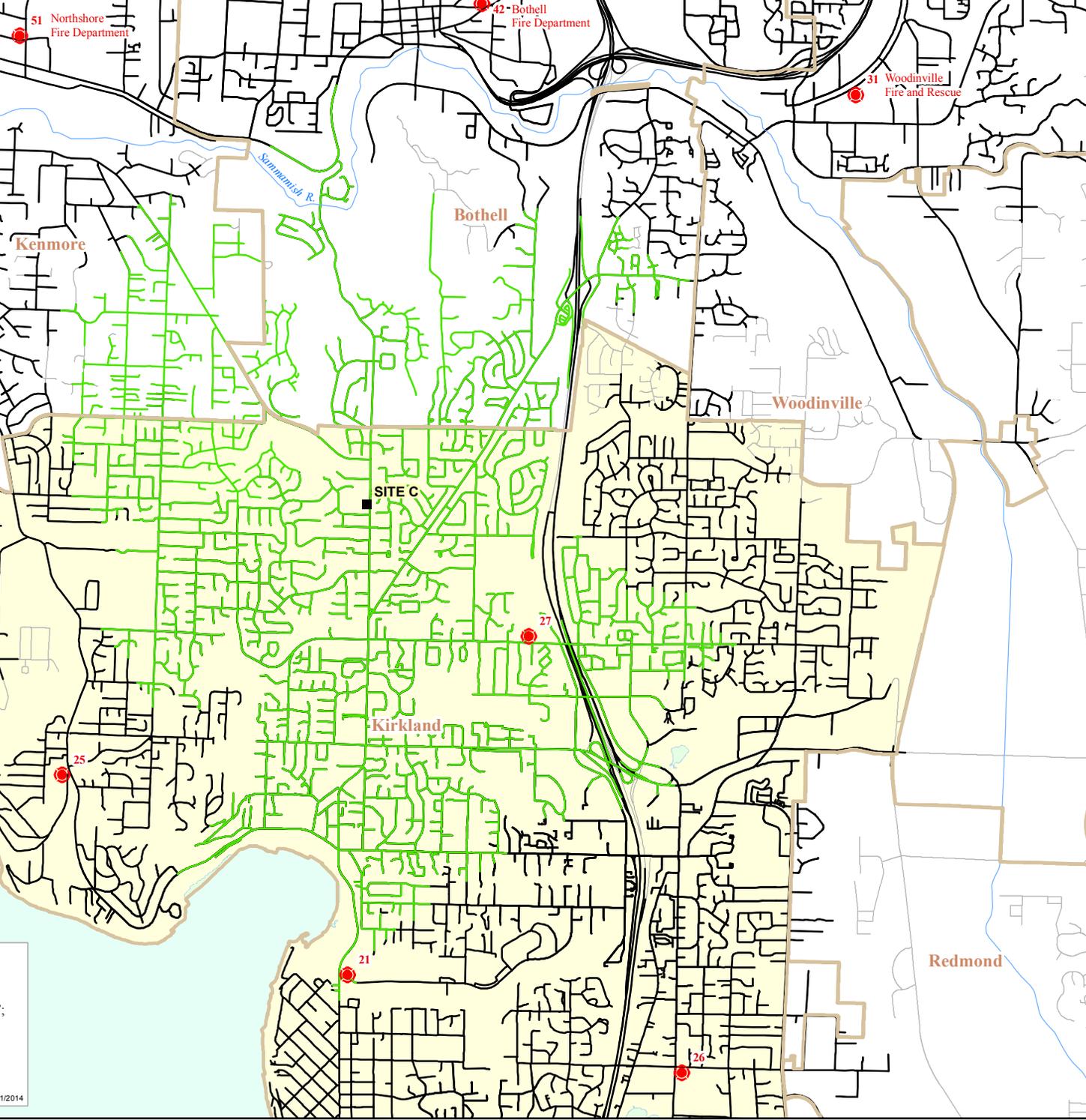
**4 Minute Travel Time At Posted Speeds:**

- Current coverage: Kirkland stations 21, 25, 26, and 27; NFD Station 51; BFD Station 42; WFR Station 31
- Proposed Site B

0 0.5 1 Mile

11/2014

# Proposed Station Locations: Site C 4 Minute Travel Time



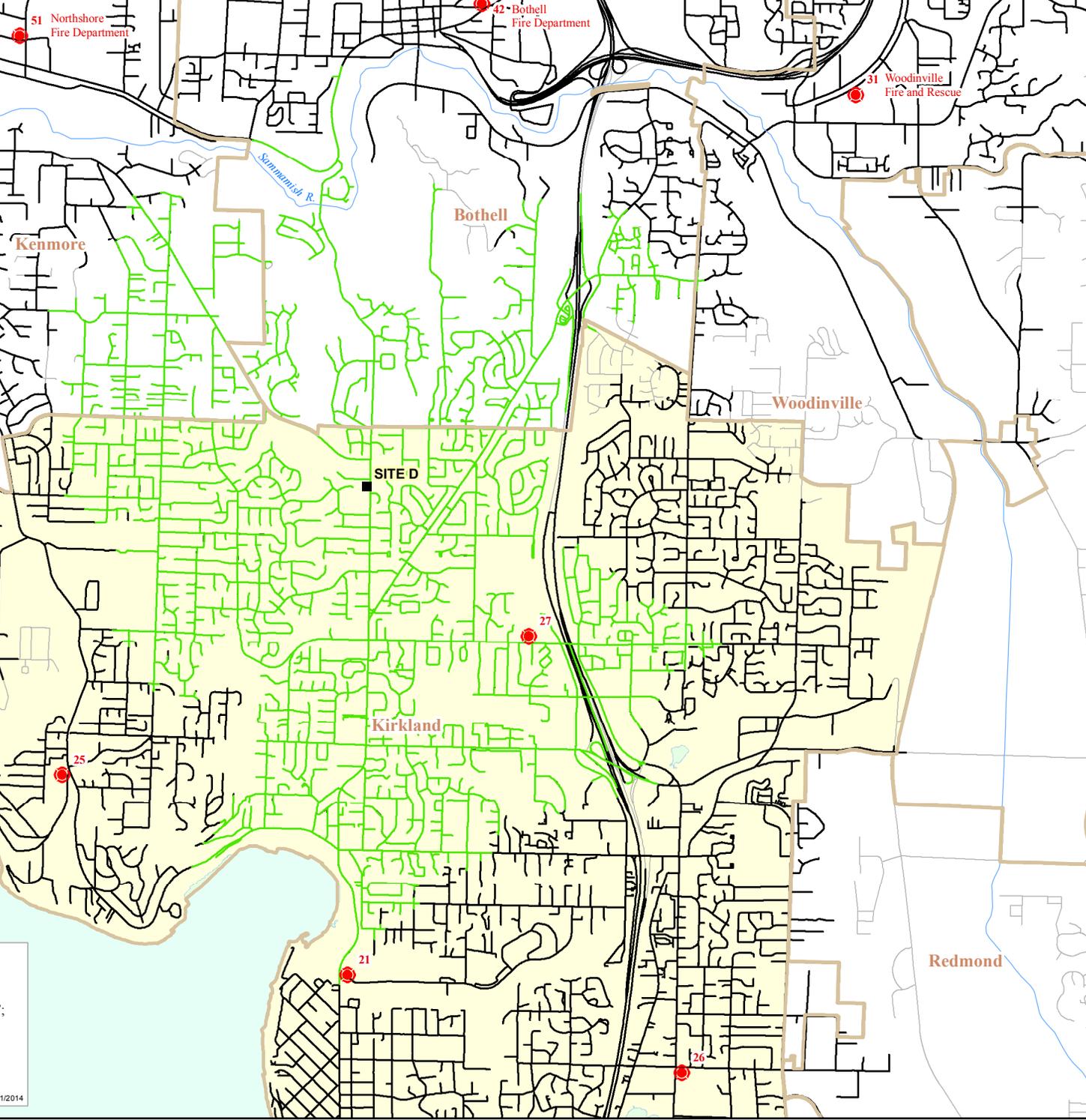
**4 Minute Travel Time At Posted Speeds:**

- Current coverage: Kirkland stations 21, 25, 26, and 27;  
NFD Station 51; BFD Station 42; WFR Station 31
- Proposed Site C

0 0.5 1 Mile

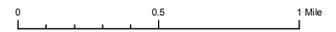
11/2014

# Proposed Station Locations: Site D 4 Minute Travel Time



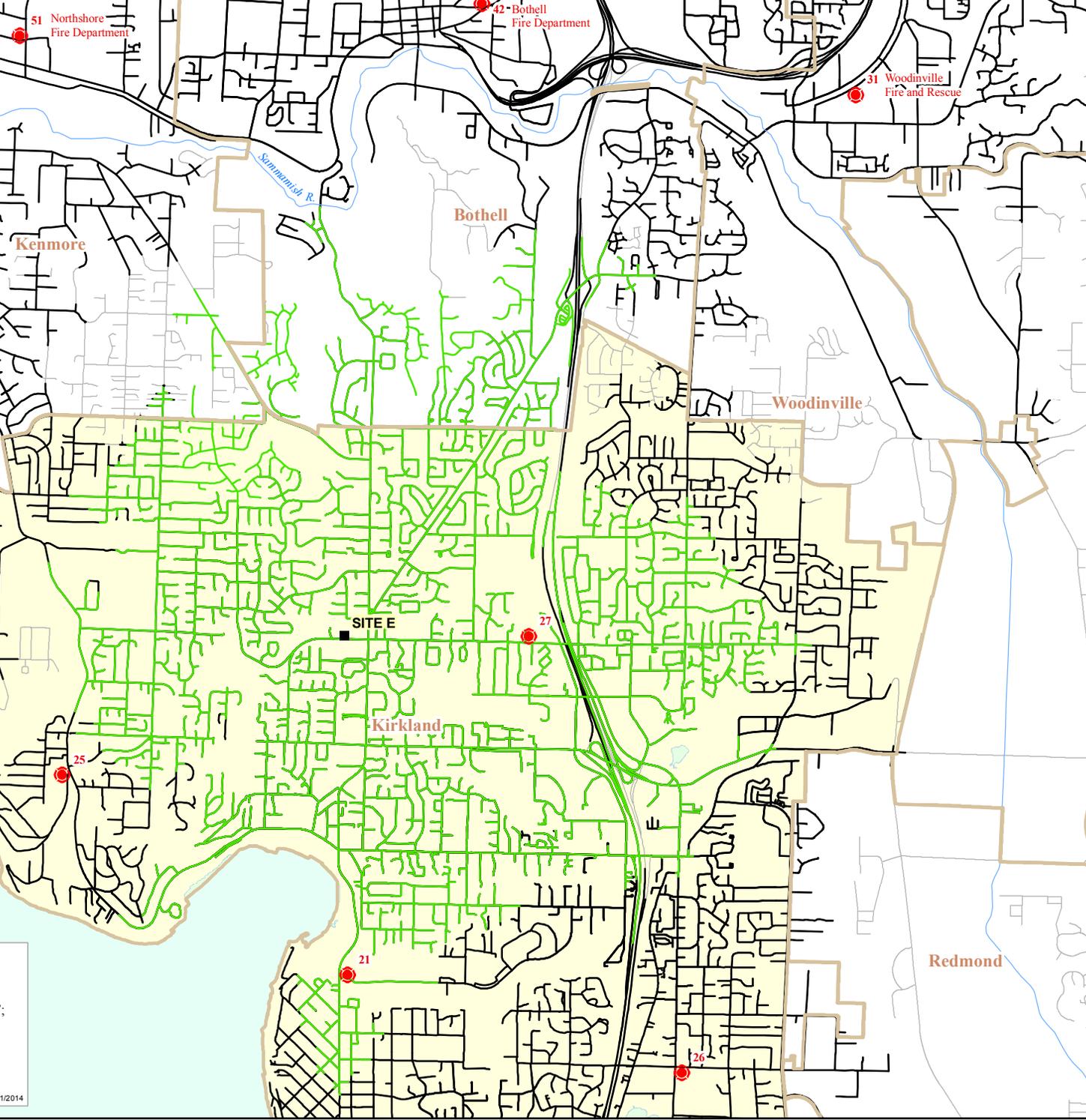
### 4 Minute Travel Time At Posted Speeds:

- Current coverage: Kirkland stations 21, 25, 26, and 27; NFD Station 51; BFD Station 42; WFR Station 31
- Proposed Site D



11/2014

# Proposed Station Locations: Site E 4 Minute Travel Time



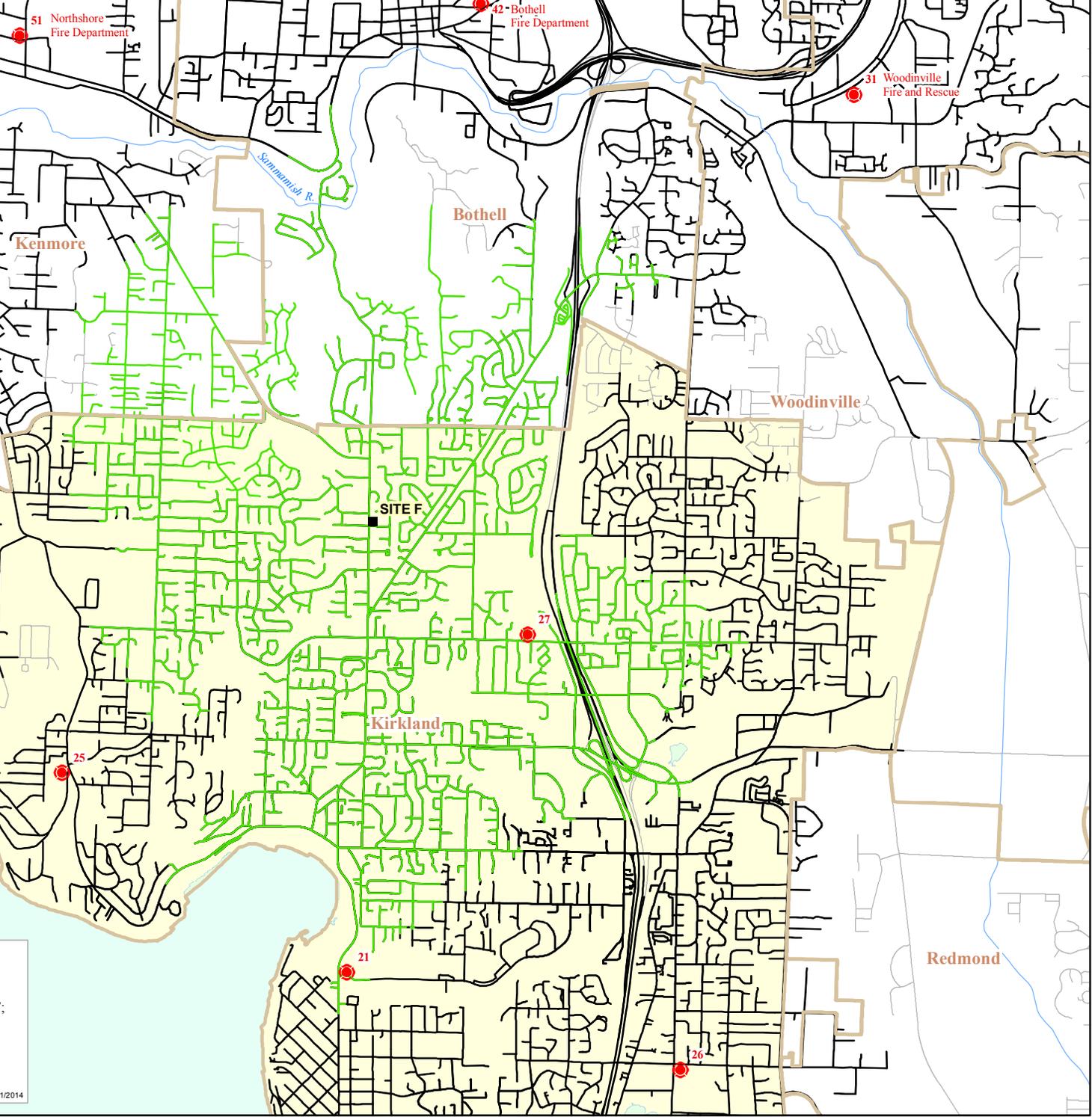
4 Minute Travel Time At Posted Speeds:

- Current coverage: Kirkland stations 21, 25, 26, and 27; NFD Station 51; BFD Station 42; WFR Station 31
- Proposed Site E

0 0.5 1 Mile

11/2014

# Proposed Station Locations: Site F 4 Minute Travel Time



4 Minute Travel Time At Posted Speeds:

- Current coverage: Kirkland stations 21, 25, 26, and 27; NFD Station 51; BFD Station 42; WFR Station 31
- Proposed Site F

0 0.5 1 Mile

11/2014



**CITY OF KIRKLAND**  
**Information Technology Department**  
**123 Fifth Avenue, Kirkland, WA 98033**  
**425.587.3050 [www.kirklandwa.gov](http://www.kirklandwa.gov)**

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## **MEMORANDUM**

**To:** Kurt Triplett, City Manager  
**From:** Brenda Cooper, Chief Information Officer  
**Date:** November 6, 2014  
**Subject:** GIS Day Proclamation

## **RECOMMENDATION**

That the Mayor proclaims Wednesday, November 19, 2014 as GIS Day in the City of Kirkland.

## **BACKGROUND DISCUSSION**

The Information Technology Department is very proud of the enterprise Geographic Information System (GIS) that the city has built together. It is truly a collaborative process among GIS professional staff, city staff in nearly all work groups that use and help maintain this system, department directors, the City Council, and the community at large.

The GIS program has helped Kirkland decision makers at the policy and staff level to understand the complex interplay of multiple topics through mapping and GIS analysis tools. GIS is used in almost every discipline at the city including park planning, environmental stewardship, development review, long-range planning, economic development, public safety, and street use.

As an organization we can also be proud of leveraging our investment in GIS to make government information and activities more accessible to the community, as in two new services, *Kirkland Maps* (<http://maps.kirklandwa.gov/SilverlightViewer/Viewer.html?Viewer=KirklandPublic>) and the *Capital Improvement Projects Map* (<http://maps.kirklandwa.gov/Html5Viewer/?viewer=CapitalImprovement>).



## A PROCLAMATION OF THE CITY OF KIRKLAND

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### **Proclaiming November 19, 2014 as GIS (Geographic Information System) Day in Kirkland, Washington**

**WHEREAS**, the City of Kirkland has implemented a highly successful enterprise-wide Geographic Information System (GIS) in support of its goals, policies, and programs; and

**WHEREAS**, the City's GIS has provided significant benefits to staff, the community, and our partner agencies; and

**WHEREAS**, the National Geographic Society and other organizations annually promote "Geography Awareness Week" which is designated this year as November 16-22, 2014 and also includes celebrating "GIS Day" on November 19, 2014; and

**WHEREAS**, the City utilizes GIS technology for many priority projects including Kirkland Maps, Kirkland 2035, Capital Improvement Projects Interactive Map, Crime Mapping, citywide GIS Browsers, NWMaps.net and other GIS mapping tools; and

**WHEREAS**, Kirkland city staff support "GIS Day" in recognition of the contribution this technology has made to a vibrant, livable, and connected community;

**NOW, THEREFORE, I**, Amy Walen, Mayor of Kirkland, do hereby proclaim November 19, 2014 as "GIS Day" in the City of Kirkland and invite the community to take advantage of web-enabled GIS portals to learn more about city activities and information.

Signed this 18<sup>th</sup> day of November, 2014

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Amy Walen, Mayor



**CITY OF KIRKLAND**  
**Human Resources Department**  
 505 Market Street, Suite B, Kirkland, WA 98033 425.587-3210  
 www.kirklandwa.gov

## MEMORANDUM

**To:** Kurt Triplett, City Manager  
**From:** Human Resources  
**Date:** November 3, 2014  
**Subject: Semi Annual Fall 2014 Service Award Recognition  
 – Special Presentations**

### Recommendation:

On a semi-annual basis include a role call list of employees reaching benchmark service years of twenty and above on the Council Agenda under Special Presentations.

Employees reaching benchmarks of 20, 25, 30, 35 ... years of service receive an Acrylic Plaque etched with the employee(s) name, department and service years and an award certificate.

From the podium the Human Resource Director will read each employee's name, years of service, department and position title. Each recognized employee will walk up to the study session table and will be presented the award by the Mayor. The employee will also receive a handshake and photograph with the Mayor when receiving the award. Each recognized employee will then walk along the Council dais and shake the hand of all the seated councilmembers before returning to their seat. The names listed below are confirmed, any changes to the employee list below will be communicated prior to the ceremony.

### Twenty years of Service

<u>Employee Name</u>	<u>Department</u>	<u>Position</u>
Carol Berkey	Parks & Community Services	Senior Groundsperson

### Twenty-five years of Service

<u>Employee Name</u>	<u>Department</u>	<u>Position</u>
William Henderson	Fire & Building	Lieutenant
Patrick Hund	Fire & Building	Captain
Troy McKinney	Fire & Building	Lieutenant
Clifton Oleszko	Fire & Building	Firefighter
Joseph Ruljancich	Fire & Building	Firefighter
David Walker	Fire & Building	Fire Marshall
Dawn Nelson	Planning	Planning Supervisor
Angela Ruggeri	Planning	Senior Planner

Patrick McManus	Fire & Building	Firefighter
Raymond Steiger	Public Works	Street Division Manager
Steven Hoopes	Public Works	Senior Maintenance Person
Paul Stewart	Planning	Deputy Planning Director

**Thirty years of Service**

<u>Employee Name</u>	<u>Department</u>	<u>Position</u>
Joan Lieberman-Brill	Planning	Senior Planner

The next award ceremony recognizing employees who reach these yearly benchmarks between January 1<sup>st</sup> and June 30<sup>th</sup>, 2015 will be scheduled for an upcoming spring 2015 Council meeting.

*The City of Kirkland Proudly recognizes and Honors the following employees for their contributions over the last ...*

<b>Service Awards</b>	<b>20 years of service</b>		
<b>Employee Name</b>	<b>Anniversary Date</b>	<b>Department</b>	<b>Position</b>
Carol Berkey	October 3, 2014	Parks & Community Services	Senior Groundsperson
<b>Service Awards</b>	<b>25 years of service</b>		
<b>Employee Name</b>	<b>Anniversary Date</b>	<b>Department</b>	<b>Position</b>
William Henderson	July 7, 2014	Fire & Building	Lieutenant
Patrick Hund	July 7, 2014	Fire & Building	Captain
Troy McKinney	July 7, 2014	Fire & Building	Lieutenant
Clifton Oleszko	July 7, 2014	Fire & Building	Firefighter
Joseph Ruljancich	July 7, 2014	Fire & Building	Firefighter
David Walker	July 7, 2014	Fire & Building	Fire Marshall
Dawn Nelson	July 10, 2014	Planning	Planning Supervisor
Angela Ruggeri	July 17, 2014	Planning	Senior Planner
Patrick McManus	September 22, 2014	Fire & Building	Firefighter
Raymond Steiger	October 23, 2014	Public Works	Street Division Manager
Steven Hoopes	November 6, 2014	Public Works	Senior Maintenance person
Paul Stewart	December 27, 2014	Planning	Deputy Planning Director
<b>Service Awards</b>	<b>30 years of service</b>		
<b>Employee Name</b>	<b>Anniversary Date</b>	<b>Department</b>	<b>Position</b>
Joan Lieberman-Brill	August 20, 2014	Planning	Senior Planner



KIRKLAND CITY COUNCIL SPECIAL STUDY SESSION MINUTES  
October 30, 2014

1. CALL TO ORDER
2. ROLL CALL

ROLL CALL:

Members Present: Councilmember Jay Arnold, Councilmember Dave Asher, Councilmember Shelley Kloba, Councilmember Doreen Marchione, Councilmember Toby Nixon, Deputy Mayor Penny Sweet, and Mayor Amy Walen.

Members Absent: None.

3. STUDY SESSION
  - a. 2015-2016 Budget

City Manager Kurt Triplett provided opening remarks and introduced Finance and Administration Director Tracey Dunlap. Ms. Dunlap recognized Financial Services staff Tom Mikesell, Neil Kruse, Kyle Butler, Chris Lynch, George Dugdale, Jessica Clem and others. Mr. Triplett began with an overview of the budget process considerations, followed by a presentation from Ms. Dunlap and Mr. Mikesell, who responded to Council questions and received direction.

Council recessed for a short break at 4:24 p.m.

Council recessed for a dinner break at 5:36 p.m.

Council recessed for a short break at 7:30 p.m.

4. ADJOURNMENT

The City Council Special Study Session of October 30, 2014 was adjourned at 8:18 p.m.

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City Clerk

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Mayor



KIRKLAND CITY COUNCIL SPECIAL MEETING MINUTES  
November 03, 2014

1. CALL TO ORDER

2. ROLL CALL

ROLL CALL:

Members Present: Councilmember Jay Arnold, Councilmember Dave Asher, Councilmember Shelley Kloba, Councilmember Doreen Marchione, Councilmember Toby Nixon, Deputy Mayor Penny Sweet, and Mayor Amy Walen.

Members Absent: None.

3. STUDY SESSION

a. 2015-2016 Budget Study Session #2

Joining Councilmembers for this discussion were City Manager Kurt Triplett and Director of Finance and Administration Tracey Dunlap. Also contributing to the conversation were Deputy City Manager Marilynne Beard and Senior Financial Analyst Neil Kruse.

4. EXECUTIVE SESSION

a. To Review the Performance of a Public Employee

Mayor Walen announced that Council would enter into executive session to review the performance of a public employee and would return to regular meeting at 7:30 p.m., which they did.

Mayor Walen requested that Council substitute the Resolution 5080 which has been placed on the dais for the one on the consent calendar. The substitute adds one word which was omitted from the original. She also requested that Council add a special presentation from King County under item 7.a.; Council agreed to do so.

5. HONORS AND PROCLAMATIONS

a. 2014 Kirkland Arbor Day Proclamation

Urban Forester Deb Powers and Green Kirkland Partnership Supervisor Sharon Rodman accepted the proclamation from Mayor Walen and Councilmember Arnold.

6. COMMUNICATIONS

- a. Announcements
- b. Items from the Audience

Ted Richardson  
Kent Kollmorgen  
David Hoffman

- c. Petitions

7. SPECIAL PRESENTATIONS

- a. King County Wastewater Treatment Division

King County Wastewater Treatment Division Director Pam Elardo and East Section Manager Robert Waddle provided an explanation of the causes of the recent pump station failure and overflow.

8. CONSENT CALENDAR

- a. Approval of Minutes: October 21, 2014
- b. Audit of Accounts:  
Payroll \$2,804,334.39  
Bills \$2,493,473.76  
run #1359 checks #556907 - 557129  
run #1360 checks #557130 - 557146  
run #1361 checks #557147 - 557195  
run #1362 checks #557200 - 557265
- c. General Correspondence
- d. Claims
- e. Award of Bids
- f. Acceptance of Public Improvements and Establishing Lien Period

(1) 100th Avenue NE Bicycle Lanes Project, Road Construction Northwest, Inc., Renton, Washington

The project work was accepted via approval of the Consent Calendar.

- g. Approval of Agreements
- h. Other Items of Business

(1) Resolution R-5080, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELINQUISHING ANY INTEREST THE CITY MAY HAVE, EXCEPT FOR A UTILITY EASEMENT, IN AN UNOPENED RIGHT-OF-WAY AS DESCRIBED HEREIN AND REQUESTED BY PROPERTY OWNER EVA L. HOPP."

(2) Report on Procurement Activities

Motion to Approve the Consent Calendar.

Moved by Councilmember Dave Asher, seconded by Deputy Mayor Penny Sweet

Vote: Motion carried 7-0

Yes: Councilmember Jay Arnold, Councilmember Dave Asher, Councilmember Shelley Kloba, Councilmember Doreen Marchione, Councilmember Toby Nixon, Deputy Mayor Penny Sweet, and Mayor Amy Walen.

## 9. PUBLIC HEARINGS

### a. Preliminary 2015-2016 Budget

Mayor Walen opened the public hearing. Finance and Administration Director Tracey Dunlap provided a brief budget overview and summary of Council's discussion to date on the preliminary 2015-2016 budget. Testimony was provided by Tom McDade, Stan Kehl, Loita Hawkinson, Karina O'Malley, Steve Roberts, Whitney Morean, and Cristina Wheatley. No further testimony was offered and the Mayor closed the hearing.

## 10. UNFINISHED BUSINESS

### a. Ordinance O-4463 and its Summary, Relating to Development Fees and Amending Kirkland Municipal Code Chapters 5.74, 19.36, 21.06 and 21.74.

Motion to Approve Ordinance O-4463 and its Summary, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO DEVELOPMENT FEES AND AMENDING KIRKLAND MUNICIPAL CODE CHAPTERS 5.74, 19.36, 21.06 AND 21.74" as amended.

Moved by Councilmember Doreen Marchione, seconded by Councilmember Dave Asher

Vote: Motion carried 7-0

Yes: Councilmember Jay Arnold, Councilmember Dave Asher, Councilmember Shelley Kloba, Councilmember Doreen Marchione, Councilmember Toby Nixon, Deputy Mayor Penny Sweet, and Mayor Amy Walen.

Motion to Amend Ordinance O-4463 by inserting "percent" after "three and five-tenths" in paragraph (i) at the bottom of page 33.

Moved by Councilmember Toby Nixon, seconded by Councilmember Dave Asher

Vote: Motion carried 7-0

Yes: Councilmember Jay Arnold, Councilmember Dave Asher, Councilmember

Shelley Kloba, Councilmember Doreen Marchione, Councilmember Toby Nixon, Deputy Mayor Penny Sweet, and Mayor Amy Walen.

b. Long-Term Street Improvement Closure Policy

Development Engineering Manager Rob Jammerman reviewed the background discussion regarding long term closures of street improvements by private development projects and responded to Council questions.

Motion to Direct staff to add the Street Improvement Closure Policy to the Kirkland Public Works Pre-approved Plans and Policies Book.

Moved by Councilmember Dave Asher, seconded by Councilmember Jay Arnold  
Vote: Motion carried 7-0

Yes: Councilmember Jay Arnold, Councilmember Dave Asher, Councilmember Shelley Kloba, Councilmember Doreen Marchione, Councilmember Toby Nixon, Deputy Mayor Penny Sweet, and Mayor Amy Walen.

Motion to Indefinitely postpone Ordinance O-4448.

Moved by Deputy Mayor Penny Sweet, seconded by Councilmember Dave Asher  
Vote: Motion carried 7-0

Yes: Councilmember Jay Arnold, Councilmember Dave Asher, Councilmember Shelley Kloba, Councilmember Doreen Marchione, Councilmember Toby Nixon, Deputy Mayor Penny Sweet, and Mayor Amy Walen.

11. NEW BUSINESS

a. Funding Requests from Council Special Projects Reserve

City Manager Kurt Triplett reviewed Council's direction for the funding requests.

Motion to Modify the staff recommendation to increase funding to \$6,000 for the Kirkland Arts Center with a contract for services to be negotiated by the City Manager, as amended.

Moved by Councilmember Jay Arnold, seconded by Councilmember Dave Asher  
Vote: Motion carried 7-0

Yes: Councilmember Jay Arnold, Councilmember Dave Asher, Councilmember Shelley Kloba, Councilmember Doreen Marchione, Councilmember Toby Nixon, Deputy Mayor Penny Sweet, and Mayor Amy Walen.

Motion to Amend the motion to increase the funding authorization to be \$8,000 for the Kirkland Arts Center.

Moved by Councilmember Doreen Marchione, seconded by Councilmember Shelley Kloba

This amendment was withdrawn by Doreen Marchione with the consent of Shelley Kloba as the second.

Motion to Amend the motion to authorize the City Manager to negotiate the contract to ensure the electrical panel is repaired and there is a public benefit to the

City.

Moved by Councilmember Dave Asher, seconded by Deputy Mayor Penny Sweet  
Vote: Motion carried 7-0

Yes: Councilmember Jay Arnold, Councilmember Dave Asher, Councilmember Shelley Kloba, Councilmember Doreen Marchione, Councilmember Toby Nixon, Deputy Mayor Penny Sweet, and Mayor Amy Walen.

Motion to Approve the funding requests from Council special projects reserve as recommended by the Council Finance and Administration Committee, as amended.

Moved by Councilmember Dave Asher, seconded by Councilmember Jay Arnold  
Vote: Motion carried 7-0

Yes: Councilmember Jay Arnold, Councilmember Dave Asher, Councilmember Shelley Kloba, Councilmember Doreen Marchione, Councilmember Toby Nixon, Deputy Mayor Penny Sweet, and Mayor Amy Walen.

b. Public Safety Emergency Radio Network (PSERN)

City Manager Kurt Triplett provided an overview of the proposed network formation and received Council direction.

c. Sound Cities Association (SCA) Open Seats/Appointments to 2015 Regional Boards and Commissions

Council discussed their interest in the various appointments.

12. REPORTS

a. City Council Reports

(1) Finance and Administration Committee

Chair Marchione reported on the budget and on Council policies and procedures.

Chair Asher reported on the Legislative Committee's meeting with Representatives Moscoso and Stanford.

(2) Planning, and Economic Development Committee

Did not meet.

(3) Public Safety Committee

Did not meet.

(4) Public Works, Parks and Human Services Committee

Chair Kloba reported on the upcoming joint committee meeting with the Finance Committee and the Lake Washington School District to discuss impact fees.

(5) Tourism Development Committee

Did not meet.

(6) Regional Issues

Councilmembers shared information regarding the Sound Cities Association and Association of Washington Cities Joint Networking Dinner; Councilmember Nixon requested the legislative committee review laws restricting grassroots lobbying by Councilmembers; the King County Regional Law, Safety and Justice Committee caucus election; the Sophia Way Annual Benefit luncheon; an upcoming Sound Cities Association Public Issues Committee meeting; a telephone call with King County Councilmember Rod Dembowski regarding public health services; the Futurewise Happy Seattle Urban Design Lab; a King County Mental Illness and Drug Dependency Oversight Committee; a Sound Cities Association Transportation Conversation luncheon; an Eastside Transportation Partnership Legislative Committee meeting; a King County Committee to End Homelessness meeting; a site visit at Bluetooth SIG; a ribbon cutting event at Purpose Boutique; Puget Sound Regional Council Executive Board meeting; Sound Cities Association Regional Policy Committee meeting; beginning of regular meetings with the Mayor and Deputy Mayor and the Houghton Community Council Chair and Vice Chair and the Planning Commission Chair and Vice Chair; Kirkland Performance Center annual gala and auction; the Kirkland Arts Center REDUX: ARTbeat of the 60's gala and benefit auction; a panel on housing.

b. City Manager Reports

City Manager Kurt Triplett reported on the Public Safety Emergency Radio Network; scheduling delays on the Cross Kirkland Corridor Interim Trail project; the potential for amendments to Sound Transit.

(1) Calendar Update

City Manager Kurt Triplett noted the upcoming Neighborhood meeting on Nov 19th at the Kirkland Justice Center; the discussion about Animal Control Services will be on the January 6th Council Meeting; the plastic bag issue will probably be on the January 6th Council Meeting.

13. ITEMS FROM THE AUDIENCE

Bill Hallerman

14. ADJOURNMENT

The Kirkland City Council Special Meeting of November 3, 2014 was adjourned at 9:32 p.m.

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City Clerk

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Mayor

# CITY OF KIRKLAND CITY COUNCIL

Council Meeting: 11/18/2014  
Agenda: Approval of Minutes  
Item #: 8. a. (3).



Amy Walen, Mayor • Penny Sweet, Deputy Mayor • Jay Arnold • Dave Asher  
Shelley Kloba • Doreen Marchione • Toby Nixon • Kurt Triplett, City Manager

### *Vision Statement*

*Kirkland is an attractive, vibrant and inviting place to live, work and visit.  
Our lakefront community is a destination for residents, employees and visitors.  
Kirkland is a community with a small-town feel, retaining its sense of history,  
while adjusting gracefully to changes in the twenty-first century.*

123 Fifth Avenue • Kirkland, Washington 98033-6189 • 425.587.3000 • TTY Relay 711 • [www.kirklandwa.gov](http://www.kirklandwa.gov)

## AGENDA

### KIRKLAND CITY COUNCIL SPECIAL JOINT COMMITTEE MEETING WITH PUBLIC WORKS, PARKS & HUMAN SERVICES and FINANCE & ADMINISTRATION CITY COUNCIL COMMITTEES

**Peter Kirk Room  
Kirkland City Hall  
123 5<sup>th</sup> Avenue**

**Wednesday, November 5, 2014  
10:00 a.m. – 11:30 a.m.**

1. School Impact Fees  
Dr. Traci Pierce, Superintendent, Lake Washington School District
2. Set Next Agenda (December 3<sup>rd</sup>)

The meeting was called to order at 10:00 a.m.

In attendance were Councilmembers Jay Arnold, Dave Asher, Shelley Kloba, Doreen Marchione, Toby Nixon, Deputy Mayor Penny Sweet and Mayor Amy Walen.

Staff attending were City Manager Kurt Triplett, Finance and Administration Director Tracey Dunlap, Parks and Community Services Director Jennifer Schroder and Public Works Director Kathy Brown.

In addition to Dr. Pierce, from the Lake Washington School District were Deputy Superintendent Janene Fogard and Director of Support Services Forrest Miller.

Following Dr. Pierce's presentation, the special City Council joint committee meeting was adjourned at 11:30 a.m.

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Mayor

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City Clerk



**CITY OF KIRKLAND**  
**Department of Public Works**  
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800  
[www.kirklandwa.gov](http://www.kirklandwa.gov)

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## **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Patrick Herbig, P.E., Project Engineer  
David Snider, P.E., Capital Projects Manager  
Kathy Brown, Public Works Director

**Date:** November 6, 2014

**Subject:** KIRKLAND ITS IMPLEMENTATION PHASE IB PROJECT  
AWARD CONTRACT

### **RECOMMENDATION:**

It is recommended that the City Council awards the construction contract for the Kirkland Intelligent Transportation System (ITS) Implementation Phase IB Project to Prime Electric, Inc., Bellevue, WA, in the amount of \$391,075.74.

### **BACKGROUND DISCUSSION:**

The ITS Phase I Project will upgrade traffic signal equipment, interconnect traffic signals, and add data collection and field monitoring equipment at various locations throughout the City. The ITS Phase I Project is comprised of two sub-projects: Phase IA and Phase IB. The City completed the Phase IA Project earlier this year with the construction of the new Traffic Management Center (TMC) inside City Hall. The Phase IB Project installs new field equipment and achieves direct communication and control between the new Phase IB field devices and the TMC. Specific equipment elements for Phase IB include new signal cabinet assemblies, signal controllers with accessible pedestrian signals (APS), central control hardware and software, and closed circuit television (CCTV) cameras for traffic monitoring, video detection, and fiber optic communications.

The Phase IB Project provides for the installation of the new signal equipment along two major City (and regional) arterial corridors leading to and from downtown Kirkland (See Attachment A):

1. Lake Washington Blvd/Market Street/98-100th Ave NE Corridor
2. Central Way/NE 85th Street Corridor

The overall ITS Phase I Project had an original budget of \$2,081,000 comprised of grant and City Funding of \$1,800,000 from a federal Congestion and Mitigation of Air Quality (CMAQ) grant, and \$281,000 in City funding. The Phase IA Project (the TMC) was completed at a total cost of \$322,600, including all construction and equipment costs, with \$274,000 coming from CMAQ and \$48,600 in City funds being expended.

At the September 16, 2014, City Council meeting staff sought Council approval to increase the Project funding and authorization to advertise for contractor bids. Based on the

engineer's estimate, at that time, the complete Phase IA and Phase IB Project cost was then projected to be \$2,171,000, which exceeded the original project funding by \$90,000. At the same September 16 meeting, City Council approved a funding increase using REET 2 Reserves, bringing the new total of City participation to \$371,000 and a total Project budget of \$2,171,000 (Attachment B).

Staff first advertised for Phase IB contractor bids on October 8, 2014. On October 29, five bids were received, with Prime Electric, Inc. being the lowest responsive and responsible bidder, as follows:

<b>Contractor</b>	<b>Total Bid</b>
<b>Prime Electric, Inc.</b>	<b>\$ 391,075.74</b>
VECA Electric	\$ 491,400.60
West Coast Signal	\$ 494,733.17
<i>Engineer's Estimate</i>	<i>\$ 525,875.00</i>
Transportation Systems	\$ 541,453.40
Totem Electric	\$ 557,275.85

With the low bid price received being considerably less than the engineer's estimate, a recalculation of the total Project budget, including grant eligible reimbursements, ineligible expenses for engineering and other soft costs result in a proportionate reduction in grant funding. Since the overall grant ineligible expenses generally remain constant, staff recommends maintaining the City Council's previously approved City funding of \$371,000. Throughout the construction process staff will work closely with the grant administrator to preserve the maximum amount of all grant eligible expenses; a final accounting of all costs will be performed at the conclusion of the Project and any City funds remaining will be returned to the funding source.

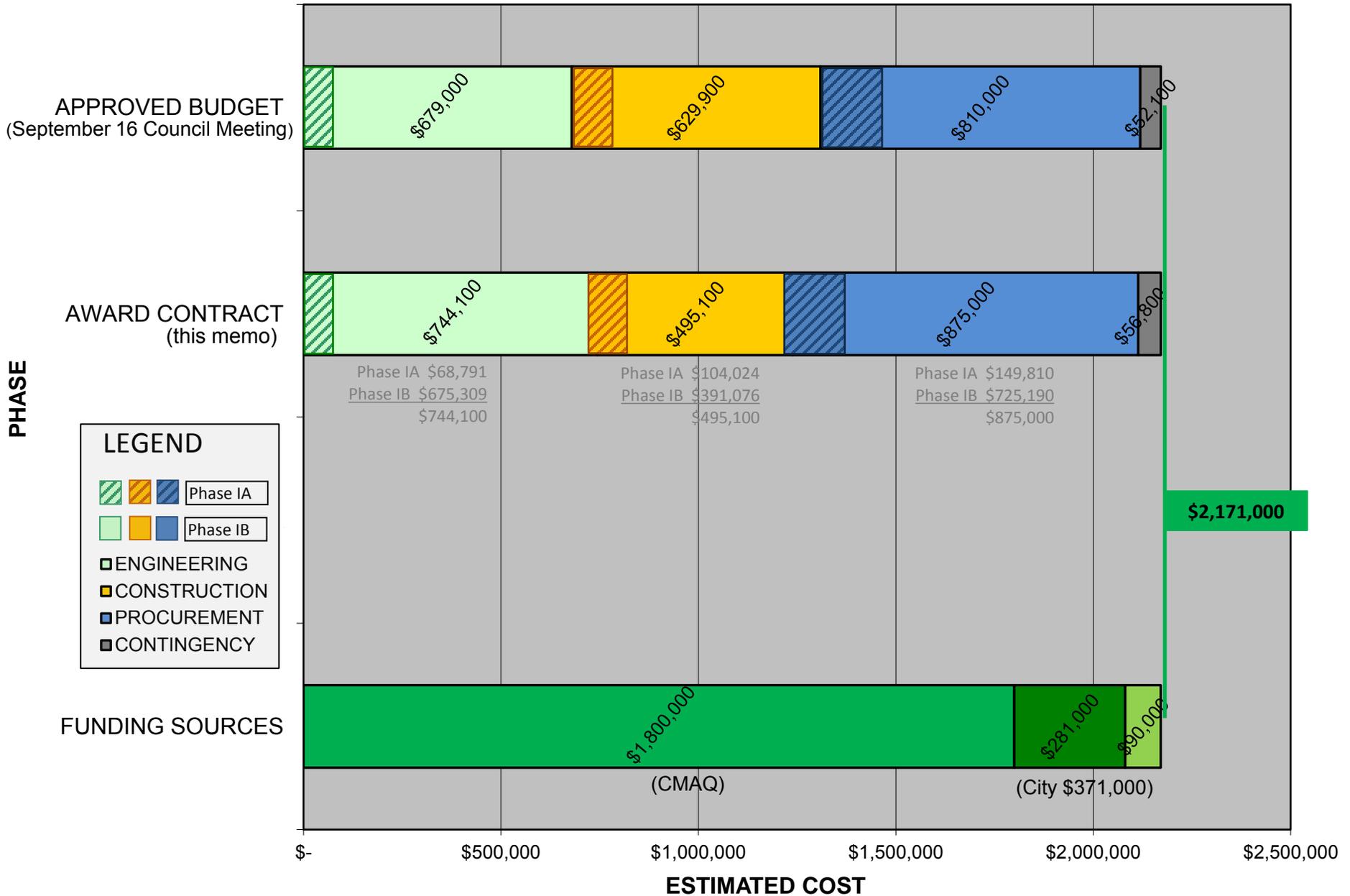
With a City Council award of the construction contract at the November 18 meeting, construction will begin in January, 2015, with an anticipated substantial completion in spring following an 80 working day schedule. In advance of the construction, staff will renew public outreach efforts by distributing regular Project updates through various means, including regular Project website information on contractor work zones and construction schedules and progress.

Attachment A: Vicinity Map  
Attachment B: Project Budget Report



**Kirkland ITS Implementation,  
Phase IB - Installation of Signal Equipment (CTR-0111-000)  
Project Budget Report**

**Attachment B**





**CITY OF KIRKLAND**  
**Department of Finance & Administration**  
**123 Fifth Avenue, Kirkland, WA 98033 425.587.3100**  
**www.kirklandwa.gov**

## MEMORANDUM

**To:** Kurt Triplett, City Manager  
**From:** Tracey Dunlap, Director of Finance and Administration  
**Date:** November 5, 2014  
**Subject:** 2015 NORCOM BUDGET APPROVAL

### **RECOMMENDATION:**

Council approves Kirkland's share of the 2015 NORCOM budget.

### **BACKGROUND DISCUSSION:**

On July 1, 2009, the North East King County Regional Public Safety Communications Agency (NORCOM) began dispatch operations. The interlocal agreement forming NORCOM calls for each participating agency to approve their portion of NORCOM's budget before it is adopted on December 12, 2014 (ILA Section 12(c)). While technically the City of Kirkland will approve NORCOM's budget as part of the adoption of the 2015-16 budget in December, the budget approval date is very close to the due date, so we are asking for the 2015 NORCOM budget to be approved by resolution.

Kirkland's share of the 2015 NORCOM costs are summarized in the table below.

	2014	2015
<b>Total Kirkland Share</b>		
<b>Fire</b>	481,014	498,690
<b>Police</b>	<u>1,951,578</u>	<u>2,111,831</u>
<b>Subtotal</b>	2,432,592	2,610,521

The overall increase in 2015 is 7.3%, with Fire's share increasing 3.6% and the Police share increasing 8.2%. The Fire increase is consistent with NORCOM's overall budget increase of 3.9%. The increase in the Police share reflects that Kirkland's Police calls as a percentage of total Police calls has grown, with Kirkland representing 44.2% of total Police calls (versus 40.9% in 2013). The 2015-2016 Fire and Police budgets include the NORCOM costs.

NORCOM adopts its budget annually, so this approval applies to 2015 only. An estimate for 2016 is included in the biennial budget and we will likely bring a similar resolution forward in late 2015 to approve the final 2016 number after it is approved by the NORCOM Governing Board in 2015.

RESOLUTION R-5081

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE CITY OF KIRKLAND'S ALLOCATION FOR THE NORTH EAST KING COUNTY REGIONAL PUBLIC SAFETY COMMUNICATIONS AGENCY (NORCOM) BUDGET.

WHEREAS, the North East King County Regional Public Safety Communications Agency (NORCOM) was formed effective November 1, 2007; and

WHEREAS, NORCOM is in the process of adopting its annual budget for 2015; and

WHEREAS, the NORCOM Interlocal Agreement, to which the City is a party, requires that the City Council approves the City's allocation for NORCOM's budget;

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

Section 1. The City of Kirkland's allocation for the North East King County Regional Public Safety Communications Agency (NORCOM) budget, as proposed to be included in the City of Kirkland 2015 – 2016 Budget, is approved.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2014.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

**CITY OF KIRKLAND****Planning and Community Development Department**  
**123 Fifth Avenue, Kirkland, WA 98033**  
**425.587-3225 - [www.kirklandwa.gov](http://www.kirklandwa.gov)**

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Eric R. Shields, AICP Planning Director  
Nancy C. Cox, AICP Development Review Manager

**Date:** November 6, 2014

**Subject:** Roster of Process IVA Zoning Code Amendments for the 'Charts to Tables'  
Zoning Code Reformatting Project

**RECOMMENDATION**

Approve by motion the roster of Process IVA Miscellaneous Zoning Code amendments (see Attachment 1). Approval will allow public comment on the proposed code changes. Final proposed amendments for Phase 1 of the project will be submitted for Council adoption in February, 2015.

**BACKGROUND DISCUSSION**Proposal

The proposed amendments involve reformatting existing charts which indicate permitted uses and associated regulations for each of the zones in the City, by converting them to simplified tables.

Process

The Planning Director periodically presents a roster of proposed amendments for review and decision under Process IVA ([Chapter 161 KZC](#) as amended). Pursuant to Zoning Code Section 161.25, process IVA amendments are limited to "minor...amendments that promote clarity, eliminate redundancy or...correct inconsistencies," and do not need extensive policy study. The City Council may by motion:

- Approve the entire proposed Process IVA roster;
- Ask for more discussion about the suitability of a subject for Process IVA; or
- Remove a subject from the Process IVA roster.

Following City Council action on the roster, a public notice is distributed providing a 30 day public comment period prior to review by the Planning Director. The Planning Director considers all of the public comments and makes a recommendation to the City Council. The City Council considers enactment by ordinance.

Staff met with the Planning, Housing and Economic Development Committee on October 13, 2014 and presented the overview concept of the reformatting project and some example tables.

The project is on the November 20, 2014 Planning Commission agenda to update Commissioners on the code reformat.

The Houghton Community Council (HCC) met on October 27, 2014 and decided to review the amendments at a regular meeting on December 15, 2014. The Community Council's recommendation will be forwarded to the Planning Director and City Council along with all public comments. The HCC has disapproval jurisdiction over the amendments.

#### Proposed amendments – Charts to Tables

This file of Process IVA amendments proposes to reformat over one-half of the Zoning Code. Zoning Code simplification was one of the key recommendations from the Development Services Organizational Review by Paul Zucker and Associates. The City Council included the following in their 2013-14 City Work Program:

**Implement the Development Services Organizational Review recommendations** and simplify the Zoning Code to further the goals of Economic Development and Neighborhoods.

The City has a contract with Code Publishing, Inc. to do the work. Code Publishing is a national company with roots in Seattle that does on-line and print publishing of hundreds of codes. Their staff includes code writers and editors. The format that is proposed for the new version of the Kirkland Zoning Code is commonly used and is recommended by Code Publishing.

In order to complete the project in a timely fashion while the City is focused on the Comprehensive Plan update, the Fast Track Process IVA process is being utilized rather than Process IV. Therefore, although the amendments touch a large portion of the code, the changes that are proposed require no substantive policy decisions and simplify the format, eliminate redundancy, and correct inconsistencies. Another outcome is improved functionality and accessibility of the online code.

#### Overview

The scope of the work is to reorganize and consolidate the Use Zone Charts into Land Use Tables. Staff has divided the task into two phases, with the first phase including all zones except the named business district zones and the second phase including the named business district zones. Although the roster includes both phases, the Council will be asked to adopt by ordinance the Phase 1 chapters first in early 2015, and the Phase 2 chapters later in the year.

About 1/3 of the code is not being revised because it is not in a chart format; it is in text format. This project deletes the Use Zone Charts entirely and creates new tables. The duplicative nature of the existing charts is one key reason the code is so thick.

The following table compares the old and new versions.

## COMPARISON OF OLD AND NEW

Existing Code - Charts		New Version - Tables	
20 Chapters	One for each group of zones	14 Chapters	Zones are grouped
95 Use Zone Charts	One for each zone	42 Tables	3 tables per chapter
Each Use Zone Chart contains permitted uses, density/dimensions, & development standards		Each chapter contains 3 tables: 1. Permitted Uses 2. Density/Dimensions 3. Development Standards	

Phase 1

In Phase 1, there will be 7 new chapters organized by land use:

1. Low density residential
2. Medium density residential
3. High density residential
4. Office
5. Commercial
6. Industrial
7. Institutional

Each chapter includes the zones that are included in the definition of the zone. For example, the Low Density Residential chapter includes RS, RSX, RSA, WDII, PLA 3C, PLA6C, PLA6E, and PLA 16. These are the zones included in the definition of Low Density Zones in KZC 5.10.490.

Each chapter will include 3 tables that address the zones. For example, in the Low Density Residential Chapter there will be 3 tables for the 8 zones. The tables that will be the same in all of the chapters are:

1. Permitted Uses Table – showing all permitted uses with review process for each use and associated special regulations.
2. Density/Dimensions Table - showing all permitted uses with lot size, required yards, lot coverage, and maximum height for each permitted use and associated special regulations.
3. Development Standards Table - showing all permitted uses with landscape, sign, and parking standards for each permitted use and associated special regulations.

The draft Low Density Residential chapter is 15 pages long. By comparison, there are

27 pages for the same material in the existing code. See Attachment 2 for a draft version of the Low Density Residential Chapter.

## Phase 2

In Phase 2, there will be 7 new chapters organized by land use:

1. Central Business District
2. Market Street Corridor
3. Juanita Business District
4. Rose Hill Business District
5. North Rose Hill Business District
6. Totem Lake
7. Yarrow Bay Business District

The named business district chapters include the same 3 tables: Permitted Uses, Density/Dimensions, and Development Standards.

## Errors, Clarifications, and Similar Phrases and Words

The process of moving the information from the charts to the tables brought to light errors in the existing code. As an example, the word "average" is left out of a reference to "average building elevation" in 3 locations in the code. These and similar errors will be noted for the file and revised in the new version.

In addition there are instances when it made sense to combine similar General or Special Regulations because similar zones are now in the same chapter. For example, it is space efficient to combine the note in the code about the hazardous liquid pipeline in the RS and RSA zones.

### RS Zone:

A hazardous liquid pipeline is located near the RSX 35 zone in the Bridle Trails neighborhood along the eastern boundary of the City. Refer to Chapter 118 KZC for regulations pertaining to properties near hazardous liquid pipelines.

### RSA Zone:

A hazardous liquid pipeline extends through or near the RSA 1, 4, 6 and 8 zones in the vicinity of 136<sup>th</sup> Avenue NE. Refer to Chapter 118 KZC for regulations pertaining to properties near hazardous liquid pipelines.

### New version:

A hazardous liquid pipeline is located near the RSX 35 zone in the Bridle Trails neighborhood along the eastern boundary of the City, and a hazardous liquid pipeline extends through or near the RSA 1, 4, 6 and 8 zones in the vicinity of 136<sup>th</sup> Avenue NE. Refer to Chapter 118 KZC for regulations pertaining to properties near hazardous liquid pipelines.

This and similar instances will be noted for the file and changed in the new version.

Finally, several Special Regulations in the existing code include similar terms and

phrases. In these cases, one term or phrase has been selected to be used consistently. For example, the same idea seen below is stated 4 ways in the code. The underlined version will be in the new code.

A six-foot-high fence is required only along the property lines adjacent to the outside play areas.

A six-foot-high fence along the side and rear property lines is required only along the property lines adjacent to the outside play areas.

A six-foot-high fence is required along the property line adjacent to the outside play areas.

A six-foot high fence is required along the property lines adjacent to the outside play areas.

This and similar instances will be noted for the file and changed in the new version.

Going through the exercise of combining regulations and making the regulations more consistent is time consuming but will create a code that is much more user-friendly and clear.

If the Council concurs with the recommendation, then staff is seeking a motion approving the Process IVA Miscellaneous Zoning Code amendments identified in Attachment 1.

#### ATTACHMENTS

1. Roster
2. DRAFT Example chapter – Chapter 15 - Low Density Residential Zones

cc: File CAM14-02011

**ROSTER OF PROCESS IVA MISCELLANEOUS ZONING CODE AMENDMENTS**

File CAM14-02011

	<b>EXISTING CODE SECTIONS</b>	<b>CHANGE NEEDED</b>	<b>DRAFT AMENDMENTS</b>
<b>Phase 1</b>	Chapter 1 User Guide	Delete existing Chapter 1	Replace with new version that applies to the new format
<b>Phase 1</b>	Table of Contents	Delete Chapters 15 - 49, 60	Replace with new Chapter titles and list zones within each
<b>Phase 1</b>	Chapters 15 – 49, 60	Delete Chapters 15 - 49, 60	Replace with new Chapter: 15 <u>Low Density Zones</u> 20 <u>Medium Density Zones</u> 25 <u>High Density Zones</u> 30 <u>Office Zones</u> 35 <u>Commercial Zones</u> 40 <u>Industrial Zones</u> 45 <u>Institutional Zones</u>
<b>Phase 1</b>	5.10.955, 72.20, 83.190, 90.10, 90.135, 95.40, 100.05, 105.05, 110.05, 112.15, 112.20, 114.15, 115.07, 115.60, 115.105, 115.115, 117.120	Delete all terms and references such as: Use Zone, chart or charts, and Chapters 15 – 60 KZC	Replace with appropriate reference to new tables
<b>Phase 2</b>	Table of Contents	Delete Chapters 50 - 56	Replace with new Chapter titles and list zones within each
<b>Phase 2</b>	Chapters 50 – 56	Delete Chapters 50 – 56	Replace with new Chapter: 50 <u>Central Business District (CBD) Zones</u> 51 <u>Market Street Corridor (MSC) Zones</u> 52 <u>Juanita Business District (JBD) Zones</u> 53 <u>Rose Hill Business District (RHBD) Zones</u> 54 <u>North Rose Hill Business District (NRHBD) Zones</u> 55 <u>Totem Lake Zones</u> 56 <u>Yarrow Bay Business District (YBD) Zones</u>
<b>Phase 2</b>	105.15, 105.19, 110.52, 142.15, 142.35, 142.37, 142.40, 162.15	Delete all terms and references such as: Use Zone, chart or charts and similar	Replace with appropriate reference to new tables

**CHAPTER 15 – LOW DENSITY RESIDENTIAL ZONES (RS, RSX, RSA, WDII, PLA 3C, PLA 6C, PLA 6E, PLA 16)**

## Sections:

15.05 User Guide.15.05.010 Applicable Zones

This chapter contains the regulations for uses in the following zones of the City: RS 35, RS 12.5, RS 8.5, RS 7.2, RS 6.3 and RS 5.0; RSX 35, RSX 12.5, RSX 8.5, RSX 7.2 and RSX 5.0 zones; RSA 1, RSA 4, RSA 6 and RSA 8 zones; WD II zones; PLA 3C, PLA 6C and 6E, and PLA 16 zones.

[description of charts, purpose, applicability, intent provisions]

15.05.020 Common Code References

1. Refer to Chapter 1 KZC to determine what other provisions of this code may apply to the subject property.
2. Public park development standards will be determined on a case-by-case basis. See KZC 45.50.
3. For properties within the Holmes Point (HP) Overlay Zone, see Chapter 70 KZC for additional regulations.
4. Review processes, density/dimensions and development standards for shoreline uses (RS, RSA, WDII, PLA 3C zones) can be found in Chapter 83 KZC, Shoreline Management.
5. Chapter 115 KZC contains regulations regarding home occupations and other accessory uses, facilities and activities associated with Attached Dwelling Units and Detached Dwelling Unit uses.
6. A hazardous liquid pipeline is located near the RSX 35 zone in the Bridle Trails neighborhood along the eastern boundary of the City, and a hazardous liquid pipeline extends through or near the RSA 1, 4, 6 and 8 zones in the vicinity of 136th Avenue NE. Refer to Chapter 118 KZC for regulations pertaining to properties near hazardous liquid pipelines.
7. Garages shall comply with the requirements of KZC 115.43. These requirements are not effective within the disapproval jurisdiction of the Houghton Community Council.

## 15.10 General Regulations

### 15.10.010 All Low Density Residential Zones

1. Structures located with 30 feet of a parcel in a low density zone or a low density use in PLA 17 shall comply with additional limitations on structure size established by KZC 115.136, except for the following uses: KZC 15.20.060, Detached Dwelling Unit, and 15.20.100, Piers, Docks, Boat Lifts and Canopies Serving Detached Dwelling Unit.

### 15.10.020 RS Zone

1. May not use lands waterward of the ordinary high water mark to determine lot size or to calculate allowable density.

### 15.10.030 RSA Zone

1. All subdivisions and short subdivisions in the RSA-1 zone shall be clustered such that development is located away from critical areas. The open space resulting from such clustering shall be placed in a separate tract that includes at least 50 percent of the subject property. Open space tracts shall be permanent and shall be dedicated to a homeowner's association or other suitable organization for purposes of maintenance. Passive recreation, with no development of recreational facilities, and natural-surface pedestrian and equestrian trails are acceptable uses within the open space tract. If access to the open space is provided, the access shall be located in a separate tract. A greenbelt protection or open space easement shall be dedicated to the City to protect the designated open space tract resulting from lot clustering.
2. May not use lands waterward of the ordinary high water mark to determine lot size or to calculate allowable density.

### 15.10.040 WDII Zone

1. May not use lands waterward of the ordinary high water mark to determine lot size or to calculate allowable density.
2. The required yard abutting an unopened right-of-way shall be a side property rather than a front property line.
3. The required rear yard for each use shall be the same as the required rear yard for the same use in the RS zone, unless otherwise specified in KZC 30.25.010(9) and (10). (Does not apply to Piers, Docks, Boat Lifts and Canopies Serving Detached Dwelling Unit.)
4. Residential uses abutting Lake Washington may have an associated private shoreline park that is commonly owned and used by residents and guests.

### 15.10.050 PLA 3C Zone

1. Development shall be subject to the following development standards:
  - a. Structures must be clustered and located so that they will not significantly impact slope stability, drainage patterns, erosion or landslide hazards, and steep ravine areas on the subject property or adjacent property.
  - b. Vegetative cover shall be retained to the maximum extent possible to stabilize slopes.
  - c. Pursuant to the requirements of KZC 85.15(1) through (4), the applicant shall submit a geotechnical report prepared by a qualified geotechnical engineer evaluating the potential geologic hazard areas of the subject and adjacent properties to minimize damage to life and property. Specific structural designs and construction techniques to ensure long-term stability shall be considered as part of the analysis. The applicant's geotechnical report and recommendations shall be reviewed by a qualified geotechnical engineer selected and retained by the City at the applicant's expense. The applicant shall comply with the performance standards contained in KZC 85.25 and 85.45.
  - d. The City may require traffic control devices, shared access points, right-of-way realignment, or limit development if necessary to further reduce traffic impacts.
  - e. Development must ensure that the City has the ability to access and provide necessary emergency services.

15.20 Permitted Uses

**Permitted Uses Table**  
**(RS, RSX, RSA, WDII, PLA 3C, PLA 6C, PLA 6E, PLA 16)**

Land Use		Required Review Process:							
		RS	RSX	RSA	WDII	PLA 3C	PLA 6C	PLA 6E	PLA 16
15.20.010	Attached Dwelling Units	NP	NP	NP	NP	I	NP	NP	NP
						1			
15.20.020	Church	2, 3	2	2, 13	NP	IIA	2	2	IIA
		4c	4c	4c		4c	4c	4c	
15.20.030	Commercial Equestrian Facility	NP	NP	NP	NP	NP	NP	NP	IIB
									5
15.20.040	Commercial Recreation Area and Use	NP	NP	NP	NP	NP	NP	NP	IIB
									6
15.20.050	Community Facility	2, 3	2	2	IIA	IIA	2	2	IIA
		4b	4b	4b	4b	4b			
15.20.060	Detached Dwelling Unit	None	None	None	None	None	None	None	None <sup>7</sup>
				8, 9	8, 11		8	8	8
15.20.070	Golf Course	IIA	IIA	IIA <sup>13</sup>	NP	NP	NP	NP	NP
		4b, 12	4b, 12	4b, 12					
15.20.080	Government Facility	2, 3	2	2	IIA	IIA	2	2	IIA
		4b	4b	4b	4b	4b			

**Permitted Uses Table  
(RS, RSX, RSA, WDII, PLA 3C, PLA 6C, PLA 6E, PLA 16) (Continued)**

Land Use		Required Review Process:							
		RS	RSX	RSA	WDII	PLA 3C	PLA 6C	PLA 6E	PLA 16
15.20.090	Mini-School or Mini-Day-Care Center	I	I	I	NP	I	I	None	None
		4a, 4b, 14, 15, 16, 18	4a, 4b, 14, 15, 16, 18	4a, 4b, 13, 14, 15, 16, 18		4a, 4b, 14, 15, 16, 18	15, 16, 17, 18, 19	15, 16, 17, 18, 19	15, 16, 17, 18, 19
15.20.100	Piers, Docks, Boat Lifts and Canopies Serving Detached Dwelling Unit	NP	NP	I <sup>10</sup>	10	NP	NP	NP	NP
15.20.110	Public Park	Development standards will be determined on a case-by-case basis. See KZC 45.50.							
15.20.120	Public Utility	2, 3	2	2	IIA	IIA	2	2	IIA
		4b	4b	4b	4b	4b			
15.20.130	School or Day-Care Center	2, 3	2	2, 13	NP	IIA	2	2	IIA
		4, 14, 16, 18, 20	4, 14, 16, 18, 20	4, 14, 16, 18, 20		4, 14, 16, 18, 20	4, 14, 16, 18, 20	4, 14, 16, 18, 20	16, 17, 18, 19, 20

**Special Regulations:**

- PU-1. a. No more than two units may be attached to each other.  
b. Attached dwelling units must be designed to look like a detached single-family house using such techniques as limiting the points of entry on each facade, providing pitched roofs and covered porches.
- PU-2. The required review process is as follows:  
a. If the subject property, including all contiguous property owned by the applicant and held by others for future use by the applicant, is less than five acres, the required review process is Process IIA, Chapter 150 KZC.  
b. If the subject property, including all contiguous property owned by the applicant and held by others for future use by the applicant, is five or more acres, a Master Plan, approved through Process IIB, Chapter 152 KZC, is required. The Master Plan must show building placement, building dimensions, roadways, utility locations, land uses within the Master Plan area, parking location, buffering, and landscaping.
- PU-3. Within the jurisdiction of the Houghton Municipal Corporation, the required review process is Process IIB, Chapter 152 KZC.

- PU-4. May locate on the subject property only if:
- It will not be materially detrimental to the character of the neighborhood in which it is located.
  - Site and building design minimizes adverse impacts on surrounding residential neighborhoods.
  - The property is served by a collector or arterial street (does not apply to existing school sites).
- PU-5.
- This use may include arenas, stables, roaming and grazing areas, club house and ancillary equestrian facilities.
  - This use must comply with KZC 80.30 through 80.45.
  - An improved public equestrian access trail through the subject property and appropriate public signing must be provided. The trail must be located and designed to allow for an eventual connection between N.E. 60th Street and Bridle Trails State and King County Parks.
- PU-6.
- This use may include activities such as: indoor and outdoor tennis courts, club house, swimming pool, other sport court games and ancillary commercial recreation activities.
  - Hours of operation may be limited by the City to reduce impacts on residential uses.
  - Vehicular and pedestrian circulation to and from the property shall be coordinated with the other properties in the vicinity to the maximum extent possible.
- PU-7. If lot size is less than 35,000 sq. ft., then Process IIB, Chapter 152 KZC.
- PU-8. For this use, only one dwelling unit may be on each lot regardless of the size of the lot.
- PU-9. Residential uses abutting Lake Washington may have an associated private shoreline park that is commonly or individually owned and used by residents and guests.
- PU-10. See Chapter 141 KZC for additional procedural requirements in addition to those on Chapter 145 KZC.
- PU-11. At the northern terminus of the 5th Avenue West vehicular access easement, the average parcel depth shall be measured from the ordinary high water mark to the public pedestrian access easement providing access to Waverly Beach Park.
- PU-12.
- May not include miniature golf.
  - The following accessory uses are specifically permitted as part of this use.
    - Equipment storage facilities.
    - Retail sales and rental of golf equipment and accessories.
    - A restaurant.
- PU-13. This use is not permitted on properties within the jurisdiction of the Shoreline Management Act.
- PU-14. Hours of operation and maximum number of attendees may be limited by the City to reduce impacts on residential uses.
- PU-15. Structured play areas must be set back from all property lines by five feet.
- PU-16. May include accessory living facilities for staff persons.

- PU-17. May locate on the subject property if:
  - a. It will serve the immediate neighborhood in which it is located; or
  - b. It will not be materially detrimental to the character of the neighborhood in which it is located.
- PU-18. A six-foot-high fence is required along the property lines adjacent to the outside play areas.
- PU-19. Hours of operation may be limited by the City to reduce impacts on nearby residential uses.
- PU-20. Structured play areas must be set back from all property lines as follows:
  - a. Twenty feet if this use can accommodate 50 or more students or children.
  - b. Ten feet if this use can accommodate 13 to 49 students or children.

15.30 Density/Dimensions

**Density/Dimensions Table (RS, RSX, RSA, WDII, PLA 3C, PLA 6C, PLA 6E, PLA 16)**  
 (Refer to KZC 15.20, Permitted Uses Table, to determine if a use is allowed in the zone)

Use	Minimum Lot Size	REQUIRED YARDS <sup>1</sup> (See Ch. 115)			Maximum Lot Coverage	Maximum Height of Structure ABE = Average Building Elevation
		Front	Side	Rear		
15.30.010 Attached Dwelling Units	2, 3	20 <sup>4</sup>	10 <sup>5</sup>	10 <sup>5</sup>	50%	25' above ABE.
15.30.020 Church	<b>RS, RSX, RSA:</b> <sup>7</sup> <b>PLA 3C:</b> 12,500 sq. ft. <b>PLA 6C:</b> 8,500 sq. ft. <b>PLA 6E:</b> 7,200 sq. ft. <b>PLA 16:</b> 35,000 sq. ft.	20'	20'	20'	70% <b>RSA:</b> 70% <sup>6</sup> <b>PLA 3C:</b> 50%	<b>RS, PLA 3C, PLA 6C, PLA 6E:</b> 25' above ABE. <b>RSX, RSA, PLA 16:</b> 30' above ABE.
15.30.030 Commercial Equestrian Facility	3 acres	20'	20'	20'	80%	<sup>8</sup>
15.30.040 Commercial Recreation Area and Use	1 acre	20'	20'	20'	80%	38' above ABE. <sup>8</sup>
15.30.050 Community Facility	None	20'	10' <b>WDII:</b> <sup>9</sup>	10'	70% <b>RSA:</b> 70% <sup>6</sup> <b>PLA 3C:</b> 50%	<b>RS, WDII, PLA 3C, PLA 6C, PLA 6E:</b> 25' above ABE. <b>RSA, RSX, PLA 16:</b> 30' above ABE.
		<b>WDII:</b> <sup>10</sup>				

**Density/Dimensions Table (RS, RSX, RSA, WDII, PLA 3C, PLA 6C, PLA 6E, PLA 16)**  
 (Refer to KZC 15.20, Permitted Uses Table, to determine if a use is allowed in the zone)

Use	Minimum Lot Size	REQUIRED YARDS <sup>1</sup> (See Ch. 115)			Maximum Lot Coverage	Maximum Height of Structure ABE = Average Building Elevation	
		Front	Side	Rear			
15.30.060	Detached Dwelling Unit	<b>RS, RSX:</b> <sup>11, 12*, 13</sup> <b>RSA:</b> <sup>11, 17, 18, 19</sup> <b>WDII:</b> 12,500 sq. ft. <sup>23</sup> <b>PLA 3C:</b> 12,500 sq. ft. <sup>2, 27</sup> <b>PLA 6C, PLA 6E:</b> 5,000 sq. ft. <sup>28</sup> <b>PLA 16:</b> 35,000 sq. ft. except as established under Spec. Reg. DD-30. <sup>13, 29, 30</sup>	<b>RS:</b> 20' <sup>14, 16</sup> <b>RSX:</b> 20' <sup>15, 16</sup> <b>RSA:</b> 20' <sup>15, 16, 20</sup> <b>WDII:</b> 14, 22, 32 <b>PLA 3C, PLA 6C, PLA 6E, PLA 16:</b> 20' <sup>4</sup>	5'/15' <sup>9</sup> <b>RSX:</b> 5' <sup>15</sup> <b>RSA:</b> 5' <b>WDII:</b> <sup>24</sup>	10' <b>RS, RSX:</b> 10' <sup>16</sup>	50% <b>RSA:</b> 50% <sup>6</sup>	<b>RS, PLA 3C, PLA 6C, PLA 6E:</b> 25' above ABE. <b>RSX, PLA 16:</b> 30' above ABE. <b>RSA:</b> 30' above ABE. <sup>21</sup> <b>WDII:</b> 25' above ABE. <sup>25, 26</sup>
15.30.070	Golf Course	1 acre	50'	50'	50'	50% <b>RSA:</b> 50% <sup>6</sup>	<b>RS:</b> 25' above ABE. <b>RSA, RSX:</b> 30' above ABE.
15.30.080	Government Facility	None	20'	10' <b>WDII:</b> 5'/15' <sup>9</sup>	10'	70% <b>RSA:</b> 70% <sup>6</sup> <b>PLA 3C:</b> 50%	<b>RS, WDII, PLA 3C, PLA 6C, PLA 6E:</b> 25' above ABE. <b>RSA, RSX, PLA 16:</b> 30' above ABE.
15.30.090	Mini-School or Mini-Day-Care Center	<b>RS, RSX, RSA:</b> <sup>7</sup> <b>PLA 3C:</b> 12,500 sq. ft. <b>PLA 6C:</b> 5,000 sq. ft. <b>PLA 6E:</b> 3,600 sq. ft. <b>PLA 16:</b> 35,000 sq. ft.	20'	5'/15' <sup>9</sup>	10' <b>PLA 3C:</b> 20'	50% <b>RSA:</b> 50% <sup>6</sup> <b>PLA 6E:</b> 60%	<b>RS, PLA 3C, PLA 6C, PLA 6E:</b> 25' above ABE. <b>RSX, RSA, PLA 16:</b> 30' above ABE.
15.30.100	Piers, Docks, Boat Lifts and Canopies Serving Detached Dwelling Unit	None	See Chapter 83 KZC.			–	See Chapter 83 KZC.
15.30.110	Public Park	Development standards will be determined on a case-by-case basis.					

**Density/Dimensions Table (RS, RSX, RSA, WDII, PLA 3C, PLA 6C, PLA 6E, PLA 16)**  
 (Refer to KZC 15.20, Permitted Uses Table, to determine if a use is allowed in the zone)

Use	Minimum Lot Size	REQUIRED YARDS <sup>1</sup> (See Ch. 115)			Maximum Lot Coverage	Maximum Height of Structure ABE = Average Building Elevation	
		Front	Side	Rear			
15.30.120	Public Utility	None	20'	20' WDII: 5'/15' <sup>9</sup>	20'	70% RSA: 70% <sup>6</sup> PLA 3C: 50%	RS, WDII, PLA 3C, PLA 6C, PLA 6E: 25' above ABE. RSA, RSX, PLA 16: 30' above ABE.
15.30.130	School or Day-Care Center	RS, RSX, RSA: <sup>7</sup> PLA 3C: 12,500 sq. ft. PLA 6C: 8,500 sq ft. PLA 6E: 7,200 sq ft. PLA 16: 35,000 sq. ft.	If this use can accommodate 50 or more students or children, then:			70% RSA: 70% <sup>6</sup> PLA 3C: 50%	RS: 25' above ABE. <sup>31*</sup> RSX, RSA, PLA 16: 30' above ABE. <sup>31</sup> PLA 3C: 25' above ABE. <sup>6</sup> PLA 6C, PLA 6E: 25' above ABE. <sup>31</sup>
			50'	50'	50'		
			If this use can accommodate 13 to 49 students or children, then:				
			20'	20'	20'		

\* Not effective within the disapproval jurisdiction of the Houghton Community Council.

**Special Regulations:**

- DD-1. In the WDII zone, for shoreline setbacks see Chapter 83 KZC.
- DD-2.
  - a. Maximum dwelling units per acre is six dwelling units. Not more than one dwelling unit may be on each lot regardless of the size of the lot.
  - b. Within a subdivision or short plat the minimum lot size is 5,000 sq. ft.
  - c. Road dedication and vehicular access easements or tracts may not be included in the density calculation or in the minimum lot size per dwelling unit.
- DD-3. For lots containing less than 7,200 square feet, the floor area ratio (F.A.R.) requirements of KZC 115.42 shall apply. The maximum floor area ratio is 50 percent of the lot size; provided, that F.A.R. may be increased to 60 percent if the primary roof form of all structures on the site is peaked with a minimum pitch of four feet vertical to 12 feet horizontal.  
  
 See KZC 115.42, Floor Area Ratio (FAR) Calculation for Detached Dwelling Units in Low Density Residential Zones, for additional information.
- DD-4. On corner lots with two required front yards, one may be reduced to the average of the front yards for the two adjoining properties fronting the same street as the front yard to be reduced. The applicant may select which front yard will be reduced (see Plate 24).

- DD-5. The side or rear yard may be reduced to zero feet if the side or rear of the dwelling unit is attached to a dwelling unit on an adjoining lot within the short plat or subdivision.
- DD-6. Except 30 percent for RSA 1 zone. See RSA General Regulation 1 (KZC 15.10.030(1)) and KZC 15.05.020(3).
- DD-7. As established on the Zoning Map. Minimum lot size is as follows:
- a. In RS 35 and RSX 35 zones, the minimum lot size is 35,000 square feet.
  - b. In RS 12.5 and RSX 12.5 zones, the minimum lot size is 12,500 square feet.
  - c. In RS 8.5 and RSX 8.5 zones, the minimum lot size is 8,500 square feet.
  - d. In RS 7.2 and RSX 7.2 zones, the minimum lot size is 7,200 square feet.
  - e. In RS 6.3 zones, the minimum lot size is 6,300 square feet.
  - f. In RS 5.0 and RSX 5.0 zones, the minimum lot size is 5,000 square feet.
  - g. In RSA 1 zone, newly platted lots shall be clustered and configured in a manner to provide generally equal sized lots outside of the required open space area.
  - h. In RSA 4 zones, the minimum lot size is 7,600 square feet.
  - i. In RSA 6 zones, the minimum lot size is 5,100 square feet.
  - j. In RSA 8 zones, the minimum lot size is 3,800 square feet.
- DD-8. Structures exceeding 25 feet above average building elevation must have the ground floor placed below existing grade to the extent possible and screened by a vegetative earthen berm. Structures can be placed at existing grade if the structures are located on lower ground than adjacent properties and if the adjacent properties are developed and do not contain residential use.
- DD-9. Five feet, but two side yards must equal at least 15 feet.
- DD-10. The dimension of any required yard, other than as specifically listed, will be determined on a case-by-case basis. The City will use the setback for this use in RS zones as a guide.
- DD-11. As established on the Zoning Map. Minimum lot size per dwelling unit is as follows:
- a. In RS 35 and RSX 35 zones, the minimum lot size is 35,000 square feet.
  - b. In RS 12.5 zones, the minimum lot size is 12,500 square feet.
  - c. In RS 8.5 and RSX 8.5 zones, the minimum lot size is 8,500 square feet.
  - d. In RS 7.2 and RSX 7.2 zones, the minimum lot size is 7,200 square feet.
  - e. In RS 6.3 zones, the minimum lot size is 6,300 square feet.
  - f. In RS 5.0 and RSX 5.0 zones, the minimum lot size is 5,000 square feet.
  - g. In RS 35, RSX 35, RS 12.5, RS 8.5, RSX 8.5, RS 7.2, RSX 7.2, RS 6.3, RS 5.0 and RSX 5.0 zones, not more than one dwelling unit may be on each lot, regardless of the size of each lot.
  - h. In RSA 1 zone, newly platted lots shall be clustered and configured in a manner to provide generally equal sized lots outside of the required open space area.
  - i. In RSA 4 zones, the minimum lot size is 7,600 square feet.
  - j. In RSA 6 zones, the minimum lot size is 5,100 square feet.

k. In RSA 8 zones, the minimum lot size is 3,800 square feet.

DD-12. Floor Area Ratio (F.A.R.) allowed for the subject property is as follows:

- a. In RS 35 and RSX 35 zones, F.A.R. is 20 percent of lot size.
- b. In RS 12.5 and RSX 12.5 zones, F.A.R. is 35 percent of lot size.
- c. In RS 8.5 and RSX 8.5 zones, F.A.R. is 50 percent of lot size.
- d. In RS 7.2 and RSX 7.2 zones, F.A.R. is 50 percent of lot size.
- e. In RS 6.3 zones, F.A.R. is 50 percent of lot size.
- f. In RS 5.0 and RSX 5.0 zones, F.A.R. is 50 percent of lot size; provided, that F.A.R. may be increased up to 60 percent of lot size for the first 5,000 square feet of lot area if the following criteria are met:
  - 1) The primary roof form of all structures on the site is peaked, with a minimum pitch of four feet vertical: 12 feet horizontal; and
  - 2) A setback of at least 7.5 feet is provided along each side yard.See KZC 115.42, Floor Area Ratio (F.A.R.) Calculation for Detached Dwelling Units in Low Density Residential Zones, for additional information.

A reduced F.A.R. may be required pursuant to subdivision design requirements in Chapter 22.28 KMC.

DD-13. Residential lots in the RS 35, RSX 35 and PLA 16 zones within the Bridle Trails neighborhood north and northeast of Bridle Trails State Park must contain a minimum area of 10,000 permeable square feet, and shall comply with regulations for horses in KZC 115.20(5).

DD-14. On corner lots with two required front yards, one may be reduced to the average of the front yards for the two adjoining properties fronting the same street as the front yard to be reduced. The applicant may select which front yard will be reduced (see Plate 24).

DD-15. On corner lots, only one front yard must be a minimum of 20 feet. All other front yards shall be regulated as a side yard (minimum five-foot yard). The applicant may select which front yard shall meet the 20-foot requirement.

DD-16. On lots with two front yards that are essentially parallel to one another, only one front yard must be a minimum of 20 feet. The other will be regulated as a rear yard (minimum 10 feet). The front yard shall be the yard adjacent to the front facade of the dwelling unit.

DD-17. Maximum units per acre is as follows:

- a. In RSA 1 zone, the maximum units per acre is one dwelling unit.
- b. In RSA 4 zones, the maximum units per acre is four dwelling units.
- c. In RSA 6 zones, the maximum units per acre is six dwelling units.
- d. In RSA 8 zones, the maximum units per acre is eight dwelling units.

Where the maximum number of units results in a fraction, the number shall be rounded up if the fraction is 0.50 or greater. In RSA 1, 4, 6 and 8 zones, not more than one dwelling unit may be on each lot, regardless of the size of the lot.

DD-18. Road dedication and vehicular access easements or tracts may be included in the density calculation, but not in the minimum lot size per dwelling unit.

DD-19. Floor Area Ratio (F.A.R.) allowed for the subject property is as follows:

- a. In RSA 1 zone, F.A.R. is 20 percent of lot size.
- b. In RSA 4 zones, F.A.R. is 50 percent of lot size.
- c. In RSA 6 zones, F.A.R. is 50 percent of lot size.
- d. In RSA 8 zones, F.A.R. is 50 percent of lot size; provided, that F.A.R. may be increased up to 60 percent of lot size for the first 5,000 square feet of lot area if the primary roof form of all structures on the site is peaked, with a minimum pitch of four feet vertical to 12 feet horizontal.  
F.A.R. is not applicable for properties located within the jurisdiction of the Shoreline Management Act regulated under Chapter 83 KZC.

See KZC 115.42, Floor Area Ratio (F.A.R.) Calculation for Detached Dwelling Units in Low Density Residential Zones, for additional information.

- DD-20. For properties within the jurisdiction of the Shoreline Management Act that have a shoreline setback requirement as established in Chapter 83 KZC and the setback requirement is met, the minimum required front yard is either: 10 feet or the average of the existing front yards on the properties abutting each side of the subject property. For the reduction in front yard, the shoreline setback is considered conforming if a reduction in the required shoreline setback is approved through KZC 83.380.
- DD-21. Maximum height of structure for properties located within the Juanita Beach Camps Plat (Volume 32, Page 35 of King County Records) or the Carr's Park Plat (Unrecorded) shall be 35 feet above average building elevation.
- DD-22.
  - a. For properties located south of the Lake Avenue West Street End Park, the required front yard may be decreased to the average of the existing front yards on the properties abutting the subject property to the north and south.
  - b. The front required yard provisions shall not apply to public street ends located west of Waverly Way, but the required yard shall be regulated as a side yard.
  - c. The required yard along the east side of the vehicular access easements known as 5th Avenue West or Lake Avenue West is zero feet.
  - d. The required yard along the west side of the vehicular access easements known as 5th Avenue West or Lake Avenue West is either five feet or the average of the existing rear yards on the properties abutting the subject property to the north and south. The garage shall be located to comply with the provisions for parking pads contained in KZC 105.47.
- DD-23. The gross floor area of any floor above the first story at street or vehicular access easement level shall be reduced by a minimum of 15 percent of the floor area of the first story, subject to the following conditions:
- a. The structure must conform to the standard shoreline setback requirements established in Chapter 83 KZC, or as otherwise approved under the shoreline setback reduction provisions established in KZC 83.380.
  - b. The required floor area reductions shall be incorporated along the entire length of the facade of one or both facades facing the side property lines in order to provide separation between neighboring residences.
  - c. Uncovered decks with solid railings located along the side property lines on the upper floors and covered decks shall be included in gross floor area calculation.
  - d. This provision shall only apply if a residence has more than one story above the street or vehicular access easement level, as measured at the midpoint of the frontage of the subject property on the abutting right-of-way (Plate 36).
- DD-24. Five feet, but two side yards must equal at least 15 feet or five feet each if Special Regulation DD-23 met.

- DD-25. For properties with a minimum of 45 feet of frontage along Lake Washington, 30 feet above average building elevation.
- DD-26. For the increase in height from 25 feet to 30 feet above average building elevation, the structure must conform to the standard shoreline setback requirements established in Chapter 83 KZC, or as otherwise approved under the shoreline setback provisions established in KZC 83.380.
- DD-27. For lots containing less than 7,200 square feet, the Floor Area Ratio (FAR) requirements of KZC 115.42 shall apply. The maximum Floor Area Ratio is 50 percent of the lot size; provided, that F.A.R. may be increased to 60 percent if:
- a. The primary roof form of all structures on the site is peaked with a minimum pitch of four feet vertical to 12 feet horizontal; and
  - b. A setback of at least 7.5 feet is provided along each side yard.  
See KZC 115.42, Floor Area Ratio (FAR) calculation for Detached Dwelling Units in Low Density Residential Zones, for additional information.
- DD-28. Floor Area Ratio (F.A.R.) allowed for the subject property is 60 percent of lot size.  
  
See KZC 115.42, Floor Area Ratio (F.A.R.) Calculation for Detached Dwelling Units in Low Density Residential Zones, for additional information.
- DD-29. Floor Area Ratio (F.A.R.) allowed for the subject property is 20 percent of lot size.  
  
See KZC 115.42, Floor Area Ratio (F.A.R.) Calculation for Detached Dwelling Units in Low Density Residential Zones, for additional information.
- DD-30. If a Master Plan is approved for the property, this use may have a lot size of less than 35,000 sq. ft. and must meet the following standards:
- a. The property must contain at least 16 contiguous acres.
  - b. Residential lots must contain a minimum area of 14,500 sq. ft. capable of being used as a horse paddock area, which shall comply with KZC 115.20(5) for keeping of horses.
  - c. The minimum lot size allowed on the property shall be determined and approved as part of the Master Plan. In no case shall the minimum lot size be less than 26,000 square feet.
  - d. A commercial equestrian facility, including an arena, stables and paddock areas, must be provided on the property. The facility must be available to the public and not exclusively for the residences within the Master Plan. The facility must meet requirements and special regulations as established for the use listing in this zone entitled "Commercial Equestrian Facility."
  - e. An improved public equestrian access trail and appropriate public signing must be provided. The trail must be located and designed so as to allow for an eventual connection between N.E. 60th Street and the Bridle Trails State and King County Parks.
  - f. A coordinated vehicular and pedestrian circulation system for the property as well as other properties in the vicinity shall be provided as part of the Master Site Plan.
- DD-31. For school use, structure height may be increased, up to 35 feet, if:
- a. The school can accommodate 200 or more students; and

- b. The required side and rear yards for the portions of the structure exceeding the basic maximum structure height are increased by one foot for each additional one foot of structure height; and
- c. The increased height is not specifically inconsistent with the applicable neighborhood plan provisions of the Comprehensive Plan.
- d. The increased height will not result in a structure that is incompatible with surrounding uses or improvements.

DD-32. For those properties that conform to the standard shoreline setback requirements established in Chapter 83 KZC, either:

- a. Ten feet; or
- b. The average of the existing front yards on the properties abutting the subject property to the north and south. Otherwise, 20 feet.

15.40 Development Standards

**Development Standards Table (RS, RSX, RSA, WDII, PLA 3C, PLA 6C, PLA 6E, PLA 16)  
(Refer to KZC 15.20, Permitted Uses Table, to determine if a use is allowed in the zone)**

USE		Landscape Category (Chapter 95 KZC)	Sign Category (Chapter 100 KZC)	Required Parking Spaces (Chapter 105 KZC)
15.40.010	Attached Dwelling Units	E	A	2.0 per dwelling unit.
15.40.020	Church	C	B	1 for every 4 people based on maximum occupancy load of any area of worship. <sup>1</sup>
15.40.030	Commercial Equestrian Facility	C <sup>2</sup>	B	See KZC 105.25.
15.40.040	Commercial Recreation Area and Use	C <sup>2, 3</sup>	B	See KZC 105.25.
15.40.050	Community Facility	C <sup>4</sup>	B RSX, RSA: B <sup>5, 9</sup>	See KZC 105.25.
15.40.060	Detached Dwelling Unit	E	A	2.0 per dwelling unit.
15.40.070	Golf Course	E <sup>14</sup>	B	See KZC 105.25.
15.40.080	Government Facility	C <sup>4</sup>	B RSX, RSA: B <sup>5, 9</sup>	See KZC 105.25.
15.40.090	Mini-School or Mini-Day-Care Center	E	B <sup>6</sup> PLA 16: B	See KZC 105.25.7 <sup>7, 8</sup>
15.40.100	Piers, Docks, Boat Lifts and Canopies Serving Detached Dwelling Unit	–	–	None
15.40.110	Public Park	Development standards will be determined on a case-by-case basis.		

**Development Standards Table (RS, RSX, RSA, WDII, PLA 3C, PLA 6C, PLA 6E, PLA 16) (Continued)**  
**(Refer to KZC 15.20, Permitted Uses Table, to determine if a use is allowed in the zone)**

15.40.120	Public Utility	A <sup>4</sup>	B RSX, RSA: B <sup>5, 9</sup>	See KZC 105.25.
15.40.130	School or Day-Care Center	D	B RS, RSX, RSA: B <sup>5, 10</sup> PLA 3C, PLA 6C, PLA 6E: B <sup>11</sup>	See KZC 105.25. <sup>8, 12</sup> PLA 3C: <sup>13</sup>

**Special Regulations:**

- DS-1. No parking is required for day-care or school ancillary to the use.
- DS-2. Existing natural vegetation must be maintained to the greatest extent possible.
- DS-3. A 20-foot-wide sight-obscuring landscape buffer must be provided along the west and south perimeter of the property.
- DS-4. Landscape Category A or B may be required depending on the type of use on the subject property and the impacts associated with the use on the nearby uses.
- DS-5. One pedestal sign with a readerboard having electronic programming is allowed only if:
- It is a pedestal sign (see Plate 12) having a maximum of 40 square feet of sign area per sign face;
  - The electronic readerboard is no more than 50 percent of the sign area;
  - Moving graphics and text or video are not part of the sign;
  - The electronic readerboard does not change text and/or images at a rate less than one every seven seconds and shall be readily legible given the text size and the speed limit of the adjacent right-of-way;
  - The intensity of the display shall not produce glare that extends to adjacent properties and the signs shall be equipped with a device which automatically dims the intensity of the lights during hours of darkness;
- DS-6. Electrical signs shall not be permitted. Size of signs may be limited to be compatible with nearby residential uses.
- DS-7. An on-site passenger loading area may be required depending on the number of attendees and the extent of the abutting right-of-way improvements.
- DS-8. The location of parking and passenger loading areas shall be designed to reduce impacts on nearby residential uses.
- DS-9. One pedestal sign with a readerboard having electronic programming is allowed at a fire station only if:
- The electronic readerboard displays messages regarding public service announcements or City events only;
  - The electronic readerboard is turned off between 10:00 p.m. and 6:00 a.m. except during emergencies;
  - It is located to have the least impact on surrounding residential properties.

If it is determined that the electronic readerboard constitutes a traffic hazard for any reason, the Planning Director may impose additional conditions.

- DS-10. Electrical signs shall be permitted at junior high/middle schools and high schools. One pedestal sign with a readerboard having electronic programming is allowed per site only if:
- a. The electronic readerboard displays messages regarding public service announcements or school events only;
  - b. The electronic readerboard is turned off between 10:00 p.m. and 6:00 a.m.;
  - c. The school is located on a collector or arterial street.
- The City shall review and approve the location of the sign on the site. The sign shall be located to have the least impact on surrounding residential properties. If it is determined that a proposed electronic readerboard would constitute a traffic hazard the Planning Director may impose restrictions or deny the readerboard.
- DS-11. Electrical signs shall not be permitted.
- DS-12. An on-site passenger loading area must be provided. The City shall determine the appropriate size of the loading area on a case-by-case basis, depending on the number of attendees and the extent of the abutting right-of-way improvements. Carpooling, staggered loading/unloading time, right-of-way improvements or other means may be required to reduce traffic impacts on nearby residential uses.
- DS-13. An on-site passenger loading area must be provided. The City shall determine the appropriate size of the loading area on a case-by-case basis, depending on the number of attendees and the extent of the abutting right-of-way improvements. The location of parking and passenger loading areas shall be designed to reduce impacts on nearby residential uses.
- DS-14. See RSA General Regulation 1 (KZC 15.10.030(1)) and KZC 15.05.020(3).

**CITY OF KIRKLAND****Department of Public Works**

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Frank Reinart, P.E., Senior Project Engineer  
David Snider, P.E., Capital Projects Manager  
Kathy Brown, Public Works Director

**Date:** November 6, 2014

**Subject:** PARK LANE PEDESTRIAN CORRIDOR ENHANCEMENTS PHASE 2 & WATER MAIN REPLACEMENT PROJECT – PRE-AWARD

**RECOMMENDATION:**

It is recommended that City Council pre-authorizes the City Manager to sign a Public Works construction contract for the Park Lane Pedestrian Corridor Enhancement Phase 2 & Water Main Replacement Project, provided the lowest responsive bid price received from a bidder deemed responsible to perform the specified work for the Project is in an amount not greater than 5% over the engineer's estimate, plus contingency (for a total of \$ 132,500 over the engineer's estimate).

**BACKGROUND DISCUSSION:**

In 2008 the Council approved funds for a study to establish a vision for the Park Lane corridor between Lake Street and 3<sup>rd</sup> Street. The study was driven by the *Downtown Strategic Plan* and the conditions of the existing infrastructure along Park Lane. Issues identified within the Study include:

- Park Lane's aging pavement surface
- Failing concrete curbs and sidewalks
- Obstructed pedestrian access with (pedestrian surface areas too narrow and irregular to meet current Americans with Disabilities Act (ADA) standards)
- Inefficient street lighting and an inadequate electrical capacity to support current street illumination requirements
- Health issues for the existing trees and significant root intrusion beneath concrete pavement surfaces
- Water and surface water utilities with increasingly limited capacity that are reaching the end of design life expectancy

The results of the study and the associated robust public involvement and input process identified a "Flexible Street" concept as the favored concept vision for Park Lane (See Attachment A). Council adopted that concept at its February 2, 2010 meeting and, as recently as September 2, 2014, Council received a full update on the Project. The most recent Council briefing included an overview on the Project's schedule and funding for both the City's level of contribution plus two substantial funding partners for the Project: the Washington State Department of Ecology *2010 Storm Water Retrofit and LID Grant Program* and the federal *Transportation Alternatives Program* (Attachment A).

The design for the Park Lane Pedestrian Corridor Enhancements Phase 2 and Water Main Replacement Project was completed by the City's consultant and design team on time and schedule, as presented to Council on September 2, 2014. All design comments by our grant funding partners and the required environmental documentation approvals were addressed by the end of September. The current bidding set consists of a multiple schedule package that is fully advertisement ready for the following two CIP projects:

- NM 0064 – Phase II Park Lane Pedestrian Enhancements
- WA 0148 – Park Lane Water Main Replacement

Unfortunately, final construction funding approval and authorization to proceed with an Invitation to Bid has been delayed by the Project's *Transportation Alternatives Program* (TAP) federal grant partner. Staff has been informed by the grant administrator of the Washington State Department of Transportation (WSDOT) Local Programs Office that there are no problems with the Project package or the continued availability of funding for the Project. The delay in authorization is apparently due to workload factors at the federal authorizing agency that are outside of the control of City and WSDOT Local Programs Office staff. Based on continued close communication with the WSDOT Local Programs Office, the City expects the full authorization by the federal government in early November.

As a result of the delay, the revised bid schedule for the Project no longer matches up with the City Council meeting schedule for the remainder of 2014. Further, the TAP grant requirement of a minimum 3-week bidding period will run up against the Thanksgiving holiday. The consequence of these scheduling challenges is a delay until early December for the receiving, opening and certification of all contractor bids.

As the Project's current construction schedule calls for an early January start, there is a compelling need to award the contract for the Project as soon as possible in December. The current Project schedule calls for a project completion by early May 2015 following an approximate 4-month construction phase. Any delay in the award of contract will significantly impact that very tight overall Project schedule, a consequence of which would likely result in a construction completion date beyond both the deadline required by the grant from the Washington State Department of Ecology and the highly desired completion date for the Project in spring, 2015.

#### *Staff Recommendation*

Due to the schedule constraints described above, staff recommends a Council pre-authorization for the City Manager to sign a Public Works construction contract with the lowest responsive bid from a bidder deemed responsible to perform the specified work for the Project, with a cap on the City Manager's approval authority of 105 percent of the Engineer's Estimate. Such an authorization will permit staff and the successful bidder to proceed with contracting and other

pre-construction processes in order to meet the highly desired start of construction in January, 2015.

As presented to Council in the September 2, 2014 Project Update, staff expects bidding for the Project may be influenced by a few factors including perceived and actual risks of a winter construction season, the current construction business climate, and the availability of contractor staff during a typically-low period for the general contracting business. To manage some of these unpredictability factors, staff did pre-advertise the Project in September in order to notify prospective bidders of the upcoming opportunity. To date, there has been a good level of interest expressed by prospective bidders and staff continues to keep those prospective bidders updated on the bidding schedule.

It is possible that perceived or actual winter work factors may result in bids higher than currently estimated. In order to avoid a substantial delay in the Project caused by a low bid that may be within a relatively close margin of the estimated contract amount, staff requests Council approval for the City Manager to execute a construction contract for up to 105 percent of the current estimate plus contingency (a total of \$132,486 over the engineer's estimate). In such a case, the received bid amount may require additional City construction contingency reserves to fully fund the Project. In the event an increase in funding is needed, staff would update City Council at the first regularly scheduled City Council meeting with an applicable fiscal note.

In the event the low bid exceeds the requested 105 percent contract overage authorized, staff would return to City Council as soon as possible with an array of other options for moving the Project forward.

**CITY OF KIRKLAND****Department of Public Works**

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Frank Reinart, P.E., Project Engineer  
David Snider, P.E., Capital Projects Manager  
Marilynne Beard, Interim Public Works Director

**Date:** August 21, 2014

**Subject:** PARK LANE PEDESTRIAN CORRIDOR ENHANCEMENTS  
PROJECT UPDATE & AUTHORIZATION TO BID

**RECOMMENDATION:**

That City Council:

- Receives an update for the Park Lane Project, including the results of the 2014 public involvement and outreach process and the resulting project design merging public input and current requirements,
- Approves the most current project design elements including parking lot modifications,
- Provides preliminary approval of the staff-recommended additional funding for construction for the project using Surface Water Construction Reserve and REET 2 Reserve funds, and
- Authorizes staff to advertise for contractor bids upon completion of the project design.

**BACKGROUND DISCUSSION:**

In 2008 City Council approved funds for a study to establish a vision for the Park Lane corridor between Lake Street and 3<sup>rd</sup> Street. The study was driven by the *Downtown Strategic Plan* and the conditions of the existing infrastructure along Park Lane. Issues identified within the Study included:

- Aging pavement surface
- Failing concrete curbs and sidewalks
- Obstructed pedestrian access with pedestrian surface areas too narrow and irregular to meet current Americans with Disabilities Act (ADA) standards
- Inefficient street lighting and an inadequate electrical capacity to support current street illumination requirements
- Health issues for the existing trees and significant root intrusion beneath concrete pavement surfaces
- Water and surface water utilities with increasingly limited capacity that are reaching the end of design life expectancy.

In addition to addressing the issues identified in the study, two key goals included:

- Exploring and developing a community-embraced concept vision for enhancements along Park Lane, and
- Identifying various funding alternatives to accomplish that concept vision.

The results of the study and the associated robust public involvement and input process, identified a "Flexible Street" concept as the favored concept vision for Park Lane. City Council adopted that concept at their February 2, 2010 meeting.

#### *Evolution to a Combined Infrastructure Project*

In addition to meeting with public approval, the concept also included options for mitigating the deteriorating condition of the existing Park Lane infrastructure for both water and stormwater, including further consideration of short and long-term tree health. Staff also identified and subsequently pursued grant funding from the Washington State Department of Ecology (Ecology) and the Puget Sound Regional Council (PSRC) for both the transportation and stormwater elements. Although the pedestrian/transportation elements have not meaningfully changed, once the Ecology grant was awarded, the project scope was adjusted to add significant stormwater infrastructure improvements. More than half the scope of the new combined project was now stormwater or water utility related. While the bulk of the citizen input has been related to the "flexible street" and surface elements, the combined project has substantial benefits to the city infrastructure that must be done before Park Lane is resurfaced.

#### *Interim Actions*

While grant funding options were being investigated, the City designed and implemented several interim surface enhancements between Lake Street and Main Street. These enhancements improved areas of damaged concrete sidewalk at various locations. A few of these areas were identified as being caused by shallow tree root intrusion, necessitating the replacement of sidewalk surface with temporary rubber sidewalk material. The City also planted two new trees in Silva Cell™-supported tree wells in order to evaluate the effectiveness of that Low Impact Development (LID) method to support healthy tree growth for future use along Park Lane.

The City partnered with King County Department of Natural Resources (KCDNR) to make surface improvements on Park Lane in the immediate vicinity of the County Wastewater Lift Station located at the intersection of Park Lane and 3<sup>rd</sup> Street. These improvements were compatible with the "Flexible Street" concept and provided a transition between the Kirkland Transit Center on 3<sup>rd</sup> Street and the future surface improvement of Park Lane.

At the January 7, 2014 meeting, City Council received an update on the project that described the two external funding grants received by the City. Staff received approval from City Council to begin full design efforts for the Park Lane project in order to complete construction in 2015. The January 7 update also marked the beginning of a renewed public involvement and outreach effort to update the concept vision with the most current public desires. This effort was performed concurrently with the design team and an advisory group of stakeholders, including volunteers from both local business and residents. It was organized to discuss design, public concerns and expectations. Additionally, during public events, staff and the City's design consultant, Perteet, Inc., provided opportunities for the community to express desires and preferences for the design.

Specific elements of our 2014 public involvement effort included:

- Presentations to the Moss Bay, Everest, and Bridle Trails/South Rose Hill Neighborhood associations between January and May, 2014. Approximately 60 to 70 local residents were reached during these meetings.
- An on-site presentation of options and concepts open to the public on Park Lane on April 22, 2014, that offered the community the opportunity to meet the project team and to provide comments and communicate preferences for the Park Lane Project. This opportunity included providing preferences for options for specific Park Lane surface features. This event was attended by 60 to 70 people, and 52 people left written comments for the Project team.
- A second opportunity was held on April 26, 2014 in conjunction with the City's Community Planning Day event in order to gain additional comments and communicate preferences for the Park Lane Project from a larger City-wide perspective. Approximately 150 people attended this event and many stopped to look at the Park Lane displays and discuss the project with City staff. The displays retained many of the comments from the April 22, 2014 event, and the project team received an additional 24 written comments at this event.
- Three advisory group meetings were hosted by the City and the design team. These meetings were held between May and August, 2014 during the design process. Sixteen representatives of local businesses and residents volunteered to be on the advisory group, and an average of eight to nine representatives attended each meeting. With different members at each meeting, staff received a relatively wide cross-section of concerns and input from the advisory group.
- Staff had regular web site, email, phone, and face-to-face communications with business owners along Park Lane with specific concerns or questions. This included a presentation to the local Kirkland Toastmaster's Group, discussions with approximately 20 interested local residents during a Wednesday Market display and the opening event for the King County Pump Station on Park Lane. In addition to the project Web page, staff has received comments from members of the community on social networking sites such as NextDoor.com.
- A construction information and notification plan was developed in cooperation with the advisory group and other interested residents and local business owners. At the time of this memorandum, this plan is still under development. A final plan will be provided to local business owners and interested residents in October and November, 2014. Staff expects to host at least one construction orientation meeting open to the public during November or December, 2014.

As direct input from the local businesses is important to the project, all were offered opportunities to make suggestions for the project team to consider. Where feasible, these suggestions are being integrated into the final project design.

### **Current Park Lane Design**

The current Park Lane design represents a union of the "Flexible Street" concept vision for Park Lane, changes in the condition of Park Lane infrastructure during the past five years (i.e. since the date of the study), updated and current LID and ADA standards and practices, and the desires and preferences presented to staff by the public during the 2014 design and public

outreach process. Where feasible, staff and Perteet, Inc. have accommodated as many business and resident preferences and requests into the design process as possible.

A summary of significant suggestions received from the public involvement efforts and implemented into the current Park Lane design include:

- Businesses to remain open for normal business hours through the duration of construction.
- Safe, uninterrupted, and ADA-accessible front-door access to all businesses along Park Lane during construction.
- A construction contract to restrict contractor workers vehicles from the Central Business District during construction in order to maximize availability of parking for local business access.
- To the extent permitted by project grant funding requirements and limitations, contract documents with specific Supplemental Bidder Requirements to retain a contractor qualified for meeting the expected construction conditions and schedule.
- The City to provide for a strong construction inspection program as a means to minimize project delays and maximize the quality of the completed work.
- A design for Park Lane that provides for the ability to temporarily close portions of the Lane for local festivals, special events and activities.
- Provide updated pedestrian areas to accommodate current ADA requirements, while still offering trees, walkway, street and surface amenities, and areas for local restaurants to continue extending their seating outdoors into the public rights-of-way
- The replacement of most of the existing trees along Park Lane is due to a combination of the health of the existing trees, as well as a consequence of meeting certain Project requirements. However, the Project Team selected trees appropriate to provide the long-term establishment and sustainability of a tree canopy over Park Lane desired by local residents. Further, the planned replacement trees will be somewhat older than typically required in the public right-of-way in order to shorten the period of time for the canopy to re-establish.
- Round-the-clock construction was found to be unfeasible due to the disruption to local residents and nearby hotel operations.
- Construction confined to a winter season period between January and April. Businesses requested the City to consider phasing construction to minimize the period of disruption to the block of Park Lane businesses located between Lake Street and Main Street; however, this request also proved unfeasible to implement.
- The City to temporarily suspend parking fees for the public parking lots located at the east and west ends of the Project site for the four-month duration of construction to encourage customer and client access to local businesses.

As one example of how public preferences were integral to design requirements was a strong preference by local business owners and residents to consider the use of brick pavers as the surface for Park Lane. Approximately 80 percent of 2014 public comments regarding the surface of Park Lane favored a brick paver surface over other options, including the pervious concrete surface of the older "Flexible Street" concept vision. A brick paver surface is easier to build during the winter months while maintaining front-door access to the local businesses than a concrete surface. The use of brick pavers satisfies an Ecology grant requirement for a pervious surface and, for those reasons, the Project Team is proposing the use of brick pavers as the surface treatment for both non-motorized and vehicular surfaces.

A plan view of the design and surface features for Park Lane is shown on Attachment A; staff remains in close communication with the City's external grant funding partners for conformance

of all design attributes with grant requirements. Final design, including implementation of design comments by our grant funding partners, is expected by the end of September 2014.

### *Park Lane Parking Revisions*

Wherever possible, the Project team recognized the importance of parking in the Central Business District. However, in order to meet current ADA accessibility requirements while also providing sufficient space for the planned LID facilities and pedestrian improvements, the existing angle parking along Park Lane needed adjustment. The consequences of these adjustments was a net reduction of three parking spots between Lake Street and Main Street and the reduction of two parking spots between Main Street and 3<sup>rd</sup> Street. This change was discussed with local business owners and the Park Lane advisory group during May and June, as well as with City departments. It was generally accepted that, while a reduction in parking along Park Lane was unfortunate, it was understandable based on the overall limited area available along Park Lane and the need to meet current ADA and LID requirements, and incorporate the other features and benefits desirable for the pedestrian corridor.

As a means to facilitate and expedite the construction of Park Lane, staff is also proposing a reconfiguration of the adjacent City parking lot located on Lake Street, between Central Way and Park Lane. This reconfiguration will permit the circulation of cars within the parking lot while Park Lane is under construction. The existing Central Way and alley ingress and egress to the parking lot will be maintained during construction; however, during construction, all parking lot access from Park Lane would be closed. A net of two parking spaces are lost within the parking lot to achieve this change to the driveways and the internal traffic circulation for the lot.

While the Lake Street parking lot reconfiguration was originally intended to be temporary during construction, staff has identified several potential long-term benefits to Park Lane by only restoring one of the two parking lot driveways off of Park Lane. Benefits desirable to the vision of Park Lane included both increased pedestrian walking and seating area and improved safety with the loss of a current pedestrian-vehicle conflict point.

To gain these benefits, staff recommends the temporary construction parking lot reconfiguration for the Lake Street parking lot shown in Attachment B be made permanent. The current Park Lane ingress driveway would be restored and parking lot circulation would be maintained completely within the lot. Under this proposed scenario, the current egress onto Park Lane would be replaced with trees and increased pedestrian space. Per the temporary configuration described above, this would reduce the number of parking spaces in the Lake Street parking lot by two.

Alternatively, if City Council chooses, the Lake Street parking lot could be restored to its pre-Park Lane Project construction with no net loss of parking spaces within the lot.

### **Project Funding Approval**

The State Department of Ecology grant was provided as part of its *2010 Storm Water Retrofit and LID Grant Program*. This grant was awarded and a funding agreement was executed in June 2013 in the amount of \$739,000.

The City also submitted a *Transportation Alternatives Program (TAP)* grant application in September 2013 to the Puget Sound Regional Council (PSRC). The PSRC Executive Board for PSRC voted to approve the City's application for \$857,480 at their meeting of December 5, 2013.

City staff had previously been notified by both Ecology and the Local Programs Office at the Washington State Department of Transportation (WSDOT), the administrator of the PSRC approved grant, that certain elements of this Project may not be grant eligible for one or both grants. As a result, staff has been close coordinating with both Ecology and the WSDOT Local Programs Office in assessing the overall project during the design process. At this time, neither agency has identified a need to reduce the amount of grant funds awarded.

The Park Lane project design retains the general nature of the "Flexible Street" vision concept, but has been enhanced by a combination of changes in design requirements and the input staff received from stakeholders and the wider community during 2014. There have also been updates to State DOE design requirements which, in combination with community input, have resulted in an increase in the design and estimated construction costs.

The overall total Park Lane Corridor Enhancements Project cost is now currently estimated to be \$4.17 million for all elements and proposed features. This estimate is comprised of all of the following project phases, including both previously-completed and yet-to-be-completed elements:

- NM 0064 (Phase I) – Phase I Park Lane Pedestrian Enhancements: Included initial planning, public involvement, and development of the "Flexible Street" vision concept and limited, interim surface enhancements up through 2010, before the full "Flexible Street" concept vision could be designed and completed. Total cost for this completed element was \$ 370,000 and was funded entirely by the City.
- King County Wastewater Treatment improvements: Surface improvements completed by 2014 on Park Lane along the frontage of the County Lift Station at the intersection of Park Lane and 3<sup>rd</sup> Street. Total cost for this completed element was \$ 250,000, of which the City contributed \$ 75,000 in Surface Water Utility funds.
- WA 0148 – Park Lane Water Main Replacement: Replacing the aging water main from Lake Street to Main Street ahead of the surface improvements. This element is to be completed by May 2015. The total estimated cost for this element is \$ 297,000 and is funded entirely by City Utility funds.
- NM 0064 (Phase II) – Phase II Park Lane Pedestrian Enhancements: Final surface redevelopment of Park Lane with pervious pavers to meet the "Flexible Street" concept vision while providing stormwater benefits. This element is to be completed by May 2015. The total estimated cost for this element is \$ 3,249,632. The City has currently contributed \$ 732,900 for this project element, including required grant matching using a combination of Transportation and Surface Water Utility funding; there is a current estimated shortfall of \$ 920,253, as outlined below.

The City's current contribution to the overall Project budget is approximately \$1.47 million with funds from Transportation Reserves, Surface Water Construction Reserves, Annual Street Preservation funds, and Annual Sidewalk Maintenance funds. The \$739,000 Ecology grant and \$857,479 TAP grant, together with the City's contributions and contributions by King County for the Wastewater Treatment improvements, provide a current overall Project funding of approximately \$3.25 million. A summary of the current total contributions by both City and external funds are summarized in Table 1.

**TABLE 1: PARK LANE PEDESTRIAN ENHANCEMENTS AND WATER MAIN**

Element	Flexible Street	Fund Source (available)
<b>FUNDING</b>		
1) Phase I (Complete)	\$ 370,000	Surface Water (SW)/REET (2010)
2) KCDNR (Complete)	\$ 75,000	City Surface Water funds (Current CIP)
	\$ 175,000	King County DNR funds (2014)
3) Water main	\$ 297,000	City Water Utility (Current CIP)
4) Ecology Grant	\$ 739,000	Ecology (2014/15)
	\$ 246,333	City Surface Water for Ecology Grant Match
5) TAP Grant	\$ 857,479	TAP (2013/15)
	\$ 133,826	City Transportation, Street Maintenance, and Sidewalk Maintenance funds for TAP Grant Match
6) City Funding (additional to grant match)	\$ 326,567	City Surface Water (Current CIP and January 2014 City Council authorization)
	\$ 26,174	City Transportation, Street Maintenance, and Sidewalk Maintenance funds (Current CIP and January 2014 City Council authorization)
Subtotal	\$ 3,246,379	Current Project Funding
<b>ANTICIPATED COST</b>		
Total	(\$ 4,166,632)	Based on Engineer's Estimate July 2014
<b>BALANCE</b>	<b>(\$ 920,253)</b>	Additional need (Equals \$3,246,379 - \$4,166,632)

Staff has identified four major factors arising from changes made in the Park Lane project that contributed significantly to the funding shortfall described in Table 1:

1. A more complete, post-design understanding of all costs associated with a winter construction project.
2. City commitment to keep the businesses open during construction, including provisions for complete and minimally unobstructed front-door accessibility to all businesses throughout construction.
3. A fully maximized public outreach, involvement and communication support process during construction, and
4. Changes in Ecology LID standards and design requirements and practices during the past few years. All costs associated with these changes were not known prior to completion of the project design.

Based on the Design Team's evaluation of the major factors leading to an estimated \$920,300 funding shortfall, approximately \$230,000 in project costs are the direct result of external agency requirements, including:

- The union of the "Flexible Street" concept vision for Park Lane with changes in the condition of Park Lane infrastructure during the past five years. This includes current LID and ADA standards and practices, the desires and preferences expressed to staff by the public during the 2014 design process and significant efforts to achieve compatibility with current City right-of-way policies and the policies of the external grant funding partners.
- Updated Department of Ecology requirements for construction storm water management on a project with close proximity to Lake Washington, particularly during winter construction.
- Changes to Ecology design requirements for LID site features since the development of the original plan for Park Lane, including required design size changes for the bio-retention facilities based on current and expected storm water conditions.

Approximately \$639,936 of the shortfall is directly attributable to requests and preferences submitted by Park Lane business and property owners, as well as the community at-large during the design and public involvement process in 2014, with design issue outcomes as follows:

- Use of a composite pervious and impervious brick paver surfacing design, based on the strong preferences of the community and more effective construction during the winter months within the required project construction schedule constraints.
- As specifically requested by the local businesses during our 2014 public involvement program, maintaining near-continuous, ADA-compliant, temporary and safe walking access to all business store fronts during construction. This includes both the immediate construction of temporary paved pathways at the beginning of the project and removal of those pathways immediately before final surface construction.
- Completion of the project within a four-month, late-winter construction period.
- Complex construction sequencing and project management requirements for this Central Business District project site involving the cooperation and coordination of multiple City departments, parking lot and City street access at Main Street, and near-continuous utility service to all businesses.
- Providing a complete yet flexible construction outreach program to keep the public informed about the project and the status of the local businesses, as well as to immediately assist and support local business concerns and complaints during construction.
- Provide a string light feature attached to the tops of the planned light standards to provide festive lighting along Park Lane and offer visual mitigation of the shorter tree canopy for the first few years.
- Design and construction of sufficient LID tree root support for the comprehensive tree canopy enhancement extending the full length of Park Lane from Lake Street to the edge of the King County pump station project near the Park Lane intersection with 3<sup>rd</sup> Street. This element was based on the total number of new trees, which could not be more fully determined until the design was complete.

Finally, approximately \$50,317 of the shortfall is attributable to a recommended response by staff to public and business owner concerns over loss of business during construction:

- Apply a temporary waiver of parking fees associated with the two City parking lots adjacent to Park Lane. This accommodation has an estimated cost to the City of \$50,317.

Staff performed a cost assessment based upon the estimated costs associated with the transportation and pedestrian enhancements portion of the project, as well as those for the surface and storm water enhancements portion of the Project, including the additional Ecology LID requirements and increased capacity to address both winter construction and post-construction surface water management. Based on that assessment of the scope-of-work and estimated costs, including evaluation of which portions of the Project are already funded through City and external funding, staff concluded that the ratio of stormwater funding to the overall project budget was significantly less than the stormwater benefits provided and stormwater costs incurred by the project. Therefore staff recommends that additional funding come from the following sources:

**TABLE 2: PARK LANE PROPOSED ADDITIONAL FUNDING SOURCES**

<b>Fund Source</b>	<b>Amount</b>
REET 2 (to replace parking revenue) *	\$ 50,317
Surface Water Construction Reserve (to fund remainder of shortfall described above) *	\$ 869,936
<b>TOTAL</b>	<b>\$ 920,253</b>

\* See fiscal note Attachment C.

As the project is in the final stages of design, it is possible that actual project costs may be different due to the current bidding climate for the construction contract or other factors. With City Council's approval to advertise the Project, staff will pre-advertise the Project during September, 2014, to support the best possible competitive outcome to a later formal invitation for bids. By doing so, potential bidders will be alerted of an extraordinary winter construction project opportunity during what is typically a slower time for this type of construction. City Council will receive another project update at the time of Award, including a revised funding recommendation if required.

#### **Authorization to Advertise**

Given its importance to the City, overall community expectations, and the significant amount of external funding available for the project, staff recommends City Council approval to proceed with the bidding process for the project once final design is complete, provided final reviews and comments from external funding partners do not result in significant changes to either the design or project cost. Advertisement for contractor bids will be for a multiple schedule bid package during October, 2014 for the following two CIP projects:

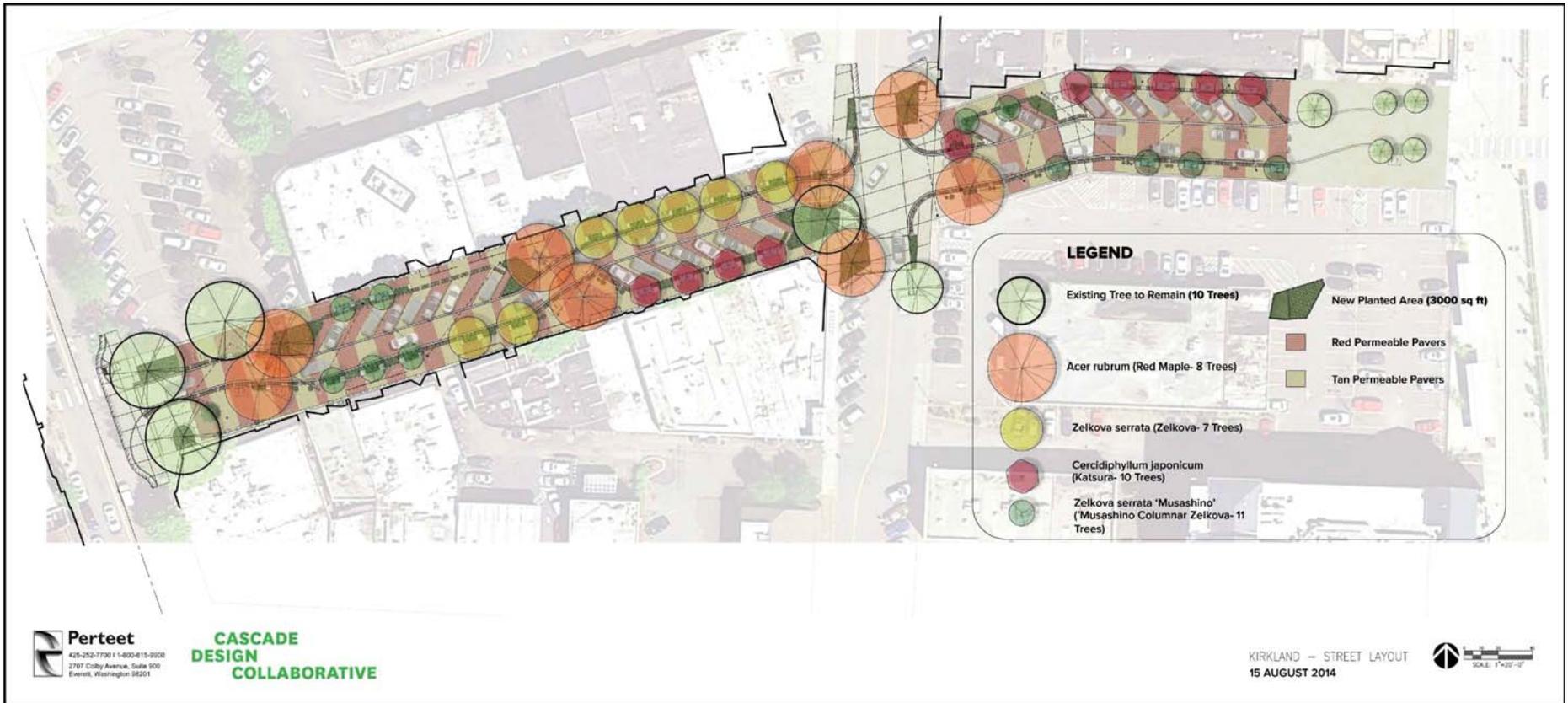
1. NM 0064 – Phase II Park Lane Pedestrian Enhancements
2. WA 0148 – Park Lane Water Main Replacement

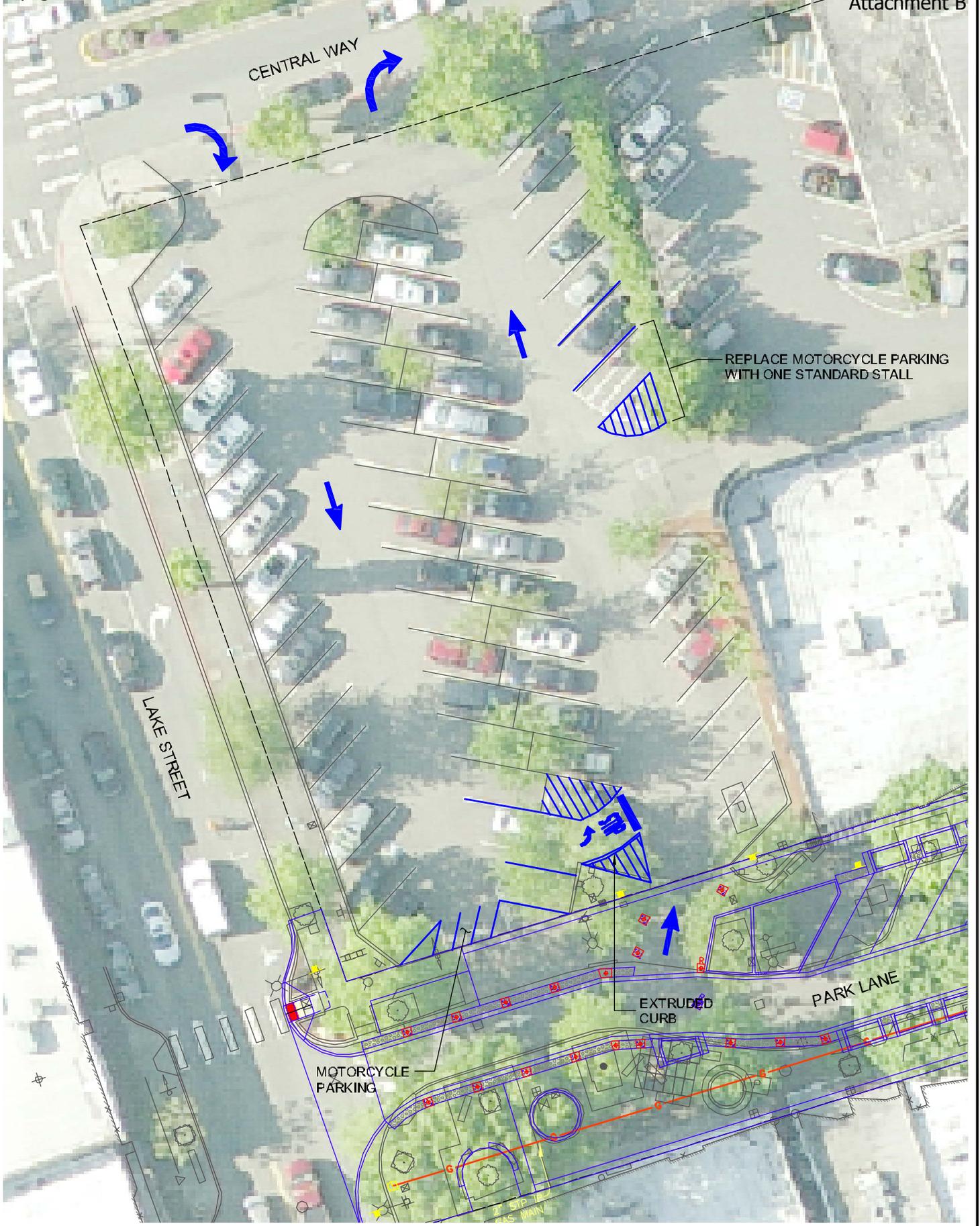
The bid opening would then be scheduled for the beginning of November, with a City Council Award action currently anticipated for a November 2014 meeting.

Construction would begin as soon as possible after January 1, 2015, and be substantially completed by the end of April, 2015, under a schedule needed to conform to the deadline for completion of the project required by the Ecology grant.

Attachment A – Park Lane Illustrative Plan View  
Attachment B – Lake Street Parking Lot Revision  
Attachment C – Fiscal Note

Park Lane Illustrative Plan View





**FISCAL NOTE**

CITY OF KIRKLAND

Source of Request							
Marilynne Beard, Interim Public Works Director							
Description of Request							
Additional funding for Park Lane Pedestrian Improvements (CNM 0064) as described in the attached memo. Request of \$869,936 from the Surface Water Transportation Reserve and \$50,317 from the REET 2 reserve.							
Legality/City Policy Basis							
Fiscal Impact							
<b>One-time use of \$869,936 from Surface Water Transportation Reserve and \$50,317 from REET 2 Reserve.</b> These reserves are fully able to fund this request.							
Recommended Funding Source(s)							
<i>Reserve</i>	Description	2014 Est End Balance	Prior Auth. 2013-14 Uses	Prior Auth. 2013-14 Additions	Amount This Request	Revised 2014 End Balance	2014 Target
	Surface Wtr. Transp. Rsv.	4,580,229	223,619	70,000	869,936	3,556,674	N/A
	REET 2 Reserve	2,319,112	371,615	126,303	50,317	2,023,483	1,071,000
	Prior Authorized Uses of Reserves: 1) Surface Wtr. Transportation Reserve: 6th Street Sidewalk (\$25,243); NE 120th Street Extension (\$123,766); NE 112th Street Sidewalk (\$74,610). 2) REET 2 Reserve: NE 112th Street Sidewalk (\$214,000), Central Way Sidewalk (\$50,000); 6th Street Sidewalk (\$3,045); 98th Avenue Bridge (\$15,000); Lakeview School Walkroute project (\$3,670); 100th Ave NE Bicycle Lanes project (\$61,600); Peter Kirk Elementary Sidewalk (\$19,000); and Transit Center Restroom (\$5,300). Prior Authorized Additions to Reserves: 1)Surface Water Transportation Reserve: Central Way Sidewalk (\$21,000) and Peter Kirk Elementary Sidewalk (\$49,000). 2) REET 2 Reserve: NE 120th Street Extension (\$77,303), NE 112th St. Sidewalk (\$49,000).						
<i>Revenue/Exp Savings</i>							
<i>Other Source</i>							
Other Information							

Prepared By	Neil Kruse, Senior Financial Analyst	Date	August 12, 2014
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## CITY OF KIRKLAND

Department of Finance & Administration  
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100  
www.kirklandwa.gov

### MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Barry Scott, Purchasing Agent

**Date:** November 6, 2014

**Subject:** REPORT ON PROCUREMENT ACTIVITIES FOR COUNCIL MEETING OF NOVEMBER 18, 2014

This report is provided to apprise the Council of recent and upcoming procurement activities where the cost is estimated or known to be in excess of \$50,000. The "Process" column on the table indicates the process being used to determine the award of the contract.

The City's major procurement activities initiated since the last report, dated October 23, 2014, are as follows:

	Project	Process	Estimate/Price	Status
1.	Police Interceptor Sedans (2)	Cooperative Purchase	\$67,519.26	Ordered from Columbia Ford of Longview, WA using WA State Contract.
2.	Park Lane Pedestrian Improvements	Invitation for Bids	\$1,900,000 - \$2,600,000	Advertised on 11/10 with bids due on 12/2.
3.	Wireless Services – Everest Park and Houghton Beach Park	Request for Proposals	\$150,000 - \$165,000	RFP issued on 11/10 with proposals due on 12/5.

Please contact me if you have any questions regarding this report.



**CITY OF KIRKLAND**  
**Department of Public Works**  
 123 Fifth Avenue, Kirkland, WA 98033 425.587.3800  
 www.kirklandwa.gov

## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Tim Llewellyn, Fleet Supervisor  
 Erin Devoto, Superintendent of Operations, Public Works  
 Kathy Brown, Public Works Director

**Date:** October 31, 2014

**Subject:** SURPLUS OF EQUIPMENT RENTAL VEHICLES/EQUIPMENT

### RECOMMENDATION:

It is recommended that the City Council approves the surplusing of the Equipment Rental vehicles/equipment identified in this memo by removing them from the City's Equipment Rental Replacement Schedule.

### BACKGROUND DISCUSSION:

The surplusing of vehicles or equipment which have been replaced with new vehicles or equipment, or no longer meet the needs of the City, is consistent with the City's Equipment Rental Replacement Schedule Policy.

The following equipment has been replaced by new equipment, and if approved by City Council, will be sold or disposed of in accordance with the KMC (Kirkland Municipal Code) Chapter 3.86, The Sale and Disposal of Surplus Personal Property. Surplus vehicles or equipment may be retained for short term, temporary, or special needs of the City prior to disposal as needed.

<u>Fleet #</u>	<u>Year</u>	<u>Make</u>	<u>VIN/Serial Number</u>	<u>License #</u>	<u>Mileage</u>
F209	1998	Jeep Cherokee	1J4FJ28S7WL254816	23996D	69,852
F215	2006	Jeep Cherokee	1J4GR48K06C327453	43205D	135,137

The City of Kirkland standard replacement criteria which reflects the industry standard, is 8 years or 80,000 miles, whichever comes first. FleetAnswers.com recently cited Municipal Vehicle Replacement Trends, with the following notable statistics for average age of replacement for vehicles in city government fleets:

- Cars: 6.7 years
- Class 1-5 trucks: 7.7 years
- Police vehicles: 4 years.

The criteria for replacement is reviewed annually by Fleet Management. Replacement factors considered are the wear and tear on the engine, drive train and transmission, structural body, and major component parts. The frequency and nature of previous repairs are also examined. Changes in the vehicle mission, technology, and right-sizing are also considered, as well as the impact of future alternative fuels usage. The decision to replace a vehicle requires the consensus of the Fleet Management staff representing over 120 years of experience among six members. Vehicles should be replaced before major repair and expense occur to maximize usefulness without sacrificing resale value.

F209, a 1998 Jeep Cherokee, was assigned to the Fire Department Deputy Chief of Operations for its anticipated 8 year life. Due to its good condition and low mileage, F209 served as a Fleet loaner/pool vehicle for an additional 8 years for a total of 16 years of service. This vehicle will be sold at public auction due to its age.

F215, a 2006 Jeep Cherokee, was assigned to the Fire Department's Deputy Chief of Administration. This vehicle achieved its expected useful life of 8 years, and will be sold at public auction due to its high mileage.

Note: The accounting life of a vehicle is the number of years of anticipated useful life to City operations. It is determined by historical averages and replacement cycles of actual City vehicles. The accounting life provides a timeline basis for the accrual of vehicle Replacement Reserve charges. At end of a vehicle's accounting life, there should be sufficient funds in the Replacement Reserve Fund to purchase a similar replacement vehicle. The accounting life of a vehicle is a guideline only. Actual usage of City vehicles can vary from averages. All vehicles considered for replacement will be evaluated on their individual condition and availability of replacement funding. Replacement reserves collected for each of these vehicles was adequate to fund their replacement.



**CITY OF KIRKLAND**  
**Department of Finance & Administration**  
**123 Fifth Avenue, Kirkland, WA 98033 425.587.3100**  
**www.kirklandwa.gov**

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## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Tracey Dunlap, Director of Finance and Administration  
Tom Mikesell, Financial Planning Manager

**Date:** November 7, 2014

**Subject: PRELIMINARY 2015 PROPERTY TAX LEVY PUBLIC HEARINGS AND ADOPTION**

## RECOMMENDATION:

City Council conducts a public hearing and adopts the following ordinances levying property taxes for the year 2015:

1. Ordinance 4464 establishing the preliminary regular levy for the City of Kirkland and the excess levy for the pre-annexation City; and
2. Ordinance 4465 establishing the levy for the area previously served by Fire District 41 to pay debt service for the consolidated fire station.

## BACKGROUND DISCUSSION:

Washington State law requires a public hearing on revenue sources that must include consideration of possible increases in property tax revenues (RCW 84.55.120). This hearing was held on September 16, 2014. A public hearing on the City's property tax levy is scheduled for November 18. Following the public hearing, the City Council will be asked to establish the City's preliminary property tax levy by adopting Ordinance 4464 and the levy to support annual debt service for the Fire District's outstanding consolidated fire station debt for 2015 by adopting Ordinance 4465.

The attached ordinances are required in order to meet the December 5 deadline established by the King County Council for submission of levy amounts. Each year the County prepares a levy worksheet for cities and other taxing districts that establishes the maximum levy capacity (within legal limits) and the amount of new construction valuation. The City cannot accurately calculate the amount of the levy until the final worksheet is received. The County estimates that the final levy worksheets will be available either by the last week of November or the first week of December. Since the date of the final levy worksheet is unknown, an ordinance needs to be passed that establishes a maximum amount of property taxes the City expects to levy in 2015. We use a maximum amount since the County will allow us to submit a final levy amount that is lower than the preliminary amount but not higher. Consequently, the preliminary property tax levy is typically higher than the final levy will be. The final levy will be calculated

when the City receives its final levy worksheet from King County and will be brought forward for adoption at the December 9 City Council meeting.

It should be noted that the property tax levies need to be established annually even though the Council has adopted a budget for the 2015-2016 biennium. Accordingly, the attached ordinances establish levies for 2015, the first year of the biennium.

The following discussion explains how the preliminary levy numbers were calculated for both the City and the Fire District.

## **1. REGULAR AND EXCESS LEVY FOR THE CITY OF KIRKLAND**

This section explains how the preliminary levy numbers in Ordinance 4464 were calculated for each of the variable factors in the City's levy. There are two components to the City's property tax levy — the regular levy, which funds operating costs, and the excess levy, which funds debt service on voter-approved bonds (which only applies within the pre-annexation boundary).

### *Regular Levy for City*

For budgeting purposes there are three factors that make up the 2015 regular levy:

- i. The base levy, which also includes:
  - a. The 2002 levy lid lift for Parks Maintenance
  - b. The 2012 levy lid lift for City Street Maintenance and Pedestrian Safety,
  - c. The 2012 levy lid lift for City Parks Maintenance, Restoration and Enhancement, and
- ii. The optional one percent increase
- iii. The new construction levy

### The Base Levy

The basis for calculating the 2015 levy is the 2014 regular levy of \$26,133,618, which is comprised of four broad budget components. The base levy for General Fund and the Street Fund; the 2002 Parks Maintenance Levy lid lift; the 2012 Street Maintenance and Pedestrian Safety Levy Lid Lift; and the 2012 City Parks Maintenance, Restoration, and Enhancement Levy Lid Lift. In addition any minor levy corrections, made by the King County Assessor, are added to the base levy.

### Optional Levy Increase

The 2015-2016 Budget assumes the optional increase of one percent in 2015. In 2015, a one percent increase in the regular levy equates to \$261,336, which is split between the four budget components as shown below.

<b>Budget Component</b>	<b>2014 Amount</b>	<b>One Percent Increase</b>	<b>2015 Amount</b>
General Fund & Street Fund	19,656,769	196,568	19,853,337
2002 Parks Maintenance Levy	1,237,438	12,374	1,249,812
2012 Streets Levy	2,936,373	29,364	2,965,737
2013 Parks Levy	2,303,038	23,030	2,326,068
<b>Total</b>	<b>26,133,618</b>	<b>261,336</b>	<b>26,394,954</b>

### Levy Corrections

In some years, corrections to the previous year's levy are made and the King County Assessor's Office re-levies these refunds by adding the amount refunded to the upcoming year's levy. These refunds are in addition to the one percent increase (RCW 84.69.020). In 2015, the Assessor will be re-levying \$48,855 in refunds making the levy plus one percent amount for the City equal to \$26,443,809.

### New Construction

New construction represents additional property taxes to be received from the construction of new buildings and additions to existing structures. The new construction levy increases revenue to the City but does not increase the tax levy on existing taxpayers. The new construction levy is calculated by dividing the new construction valuation by \$1,000 and multiplying the result by the current year's regular levy tax rate<sup>1</sup> (\$1.65892 per \$1,000 of assessed valuation). The preliminary new construction valuation for the 2015 levy (as of November 4, 2014) is \$292,073,688 which translates into a new construction levy of \$484,527 ( $\$292,073,688 / \$1,000 \times \$1.65892$ ). Over the past several years, the increase in new construction levy as a percentage of each year's total base regular levy has ranged between 0.34 percent and 4 percent. The estimated 2015 new construction levy of \$484,527 (as of November 4, 2014) is 1.8% percent of the total regular levy for 2015.

For preliminary levy purposes in the preliminary ordinance (O-4464) only, new construction valuation is shown at \$1,453,581, which is triple the November 4, 2014 figure. This is done to ensure that all new construction amounts will be available. The final new construction levy will not be known until the City receives its final levy worksheet from King County in December, and will likely be closer to the November 4 figure of \$484,527. Once the final levy worksheet is received, staff will adjust the 2015 property tax levy accordingly and submit a final ordinance for Council approval on December 9, 2014.

The new construction levy is allocated proportionately across the four areas that receive property tax funding. The table below shows how much would be distributed based on the new construction levy provided by the Assessor on November 4, 2014, as well as the amount (triple the Assessor's estimate) used in the preliminary ordinance (O-4464).

<b>Budget Category</b>	<b>Levy with Optional One Percent Increase</b>	<b>Addition From New Construction</b>	<b>Assessor's Preliminary 2015 Levy</b>
Base Levy (General Fund & Street Fund)*	19,902,192	364,444	20,266,635
2002 Parks Maintenance Levy	1,249,812	22,943	1,272,755
2012 Streets Levy	2,965,737	54,441	3,020,178
2012 Parks Levy	2,326,068	42,699	2,368,768
<b>Subtotal</b>	<b>26,443,809</b>	<b>484,527</b>	<b>26,928,336</b>
Artificially High New Construction Increment		969,054	969,054
<b>Total</b>	<b>26,443,809</b>	<b>1,453,581</b>	<b>27,897,390</b>

\* Base Levy includes the \$48,855 refund correction.

<sup>1</sup> Levy rate per the Preliminary Levy Limit Worksheet from the King County Assessor's Office.

*Excess Levy for Pre Annexation City*

The total excess levy for the City, which relates to voted debt paid within the pre-annexation boundaries, will decrease in 2015 based on the payment schedule for the outstanding voted debt; in 2015 this amount will be \$569,990. Annexation voters did not approve the assumption of voted bond indebtedness, therefore the excess levy will only be applied on the taxable assessed value of properties within the pre-annexation boundaries of the City. This translates to a rate per \$1,000 assessed value of \$0.04337.

*Trends in Assessed Valuation*

Assessed valuation is composed of new construction and revaluation of existing properties. Preliminary figures from King County dated November 4, 2014, indicate that compared to 2014, total assessed valuation increased by 16.98 percent. Of this amount, 1.85 percent is due to new construction.

For estimating purposes, in the preliminary levy only, new construction valuation is shown at triple the November 2014 figures to ensure that all new construction amounts will be available. It should be noted that the preliminary new construction figure from King County does not include the State utility assessed valuation, which has not been finalized yet.

The change in valuation does not in itself generate additional revenue for the City. If the Council took no optional increase in the levy and the assessed valuation increases, it would have the effect of lowering the rate applied to each \$1,000 of assessed valuation. Conversely, if the assessed valuation decreases, it results in an increase in the rate applied to each \$1,000 of assessed valuation, since the levy is set as a total dollar amount, which is divided by the assessed valuation.

*Preliminary Levy Rates*

Based on the preliminary levy worksheet, an intentionally high estimate for new construction (\$1,453,581), and the one percent optional increase, the regular levy tax rate for the City would decrease from \$1.65892 per \$1,000 of assessed valuation in 2014 to \$1.51182 in 2015. The rate per \$1,000 decreases because the total assessed valuation (AV) for the City has increased by 16.98 percent over the same period and we are using an artificially high new construction value. This rate applies to all parcels in Kirkland.

The excess levy rate, which applies for properties within the pre-annexation boundaries, is decreasing from \$0.05773 to \$0.04337 based on the decrease in the annual debt payment and increase in assessed valuation in the pre-annexation portion of the City.

<b>Levy Type</b>	<b>Levy Amount</b>	<b>Applicable AV</b>	<b>Levy Rate</b>
Regular Levy Rate	27,897,390	÷ \$18,452,886,021/1,000	\$1.51182
Excess Levy Rate	569,990	÷ \$13,142,292,236/1,000	\$0.04337

**2. CONSOLIDATED FIRE STATION DEBT SERVICE LEVY**

When annexation of the Juanita, Finn Hill, and Kingsgate neighborhoods became effective on June 1, 2011, Fire District 41, which served a majority of that area, was assumed by the City. The District's outstanding debt for the consolidated fire station remains in place until it is

retired. With the assumption of the District, the City Council has assumed the role of governing body with the authority to levy taxes to pay the outstanding debt service on the consolidated fire station. For 2015, the City needs to collect \$470,572 to pay the debt service. King County as a whole has a 98 percent collection rate on tax levies, therefore, the City is setting a levy of \$480,176 ( $\$470,572 \div 98$  percent) to pay debt service in 2015.

This levy approved by Ordinance 4465 establishes a levy of \$480,176 for the area previously served by Fire District 41 to pay debt service for the consolidated fire station. This translates to a rate per \$1,000 assessed value of \$0.11402 on the properties within the North Juanita, Finn Hill and Kingsgate areas previously served by Fire District 41. Annexation area residents previously served by Fire District 41 will pay 2015 property taxes at the City of Kirkland regular levy rate (excluding voted debt service) plus the District's levy rate required to repay the District's outstanding debt.

Levy Type	Levy Amount	Applicable AV	Levy Rate
Fire District 41 Levy Rate	480,176	$\div \$4,211,223,586/1,000$	\$0.11402

### 3. SUMMARY

Since the annexation was approved by less than a 60 percent majority of voters, the residents of the annexation area did not assume the existing City's voted indebtedness and therefore will not pay the excess levy rate. In fact, tax payers within the City's boundaries have three separate levy rates based on their location (note that the preliminary rates shown are higher than the expected final rates that will be adopted on December 9):

1. Property owners within the pre-annexation City will pay the regular levy rate of \$1.51182 and the excess levy of \$0.04337 for a total of \$1.55519;
2. Property owners within the annexation area previously served by Fire District 41 will pay the regular levy rate of \$1.51182 and the excess levy of \$0.11402 to repay the District debt for a total of \$1.62584; and
3. Property owners within the annexation area previously served by Fire Districts 36 (Woodinville) and 34 (Redmond) will pay the regular levy rate of \$1.51182 only.

Levy Type	Pre-Annexation City	New Neighborhoods Previously Served by FD-41	New Neighborhoods Previously Served by Woodinville or Redmond
Regular Levy Rate	\$ 1.51182	\$ 1.51182	\$ 1.51182
Excess Levy Rate	\$ 0.04337	N/A	N/A
FD-41 Debt Levy	N/A	\$ 0.11402	N/A
<b>Est. Final Levy Rate</b>	<b>\$ 1.55519</b>	<b>\$ 1.62584</b>	<b>\$ 1.51182</b>

While the total dollar amount of the levy is fixed, the final rate per \$1,000 of AV can change based on the final AV at the time King County finalizes the levy rates (in early 2015). A final levy will be prepared for Council approval at the December 9 regular meeting.

*Preliminary Levy Recap:*

	Amount
2014 Regular Levy	26,133,618
Optional 1 percent Increase	261,336
New Construction*	1,453,581
Other Adjustments^	48,855
<b>Total Regular Levy</b>	<b>27,897,390</b>
Excess Levy	569,990
<b>Total 2014 Preliminary Levy</b>	<b>28,467,380</b>

\* New construction levy is set at triple the latest new construction levy amount and will be reduced to the actual new construction allowance when final information is received from King County.

^ Other adjustments include re-levy for prior-year refunds and any levy corrections or omissions.

Adoption of the preliminary property tax levies on November 18 is required in order to meet the King County deadline of December 5 to submit levy amounts. The final levy amount will be calculated based on the final property tax levy worksheet from King County, which is expected in the last week of November or early December. The final levy will be brought forward for Council action at the December 9 meeting.

ORDINANCE O-4464

AN ORDINANCE OF THE CITY OF KIRKLAND ESTABLISHING THE AMOUNT OF PROPERTY TAXES TO BE LEVIED FOR THE YEAR 2015, THE FIRST YEAR OF THE CITY OF KIRKLAND'S 2015-2016 FISCAL BIENNIUM.

WHEREAS, the City Council held a public hearing on September 16, 2014, to consider revenue sources for the 2015-2016 Biennial Budget; and

WHEREAS, the City Council and the City Manager have considered the anticipated financial requirements of the City of Kirkland for the fiscal year 2015; and

WHEREAS, pursuant to RCW 35A.33.135, the City Council is required to determine and fix by ordinance the amount to be raised by ad valorem taxes; and

WHEREAS, RCW 84.55.120 requires that the increase in the levy over the prior year shall be stated both as to dollars and percentage;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. The regular property tax levy for the year 2015 is hereby fixed and established in the amount of \$27,897,390. This property tax levy represents a dollar increase of \$261,336 and a percentage increase of one percent from the previous year, excluding the addition of new construction, improvements to property, any increase in the value of state-assessed property, and administrative refunds as shown below:

	Amount
<b>2015 Regular Levy</b>	<b>27,897,390</b>
Less 2014 Levy	26,133,618
Less New Construction	1,453,581
Less Refunds	48,855
<b>Total Increase</b>	<b>261,336</b>
<b>Percent Increase</b>	<b>1.00%</b>

Section 2. There is hereby levied for 2015 upon all property, both real and personal, within the City of Kirkland, Washington, and within the area subject to tax levies for the principal and interest of all general obligation bond issues, a total voted property tax of \$569,990 on the total of assessed valuation for such property.

Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

ORDINANCE O-4465

AN ORDINANCE OF THE CITY OF KIRKLAND ESTABLISHING THE AMOUNT OF PROPERTY TAXES TO BE LEVIED FOR THE YEAR 2015, TO PAY THE FIRE DISTRICT 41 DEBT SERVICE ASSUMED AS A RESULT OF ANNEXATION OF THE NORTH JUANITA, FINN HILL, AND KINGSGATE NEIGHBORHOODS ON JUNE 1, 2011.

WHEREAS, the City has annexed the territory formerly served by Fire District 41 which removed all of the territory served by the District from its jurisdiction by operation of law as of June 1, 2011; and

WHEREAS, RCW 35A.14.500 provides that “[w]hen any portion of a fire protection district is annexed by or incorporated into a code city, any outstanding indebtedness, bonded or otherwise, shall remain on obligation of the taxable property annexed or incorporated as if the annexation or incorporation had not occurred”; and

WHEREAS, RCW 35A.14.801(5) provides that “[i]f a code city annexes property within a fire district or library district while any general obligation bond secured by the taxing authority of the district is outstanding, the bonded indebtedness of the fire district or library district remains on obligation of the taxable property annexed as if the annexation had not occurred”; and

WHEREAS, the outstanding indebtedness obligation of the taxable property annexed is \$2,930,287 as of December 31, 2014; and

WHEREAS, the City Council and the City Manager have considered the anticipated financial requirements of the City of Kirkland for the payment of the debt service for the fiscal year 2015; and

WHEREAS, pursuant to RCW 35A.33.135, the City Council is required to determine and fix by ordinance the amount to be raised by ad valorem taxes;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. The Fire District 41 debt service property tax levy for the year 2015 is hereby fixed and established in the amount of \$480,176.

Section 2. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_\_ day of \_\_\_\_\_, 2014

Signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR

Attest:

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City Clerk

Approved as to Form:

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City Attorney



**CITY OF KIRKLAND**  
**Department of Finance & Administration**  
**123 Fifth Avenue, Kirkland, WA 98033 425.587.3100**  
**www.kirklandwa.gov**

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## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Tracey Dunlap, Director of Finance and Administration  
Tom Mikesell, Financial Planning Manager

**Date:** November 7, 2014

**Subject:** PUBLIC HEARING ON PRELIMINARY 2015-2016 BUDGET

### RECOMMENDATION:

City Council holds a public hearing on the Preliminary 2015-2016 Budget.

### BACKGROUND DISCUSSION:

The purpose of this public hearing is to solicit public comment on the Preliminary 2015-2016 Budget as submitted by the City Manager and available to the public on October 21, 2014. The budget document is available at:

<http://www.kirklandwa.gov/budgetdoc>

A public hearing on anticipated revenue sources was held on September 16, 2014. RCW 35A.33 requires that a public hearing on the upcoming budget period be held on or before the first Monday in December. A public hearing on the Preliminary 2015-2016 Budget was held on November 3, 2014.

Additionally, Council budget study sessions were held on October 30<sup>th</sup> and November 3<sup>rd</sup>. At the November 3<sup>rd</sup> study session, Council requested additional information on a number of topics, as follows:

- How many CERT classes were held per year prior to the last recession?
  - The Fire and Building Department estimates that there have been 2 CERT classes per year since 2006.
- When was the last year in which Kirkland had two School Resource Officers in the schools?
  - The most recent year with two school resource officers was 2008.

- What are the potential sponsorship levels for Leadership Eastside?
  - There are a number of sponsorship options, as shown in the table of sponsorship levels on the attached "Leadership Eastside Partner Opportunities and 2014-2015 Annual Budget" (Attachment A).
  - It is worth noting that while the Partner Opportunities document lists \$10,000 as the full year municipal support amount, Issaquah currently supports at \$15,000, Redmond at \$10,000 and Bellevue at \$6,000.
  - Staff is recommending that the City plan to send three participants per year and defer funding any sponsorships pending a discussion with Leadership Eastside (LE) as to the measurable outcomes that such a sponsorship would provide to both LE and Kirkland.
- What is the process for receiving and approving the use of cultural organization grant matching funds?
  - The suggested process begins with the cultural organization notifying the City Manager that they are pursuing a grant from an organization such as 4Culture. As part of that notification the organization would provide details on the nature, amount, and public purpose of the grant and the request match.
  - The City Manager, supported by the Economic Development Manager, would evaluate the public purpose and amount and makes a determination of the amount eligible for city matching funds. The applicant is then notified in writing of the financial commitment from the City in the event that the organization receives the grant.
  - Upon receipt of the written notification that grant funds are approved, the applicant submits grant paperwork to the City, which then disburses the approved matching funds.
- Bring back additional information on using home demolition fees as dedicated funding for ARCH.
  - Please refer to Attachment B for materials on this topic presented to the ARCH Board.

The Council also discussed a number of additional 2015-2016 funding needs at the October 30<sup>th</sup>, 2014 and November 3, 2014 budget study sessions. If approved in total, these changes would require ongoing and one-time funding of \$86,989 and \$276,712, respectively.

In terms of potential resources to meet these needs, as mentioned at the October 30, 2014 budget study session, recent updates to Kirkland's new construction assessed valuation from the King County Assessor's Office indicate an increase above the amount used in the preliminary budget. In addition, corrections and refunds to prior year valuation are eligible to be added to Kirkland's allowable 2015 levy. These two factors provide sufficient unbudgeted property tax revenue to fund the ongoing SRO in the 2015-16 biennium.

Also, at the November 3<sup>rd</sup> study session, Council discussed the concept of utilizing a portion of the Special Projects Reserve in 2015-2016 to fund a set-aside of resources pending a regional plan for the Northshore Public Health Center. The Council made no final decision regarding the

source of the health center funding. If the Council does not use the Special Projects Reserve, the \$80,000 would likely come from unallocated ending fund balance. As the books are closed on 2014, staff will know whether there will be sufficient fund balance to absorb this amount, or whether it would result in a small reduction to reserve replenishment. Staff is seeking a Council decision on funding and will finalize the chart and funding sources accordingly before final budget adoption on December 8<sup>th</sup>.

Finally, the City's current fiscal policies require a high percentage (up to all) of uncommitted funds available at the end of the biennium to be used for reserve replenishment until reserves meet 80% of target. The policies also permit the Council to suspend the requirements to replenish reserves under special circumstances. With planned replenishments, reserves are projected to exceed the 80% level during the 2015-2016 biennium, which triggers the provision that 50% of any remaining funds can be used for one-time purposes. The one-time expenditures in the proposed budget, including the additional items summarized below, exceed this 50% threshold. As a result, staff is planning to prepare a resolution to suspend the reserve replenishment requirement for Council action on December 9<sup>th</sup>.

The following table displays the 2015-2016 funding needs discussed in the budget study sessions, and includes the sources proposed to fund them, assuming full use of newly available property tax revenues, potential use of the Council Special Projects Reserve for the Northshore Public Health Center one-time set-aside, and suspension of the reserve replenishment requirements.

Uses	2015-16 Cost		
	Ongoing	One-time	Total
Human Services Option 3	-	116,226	116,226
School Resource Officer	86,989	12,780	99,769
Northshore Public Health Center Set-Aside	-	80,000	80,000
Leadership Eastside Scholarships <sup>1/</sup>	-	24,000	24,000
KAN Request	-	10,202	10,202
Social Worker at John Muir Elementary	-	23,504	23,504
Cultural Organization Grant Matching	-	10,000	10,000
<b>Grand Total Uses</b>	<b>86,989</b>	<b>276,712</b>	<b>363,701</b>
Resources			
Higher New Construction/ Rebates	86,989	-	86,989
Council Special Projects Reserve/ NPHC set-aside		80,000	80,000
Unallocated year end resources	-	196,712	196,712
<b>Grand Total Resources</b>	<b>86,989</b>	<b>276,712</b>	<b>363,701</b>

1/ Based on 3 participants per year with no sponsorship. May be partially offset by participant match.

The Council's direction on the funding of the identified needs in 2015-2016 will be incorporated in the budget ordinance brought forward for Council action on December 9<sup>th</sup>.

For additional reference, attached are the Sales Tax Report for October (Attachment C) and the 3rd Quarter 2014 Financial Management Report (Attachment D).

	Event/ Opportunity	Description/Audience	Available	Sponsorship Amount
FULL YEAR	<u>Annual Corporate/ Organizational &amp; Municipal Support</u>	Annual underwriting for Leadership Eastside's Inform, Equip, and Connect programs. Recognized on website, in all events, and all publications. <i>Estimated annual reach: 50,000+ impressions. (Customized additional recognition upon request.)</i>	Available: Corporate Sponsorship (2 remaining); Organizational (non-profit/public) Sponsorship (2 remaining); City Sponsorship (unlimited). <i>Sold: Corporate Sponsorship (Boeing, Republic Services, Microsoft, Symetra); Current Municipal Sponsorships (Redmond, Bellevue, Issaquah, Mercer Island)</i>	\$10,000
FULL YEAR	<u>State of the Eastside Lead Partners</u>	Annual partnership and key recognition of one organization within each of the seven sectors that make up a healthy community. The Lead (Issue) Partners are involved in organizing LE discussions about their related issues, invited to contribute a highlighted article in the publication of <i>LE Impact</i> that focuses on their issue area, invited to participate in (and be recognized at) LE panels and forums that focus on their issue area, Highlighted recognition and Issue Table Sponsorship at the Annual State of the Eastside Lunch, and are invited to contribute to the annual State of the Eastside Address and Report. They are also consulted regarding community projects related to their issue area. Audience includes attendees at events, <i>LE Impact</i> subscribers, program sponsors, LE Board, and members of the LE Network. Estimated annual reach: 5000 community leaders in East King County.	Available: 1 State of the Eastside Lead Partner in the following issue areas Arts and Culture, Basic Needs, Economy, Health and Wellness, Education, Environment, Neighborhoods and Community Building. <i>Sold: 2014 Health and Wellness Lead Partner (Bellevue Children's Hospital). Pending: 2014 Basic Needs Lead Partner (United Way of King County)</i>	\$5,000
FULL YEAR	<u>State of the Eastside Issues Partners</u>	Annual partnership with organizations related to each of seven sectors that make up a healthy community. State of the Eastside Partners are involved in LE discussions about their related issues, highlighted in the publication of <i>LE Impact</i> that focuses on their issue area, recognition and Issue Table Sponsorship at the Annual State of the Eastside Lunch, and invited to contribute to the annual State of the Eastside Address and Report. Audience includes attendees at events, <i>LE Impact</i> subscribers, program sponsors, LE Board, and members of the LE Network. Estimated annual reach: 5000 people.	Available: State of the Eastside Partnerships in the following issue areas (limited to 10 in each area): Arts and Culture, Basic Needs, Economy, Health and Wellness, Education, Environment, Neighborhoods and Community Building. <i>Sold: 2014: United Way of King County, Imagine Housing, Puget Sound Energy, Studio East, Boeing, Overlake Hospital, Cascadia Community College, AAA Washington, Republic Services, Meydenbauer Center.</i>	\$500



	Event/ Opportunity	Description/Audience	Available	Sponsorship Amount
<b>FULL YEAR</b>	<b>LE Impact:</b> Issue date: First Wednesday, monthly	LE monthly electronic communication. <i>Estimated circulation: 3000 subscribers .</i>	Available: Presenting Sponsorship. <i>Sold: 2014 (Washington Trust Bank)</i>	\$2,500
<b>SEP- MAY</b>	Monthly Leader Days	10 Monthly "Class Days" for program participants held in locations across the Eastside. <i>Estimated attendance, each day: 35-50 people.</i>	Available: Presenting Sponsorship: Includes Opportunity to welcome attendees. Host/Lunch Sponsorship. Includes Opportunity to welcome attendees. <i>(Various 2015 Partnerships Available)</i>	<b>\$4,000 (Full Year Presenting Sponsor) OR \$500 (Individual Day Sponsor) Host for Individual Class Day (Offset cost for room and food, approximately \$500)</b>
<b>2-YEAR</b>	<b>Scholarship Sponsor</b>	Support tuition of program participants who require financial assistance so that all qualified applicants can participate, regardless of personal or organizational ability to pay. Audience includes the LE Board, members of the LE Network, and members of the Eastside community at large. <i>Estimated annual reach: 500 people.</i>	Available: Named and unnamed scholarships for Diversity, Fellowship, or issue area. Recognized throughout the two-year participation of the class member, and captured historically on the LE website. <i>(Various 2015 Partnerships Available)</i>	<b>Various</b>
<b>Opportunities by Month</b>				
<b>JAN 2015</b>	<b>LEx: Happy Hour for the Greater Good :</b> 1/20 5:30pm - 7:30pm (Wilde Rover, Kirkland)	Networking and leadership skill-building event for LE alumni and members of the LE Network. - January 2015 Focus: How Leaders Thrive <i>Estimated attendance: 75 people.</i>	Available: 1 Presenting Sponsorship: Includes opportunity to welcome attendees from podium. 1 Host: Includes recognition from podium. All sponsorships include recognition in online communications marketing the event.	<b>\$1,000 (Presenting Sponsor) Host (Offset cost for room and food, approximately \$500)</b>

	Event/ Opportunity	Description/Audience	Available	Sponsorship Amount
FEB	<b>State of the Eastside Luncheon and Address</b> Thu 2/12, 12pm-1:30pm, (Location TBA).	5th annual event bringing together community leaders from each of seven sectors that make up a healthy community to discuss the trends, concerns, and focus of community leadership across the Eastside for the upcoming year. Audience includes current program participants, alumni, LE Board, and elected officials. <i>Estimated attendance: 300 people.</i>	Available: 2 Presenting Sponsorships: Includes opportunity to welcome attendees from the podium. 2 Supporting Sponsorships: Includes highlighted recognition from the podium. All sponsorships include Issue Table Sponsorship and recognition in online communications marketing the event. 10th Anniversary Celebration Sponsors also recognized at this event.	<b>\$5,000 (Presenting Sponsor)</b> <b>\$2,500 (Supporting Sponsors)</b> <b>\$800 (Issue Table Sponsors)</b>
FEB-NOV	<b>LE 10th Anniversary Celebration</b>	LE celebrates its 10th anniversary with a series of events that kicks off with the State of the Eastside Lunch and culminates with a Gala in November 2015. Sponsors supporting the celebration will receive recognition via print, online, LE Impact, and social media. <i>Estimated attendance of event series: 1000 people. Estimated media, impressions: 50,000+</i>	Available: 2 Presenting Sponsorships: Includes opportunity to welcome attendees from the podium. 5 Supporting Sponsorships: Includes highlighted recognition from the podium. Unlimited Celebration Sponsorships.	<b>\$5,000 (Presenting Sponsor)</b> <b>\$2,500 (Supporting Sponsors)</b> <b>\$1000 (Celebration Sponsors)</b>
FEB	<b>LE Class of 2015 Project Presentation Day</b> Thu 2/19, 8:00-10:00am (Location TBD)	Annual presentation of community projects undertaken by participants in their second year LE program year. Audience includes Class of 2015, program sponsors, project stakeholders, LE Board, and members of the LE Network. <i>Estimated attendance: 100 people.</i>	Available: Presenting Sponsorship. Host. All sponsorships include recognition in online communications marketing the event.	<b>\$1,000 (Presenting Sponsor)</b> <b>Host (Offset cost for room and food, approximately \$500)</b>
MAR	<b>LEx: Happy Hour for the Greater Good :</b> 3/31 5:30pm - 7:30pm (Wilde Rover, Kirkland)	Networking and leadership skill-building event for LE alumni and members of the LE Network. - March 2015 Focus: TBD <i>Estimated attendance: 75 people.</i>	Available: 1 Presenting Sponsorship: Includes opportunity to welcome attendees from podium. 1 Host: Includes recognition from podium. All sponsorships include recognition in online communications marketing the event.	<b>\$1,000 (Presenting Sponsor)</b> <b>Host (Offset cost for room and food, approximately \$500)</b>

	<b>Event/ Opportunity</b>	<b>Description/Audience</b>	<b>Available</b>	<b>Sponsorship Amount</b>
<b>APR</b>	<b><u>State of the Eastside Report</u></b> <b>(printed and online versions)</b> Issue Date April 2015	3rd annual published report consolidated from partners across seven sectors that make up a healthy community. Includes feedback from community leaders in attendance at the State of the Eastside Luncheon. Audience includes elected officials, current program participants, alumni, and other members of the LE Network. <i>Estimated audience: 3000 people.</i>	Available: Presenting Sponsorship.	<b>\$2,500</b>
<b>MAY</b>	<b><u>LE Class of 2015 Graduation and All Class Celebration</u></b> Thu 5/21 7:00-9pm, (Location TBD).	Annual graduation reception and celebration for participants successfully completing their second year of the LE Leadership Enrichment Program. Celebration of the year-end for the rest of the program participants. Audience includes both class years, spouses and other family, employers, LE Board, and members of the LE Network. <i>Estimated attendance: 150 people.</i>	Available: Includes opportunity to welcome attendees from podium. 1 Host: Includes recognition from podium. All sponsorships include recognition in online communications marketing the event.	<b>\$1,000 (Presenting Sponsor)</b> <b>Host (Offset cost for room and food, approximately \$500)</b>
<b>AUG</b>	<b><u>Class of 2017 Welcome Reception</u></b> Thu 8/14, 7:pm-9pm: (Woodmark Hotel, Kirkland).	Program welcome and expectation setting. Incoming class members, their spouses/guests, and employers. <i>Estimated attendance: 100 people.</i>	Available: 1 Presenting Sponsorship: Includes opportunity to welcome attendees from the podium. 1 Text Book Sponsorship: Includes written note to each class member included in text books received that evening and recognition from the podium. All sponsorships include recognition in online communications marketing the event.	<b>\$2,500 (Presenting Sponsor)</b> <b>\$1,500 (Text Book Sponsor)</b>
<b>SEP</b>	<b><u>Mayors' Lunch</u></b> Fri 9/10, 12pm-2pm, (Cascadia Community College, Bothell).	The kick-off of the curriculum year for the two LE Enrichment Program class years. Panel of mayors from Eastside cities discussing local issues and how class members might engage. <i>Estimated attendance: 150 people.</i>	Available: 1 Presenting Sponsorship: Includes opportunity to welcome attendees from the podium. 2 Supporting Sponsorships: Includes recognition from the podium. Sold: Host Sponsorship (Cascadia Community College). All sponsorships include recognition in online communications marketing the event.	<b>\$2,500 (Presenting Sponsor)</b> <b>\$1,000 (Supporting Sponsor)</b>



	Event/ Opportunity	Description/Audience	Available	Sponsorship Amount
	<b>LEx: Happy Hour for the Greater Good</b> : Date TBD 5:30pm - 7:30pm (Wilde Rover, Kirkland)	Networking and leadership skill-building event for LE alumni and members of the LE Network. - September 2014 Focus: TBD <i>Estimated attendance: 75 people.</i>	Available: 1 Presenting Sponsorship: Includes opportunity to welcome attendees from podium. 1 Host: Includes recognition from podium. All sponsorships include recognition in online communications marketing the event.	<b>\$1,000 (Presenting Sponsor)</b> <b>Host (Offset cost for room and food, approximately \$500)</b>
NOV	<b>Leadership Eastside 10th Anniversary Gala</b> November date TBD 2015	Gala event celebrating LE's 10th anniversary as well as the legacy of its predecessor organizations Advance Bellevue and Leadership Institute/Leadership Redmond. Audience includes current program participants, alumni, LE Board, and community luminaries. <i>Estimated attendance: 500 people.</i>	Available: 1 Presenting Sponsorship: Includes opportunity to welcome attendees/introduce speaker from the podium. Supporting Sponsorships (5) includes recognition from podium. Table Sponsorships (30). 1 Reception and Beverage Sponsorship. 10th Anniversary Celebration Sponsors also recognized at this event. All sponsorships include recognition in online communications marketing the event.	<b>\$10,000 (Presenting Sponsor)</b> <b>\$3,000 (Supporting Sponsors)</b> <b>\$2,000 (Table Sponsors)</b>



## FY 2014-2015 Budget Proposal for adoption at 6/10/2014 LE Board Meeting

*Overall budget intent is to limit expenses to FY '13-'14 actual income and budget revenues conservatively.*

<b>Budget Overview</b>	
Total Tuition and program fees	\$ 176,475
Corporate and Org Support	80,000
City and Public Support	35,000
Grants	20,000
Annual Events ("Tickets")	15,750
Individual Giving	8,000
<b>Total income</b>	<b>\$ 335,225</b>
Payroll Exp, Curriculum Management & Prof. Svcs	254,448
Other Programs, Events, and Admin/Rent	80,550
<b>Total Expense</b>	<b>\$ 334,998</b>
<b>NET</b>	<b>\$ 227</b>

*Note: Add'l revenue from 10th Anniversary anticipated, but not included in operational budget*

**Potential Annual Dedicated Revenue for Housing**

5/22/14

<b>Funding Category</b> <b>Source of Revenue</b>	<b>Low</b> <b>Estimate</b>	<b>High</b> <b>Estimate</b>
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**Consumers**

1. Utility Tax	6,757,000	13,515,000
tax rate: % of utility bills	0.5%	1%
2. Sales Tax	6,493,000	12,985,000
tax rate: % of taxable purchases	0.05%	0.10%

**Development and Real Estate Activity**

3. Sales Tax on Construction	2,537,000	10,147,000
Pct of collected taxes for new construction	25%	100%
4. Linkage Fee for Commercial Development	339,000	3,390,000
fee per sq. ft. commercial development	\$0.50	\$5.00
4. Demolition Fee	387,000	1,290,000
fee per unit demolished	\$3,000	\$10,000
6. Condominium Conversion Fee	27,000	7,060,000
fee per unit converted	\$100	\$25,000
7. Fee for Commercial Bonus Capacity	0	0
fee per bonus sq. ft. developed		

**Property Owners**

8. Housing Levy (Property Tax)	10,403,000	52,013,000
tax rate / \$1,000 property value	\$0.10	\$0.50
9. Real Estate Excise Tax	6,102,000	15,255,000
tax on sale price of property	0.10%	0.25%

**Businesses**

10. Business Gross Receipts Tax (B&O Tax)	6,637,000	12,412,000
tax rate: % of gross receipts of business	0.00008	0.0001496
11. Business License Fee	3,460,000	6,920,000
license fee per full-time equivalent employee	\$10	\$20
12. Tax on Low-Wage Businesses	1,545,000	2,889,000
tax rate: % of gross receipts of low-wage business	0.00008	0.0001496

## 5. Demolition Fee

5/22/14

	<b>Annual Average Units Demolished 2006-11</b>	<b>\$3,000 Demolition Fee per Unit for Housing</b>	<b>\$10,000 Demolition Fee per Unit for Housing</b>	<b>Each City's % of Total Demo Fee</b>	<b>Each City's Parity %</b>
Beaux Arts Village	-	-	-	0.00%	0.05%
Bellevue	12	36,000	120,000	9.30%	28.85%
Bothell (KC part)	3	9,000	30,000	2.33%	6.63%
Clyde Hill	4	12,000	40,000	3.10%	0.50%
Hunts Point	2	6,000	20,000	1.55%	0.09%
Issaquah	7	21,000	70,000	5.43%	5.48%
Kenmore	3	9,000	30,000	2.33%	4.56%
Kirkland	43	129,000	430,000	33.33%	12.35%
Medina	8	24,000	80,000	6.20%	0.51%
Mercer Island	16	48,000	160,000	12.40%	4.50%
Newcastle	3	9,000	30,000	2.33%	3.52%
Redmond	12	36,000	120,000	9.30%	22.96%
Sammamish	13	39,000	130,000	10.08%	6.37%
Woodinville	1	3,000	10,000	0.78%	3.46%
Yarrow Point	2	6,000	20,000	1.55%	0.17%
<b>Total</b>	<b>129</b>	<b>387,000</b>	<b>1,290,000</b>	<b>100.00%</b>	<b>100.00%</b>

Sources:

Demolitions 2006-2011 collected by ARCH.

Assumptions:

\$3,000 Fee per Demolished Multi-Family Unit for Housing (Highland Park, IL)

\$10,000 Fee per Demolished Single-Family Unit for Housing (Highland Park, IL)

Highland Park, IL adopted the fees in 2002. The rates have remained the same since then.

Authority:

Existing authority to charge regulatory fees might provide basis, otherwise need legislation.

Need for completion of analysis

1. Units demolished 2012 and 2013



**CITY OF KIRKLAND**  
**Department of Finance & Administration**  
 123 Fifth Avenue, Kirkland, WA 98033 425.587.3100  
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## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Tracey Dunlap, Director of Finance & Administration  
George Dugdale, Budget Analyst

**Date:** October 27, 2014

**Subject:** October Sales Tax Revenue

October sales tax revenue is **up 11.0 percent** compared to October 2013. **Year-to-date** revenues are **up 9.3 percent** compared to the same period last year. Results this month reflect sales activity in August, due to the two month lag in reporting sales tax data.

### Comparing October 2014 to October 2013

Comparing collections from the month of October this year and last provides insight into business sector performance controlling for seasonal cycles in sales.

#### 2013-2014 Sales Tax Receipts by Business Sector-Monthly Actuals

Business Sector Group	October		Dollar Change	Percent Change	Percent of Total	
	2013	2014			2013	2014
Services	177,837	278,889	101,052	56.8%	12.4%	17.5%
Contracting	228,242	252,867	24,625	10.8%	15.9%	15.8%
Communications	43,525	39,306	(4,219)	-9.7%	3.0%	2.5%
Retail:						
Auto/Gas Retail	398,444	403,412	4,968	1.2%	27.7%	25.3%
Gen Merch/Misc Retail	156,085	166,058	9,973	6.4%	10.9%	10.4%
Retail Eating/Drinking	121,052	131,269	10,217	8.4%	8.4%	8.2%
Other Retail	176,108	183,337	7,229	4.1%	12.2%	11.5%
Wholesale	59,810	59,503	(307)	-0.5%	4.2%	3.7%
Miscellaneous	76,560	81,360	4,800	6.3%	5.3%	5.1%
<b>Total</b>	<b>1,437,663</b>	<b>1,596,001</b>	<b>158,338</b>	<b>11.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Comparing month to month, October sales tax collections this year are **\$158,300** (11.0 percent) higher than October 2013. This is higher than the **6.5 percent** increase between September 2014 and September 2013, and is the fifth month this year that the increase has been above 10 percent compared to the same month in 2013.

However, a large proportion of this gain was made up by a series of payments and field collections made by a single business in the **services sector**, which accounted for \$122,000 of the growth. Corrections by the department of revenue and one-time payments are not uncommon, but can be both positive and negative amounts and do not necessarily indicate a sustained upturn in revenue. Without this revenue, sales tax would be up **2.5 percent** compared to the same period last year.

Outside of services, receipts from two business sectors were over \$10,000 higher than October 2013. The largest of these was in **contracting**, particularly in the specialty trade contracting sector, which is

focused on specialized areas of construction such as plumbing and electrical roofing work. The other is **retail eating/drinking**, which grew **8.4 percent** due to broad growth across most large establishments in the City.

Overall, the month to month comparison suggests moderate growth across the City. Small growth across most sectors, including the City's largest single sector (**auto/gas retail**) is positive. However, without the money collected through corrections made to a single business account, growth would be much lower.

### Year-to-Date Business Sector Review

Year-to-date sales tax totals are useful for comparing revenues received so far this year with last year's totals through the same period. This information gives context on a sector's longer term performance and allows developing trends to be identified.

#### City of Kirkland Actual Sales Tax Receipts

Business Sector Group	January-October		Dollar Change	Percent Change	Percent of Total		Percent of Change
	2013	2014			2013	2014	
Services	1,738,780	1,972,870	234,090	13.5%	12.7%	13.2%	18.4%
Contracting	2,189,621	2,358,976	169,355	7.7%	16.0%	15.8%	13.3%
Communications	381,596	420,794	39,198	10.3%	2.8%	2.8%	3.1%
Retail:							
Auto/Gas Retail	3,458,908	3,659,850	200,942	5.8%	25.3%	24.5%	15.8%
Gen Merch/Misc Retail	1,678,872	1,754,680	75,808	4.5%	12.3%	11.7%	6.0%
Retail Eating/Drinking	1,125,914	1,221,244	95,330	8.5%	8.2%	8.2%	7.5%
Other Retail	1,758,607	1,968,538	209,931	11.9%	12.9%	13.2%	16.5%
Wholesale	630,184	688,227	58,043	9.2%	4.6%	4.6%	4.6%
Miscellaneous	719,125	907,498	188,373	26.2%	5.3%	6.1%	14.8%
<b>Total</b>	<b>13,681,607</b>	<b>14,952,677</b>	<b>1,271,070</b>	<b>9.3%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Through the end of October, sales tax is **up 9.3 percent** compared to last year, with every category increasing.

The largest growth by dollar amount of any sector is **other retail**, which contains food and beverage stores as well as online retailers. Owing to the growth in online retail, this makes up an increasing share of the City's sales tax receipts (13.2 percent in 2014).

Four other categories, **auto/gas retail**, **contracting**, **services**, and **miscellaneous** have grown over \$100,000 year to date. However, caution should be used when interpreting these results for the following reasons:

- **Auto/gas retail** and **contracting** are two of the revenue sources that decline most significantly and abruptly during economic downturns. These two sectors currently make up 40.3% of the City's total sales tax revenue, so their decline would present a danger to the City's revenue base.
- Both the **services** and **miscellaneous** categories include large one-time or irregular payments in 2014 that provided approximately \$275,000 in revenue.

The overall performance of sales tax through October 2014 has been strong. Growth across every sector, accompanied by one time payments, has created a strong revenue base for the City. However, this picture could change very quickly if the wider economy experienced a downturn.

### National and Regional Economic Context:

Information about wider trends in the economy provides a mechanism to help understand current results in Kirkland, as well as predict future performance. The combination of consumer confidence,

unemployment levels, housing data and auto sales provide a high level picture of key factors in sales tax revenues.

### 2013-2014 Wider Economic Indicators

Indicator	Most recent month of data	Unit	Month			Yearly Average	
			Current	Previous	Change	2014	2013
<b>Consumer Confidence</b>							
Consumer Confidence Index	October	Index	<b>94.5</b>	89.0	5.5	85.8	78.1
<b>Unemployment Rate</b>							
National	September	%	<b>5.9</b>	6.1	-0.2	6.3	7.4
Washington State	September	%	5.7	<b>5.6</b>	<b>0.1</b>	6.0	7.0
King County	September	%	4.8	4.9	-0.1	4.9	5.2
Kirkland (pre annex boundaries)	September	%	4.8	5.0	-0.2	4.8	4.8
<b>Housing</b>							
New House Permits	August	Thousands	30.4	34.3	<b>-3.9</b>	33.7	30.8
Seattle Area Home Prices	August	Index	<b>171</b>	<b>171</b>	0	166	154
<b>Inflation (Core CPI)</b>							
National	August	% Change	1.7	1.9	-0.2	1.8	1.8
Seattle	August	% Change	1.8	2.0	-0.2	1.9	1.2
<b>Car Sales</b>							
New Vehicle Registrations	September	Thousands	23.9	<b>24.3</b>	<b>-0.4</b>	23.2	22.1

**bold numbers** indicate data point is highest or lowest in that year.

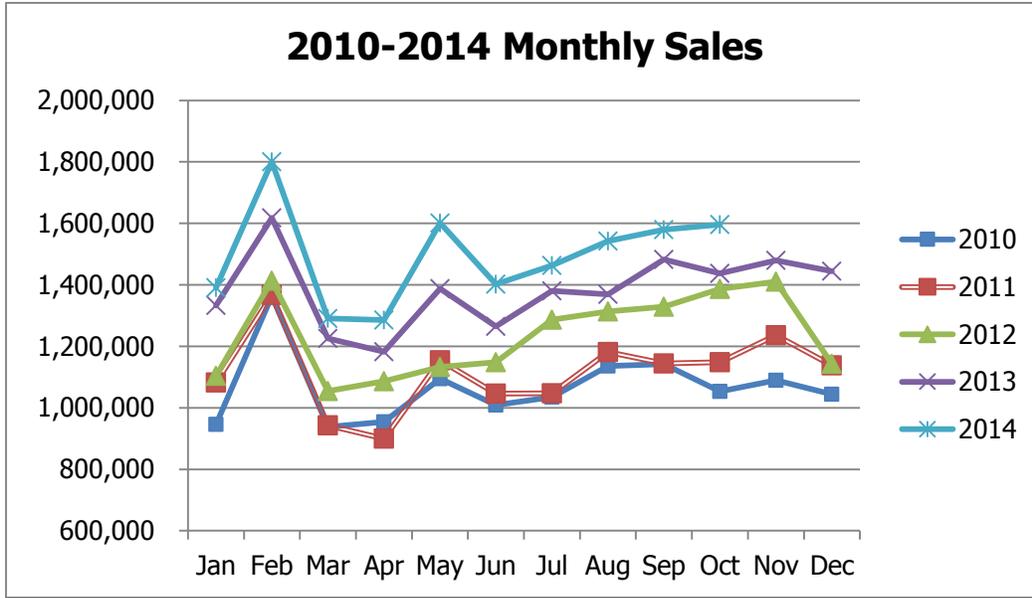
**Numbers in red** indicate a negative movement from the previous months data.

The **Consumer Confidence Index** increased from 89.0 in September to 94.5 in October and is now at its highest point since October 2007. This is in line with the Bureau of Labor Statistics **unemployment data** from September, which shows the seasonally adjusted national rate falling below 6 percent for the first time since July 2008. State and local unemployment rates also declined in September, although these remain within the range of data points seen in 2014. The relatively low unemployment rates should be interpreted with some caution, since some analysts have argued that the declining unemployment rate is due at least in part to falling participation in the labor market and “underemployment”, rather than strong employment numbers. National and Seattle area **inflation rates** also remained below the Federal Reserve’s target of 2 percent, as they have done for most of the past two years.

Analysis of statewide vehicle registrations and housing market indicators provides useful information on the health of two of the City’s most important sales tax categories. After steadily climbing for over two years, **Seattle area home prices** have remained flat for the past few months. This has been accompanied by slow growth in the number of new houses, with the number of **new housing permits** down in the second and third quarters. While not a cause for immediate concern, this data does show growth moderating after the rapid pace of homebuilding to meet pent up demand during the regional housing market recovery. Data on **new vehicle registrations** shows a similar pattern to the housing market. After strong increases as the economy recovered from the recession, new registrations reached a post-recession high in the second quarter of 2014 and have remained at that level for the past few months.

### Conclusion

As the chart below shows, sales tax revenues have increased steadily since 2010 and the past two years have seen consistent increases compared to the same month in the previous year. The wider economy has also been improving and has been matched by growing consumer confidence. However, the level of growth has slowed, especially in important sectors such as auto sales.





# Financial Management Report as of September 30, 2014

## AT A GLANCE:

Google partners with the City of Kirkland on Cross Kirkland Corridor Improvements (page 2 sidebar)

Most revenues increased over 2013 through the third quarter of 2014 (page 3)

Sales tax revenue growth continued into 2014, slowing at first, but accelerating in the second quarter and has continued with an upward trend in the third quarter (page 5)

In the wider economy the housing market and auto sales have flattened out and inflation is rising slowly (pages 7-8)

## Inside this issue:

Expenditure Summary	2
General Fund Revenue	3
General Fund Expenditures	4
Sales Tax Revenue	5-6
Economic Environment	7-8
Investment Report	8-9
Reserve Summary	10-11

## Summary of All Operating Funds: *Revenue*

- General Fund** revenue ended the third quarter of 2014 **4.4 percent ahead** of the same period in 2013, an increase of \$2.63 million. Higher than budgeted revenues from retail sales tax and other taxes, along with higher property tax collections in the first nine months of 2014 were primarily responsible for the increase. Second half EMS revenues came in earlier in 2014 than in 2013, also contributing to the increase. Revenues finished the third quarter at **77.1 percent of budget**. A more detailed analysis of General Fund revenue can be found on page 3, and details on sales tax revenue begin on page 5.
  - Water/Sewer Operating Fund** revenue through three quarters of the year continues to be higher than in 2013, **up 4.1 percent**. At the end of the third quarter, revenue was **74.8 percent of budgeted** revenue, in line with collections in previous years. Water sales are traditionally higher in the second half of the year, so it is likely these categories will reach 100 percent of budget by the end of the year.
  - Surface Water Management Fund** revenues at the end of September were **53 percent of budget**. This is expected since the majority of payments are received in May and October. Revenues through the third quarter of 2014 were **4.5 percent lower** than in 2013, primarily because of a Department of Ecology grant and internal wage reimbursements received in 2013.
  - Revenue in the **Solid Waste Fund** was **77.5 percent of budget**. This is **3.8 percent more revenue** than in 2013. Revenue was higher across residential, commercial and multi-family properties.
- budget** largely due to the timing of property tax payments, the second half of which are normally received in October and November.

Resources by Fund	Year-to-Date Actual			Budget			% of Budget	
	9/30/2013	9/30/2014	% Change	2013	2014	% Change	2013	2014
<b>General Gov't Operating:</b>								
General Fund	58,227,943	60,790,484	4.4%	77,699,996	78,890,220	1.5%	74.9%	77.1%
Other General Gov't Operating Funds	15,966,070	16,725,321	4.8%	23,452,132	24,628,836	5.0%	68.1%	67.9%
<b>Total General Gov't Operating</b>	<b>74,194,013</b>	<b>77,515,805</b>	<b>4.5%</b>	<b>101,152,128</b>	<b>103,519,056</b>	<b>2.3%</b>	<b>73.3%</b>	<b>74.9%</b>
<b>Utilities:</b>								
Water/Sewer Operating Fund	17,489,501	18,214,887	4.1%	24,234,608	24,342,543	0.4%	72.2%	74.8%
Surface Water Management Fund	5,257,243	5,018,710	-4.5%	9,224,823	9,460,539	2.6%	57.0%	53.0%
Solid Waste Fund	11,851,610	12,299,032	3.8%	15,954,564	15,875,727	-0.5%	74.3%	77.5%
<b>Total Utilities</b>	<b>34,598,354</b>	<b>35,532,629</b>	<b>2.7%</b>	<b>49,413,995</b>	<b>49,678,809</b>	<b>0.5%</b>	<b>70.0%</b>	<b>71.5%</b>
<b>Total All Operating Funds</b>	<b>108,792,367</b>	<b>113,048,434</b>	<b>3.9%</b>	<b>150,566,123</b>	<b>153,197,865</b>	<b>1.7%</b>	<b>72.3%</b>	<b>73.8%</b>



**Kirkland City Council unanimously approves multi-million dollar agreement that nets public improvements with Google expansion project**

On September 16, 2014, the Kirkland City Council unanimously approved an agreement, via Resolution R-5069, between the City of Kirkland and SRM Development for public improvements including two new traffic signals and street frontage improvements to adjacent and surrounding streets to the Kirkland Google campus.

Specifically, the agreement provides for two new traffic signals on 6<sup>th</sup> Street South at Kirkland Way and at 9<sup>th</sup> Avenue South. The 6<sup>th</sup> Street South/Kirkland Way signal will be funded through Transportation Impact Fees. The new 6<sup>th</sup> Street South/9<sup>th</sup> Avenue South signal is required per SEPA and is the responsibility of SRM who, per the Agreement, will pay for construction costs estimated at more than \$1 million. Additionally, the Agreement requires that the City complete the installation of water, sewer, and partial stormwater facilities on 7<sup>th</sup> Avenue South by December 31, 2014.

Once the utility improvements are completed, SRM will install street frontage improvements (curb, gutter and sidewalk) on 7<sup>th</sup> Avenue South up to State Street no later than May 31, 2015. Approximately 1,200 feet of new sidewalk will be installed along the west side of 6<sup>th</sup> Street South from the Google Phase I campus to 5<sup>th</sup> Place South. These sidewalk improvements will be installed by the City using Transportation Improvement Board (TIB) grant funding and more than \$330,000 from SRM.

In addition to improvements identified in the Agreement, SRM has proposed \$2.8 million worth of public improvements along the Cross Kirkland Corridor. The improvements include a 16-foot wide hard surface trail, meandering secondary trail, basketball court, resting and gathering spots, trees, beach-like dunes with volley ball court, and a children's play area. The City is reviewing construction plans and the work is scheduled to begin early November 2014 and be completed by June 2015.

## Summary of All Operating Funds: *Expenditures*

- **General Fund** expenditures finished the third quarter of 2014 **up 7.0 percent** from 2013. Actual expenditures finished the third quarter at **71.9 percent of budget**. A more detailed analysis of General Fund expenditures by department is found on page 4.
- **Other Operating Funds** actual expenditures were **up 12.0 percent** compared to the third quarter of 2013, mostly due to higher expenditures in the Information Technology and Fleet funds. Information Technology expenditures were higher largely because of higher computer replacement costs in 2014. Similarly, Fleet costs were primarily higher because vehicle replacement costs were higher in 2014 than 2013. Both of these expenditures are higher some years than others based on operational needs and do not necessarily represent a trend of higher spending.
- **Water/Sewer Operating Fund** actual expenditures finished September **3.7 percent lower** than in 2013. Expenses were skewed higher earlier in the year because the City paid two months of metro sewer charges in January 2014, after not paying in December 2013. Therefore, the city effectively paid for seven months during the first half of 2014, but will make five payments in the remaining two quarters, which has brought expenditures back in line with budget. Additionally, dues and memberships are paid in full in January, and the combination of these two factors means expenditures are usually higher in the early part of the year. This has proven true so far in 2014 as first quarter expenditures were higher than the second quarter, which in turn, was higher than the third quarter. Expenditures are expected to continue to normalize as the year continues. Expenditures at the end of September 2014 were **77.9 percent of budget**
- **Surface Water Management Fund** expenditures through September 2014 were **7.9 percent higher** than the same time in 2013, due to an increases in personnel costs and the purchase of a new computer software program. Despite this increase, there have been salary savings in the Surface Water fund, which meant that expenditures through September were **lower than budgeted at 65.4 percent** of the yearly budget. These salary savings were also present in 2012 and 2013.
- **Solid Waste Fund** expenditures were **1.6 percent higher** during the first nine months of 2014, compared to the same period in 2013. This increase is due to an expected increase in the cost of the waste disposal contract. Since this increase was planned for and all other expenses were also in line with budget, expenditures finished the first three quarters of 2014 at **75.2 percent of budget**.

Expenditures by Fund	Year-to-Date Actual			Budget			% of Budget	
	9/30/2013	9/30/2014	% Change	2013	2014	% Change	2013	2014
<b>General Gov't Operating:</b>								
General Fund	50,143,839	53,635,571	7.0%	70,685,005	74,560,827	5.5%	70.9%	71.9%
Other General Gov't Operating Funds	12,659,047	14,175,647	12.0%	20,609,514	20,933,875	1.6%	61.4%	67.7%
<b>Total General Gov't Operating</b>	<b>62,802,886</b>	<b>67,811,218</b>	<b>8.0%</b>	<b>91,294,519</b>	<b>95,494,702</b>	<b>4.6%</b>	<b>68.8%</b>	<b>71.0%</b>
<b>Utilities:</b>								
Water/Sewer Operating Fund	16,657,584	16,042,671	-3.7%	20,909,022	20,601,544	-1.5%	79.7%	77.9%
Surface Water Management Fund	3,892,944	4,199,185	7.9%	6,546,354	6,425,048	-1.9%	59.5%	65.4%
Solid Waste Fund	11,598,724	11,785,701	1.6%	15,374,063	15,668,380	1.9%	75.4%	75.2%
<b>Total Utilities</b>	<b>32,149,253</b>	<b>32,027,557</b>	<b>-0.4%</b>	<b>42,829,439</b>	<b>42,694,972</b>	<b>-0.3%</b>	<b>75.1%</b>	<b>75.0%</b>
<b>Total All Operating Funds</b>	<b>94,952,139</b>	<b>99,838,774</b>	<b>5.1%</b>	<b>134,123,958</b>	<b>138,189,674</b>	<b>3.0%</b>	<b>70.8%</b>	<b>72.2%</b>

## General Fund Revenue

- **Sales tax** revenue allocated to the General Fund through the third quarter of 2014 was **9.2 percent higher** than it was during the same period of 2013. This was higher than budgeted at **86.2 percent of budget** because sales tax is budgeted on a one year lag. A detailed analysis of total sales tax revenue can be found starting on page 5.
- **Property tax** finished the third quarter at **54.9 percent of budget**. Most property tax payments are receipted to the City in April and October, therefore this number will be close to 100 percent of budget by the end of the fourth quarter.
- **Utility tax** collections finished September 2014 with **no change** compared to 2013. These revenues are within the expected range, at **75.1 percent of budget**.
- **Other taxes** actual revenue was **110.2 percent of budget** at the end of the third quarter of 2014. This is a **20.5 percent increase** compared to the same period in 2013. The increase is driven by a large increase in leasehold excise tax, which is at \$180,000 through the first three quarters of 2014, over 150 percent of budget and three times higher than in 2013, due to a one-time payment by one taxpayer.
- The **revenue generating regulatory license fee** was **4.5 percent higher** than the first half of 2013. This increase means revenues were ahead of the budgeted amount at **82.2 percent of budget**. This tax is charged to employers on a per-employee basis, and fluctuates based on the timing of when businesses submit their payments, as well as the number of employees at each business, therefore revenues could be lower in the final quarter of 2014.
- The **business licenses (base fee) and franchise fees** were **up 3.0 percent** compared to the same period in 2013 and finished the quarter **ahead of budget at 78.6 percent**.
- **Development-related fee** revenues were collectively **down 7.6 percent** at the end of the third quarter of 2014 compared to 2013. **Plan check fees** were **down 16.5 percent**, **Engineering Services** were **down 14.1 percent**, and **Planning Fees** were **down 8.3 percent**. This was partially offset by **Building Structural and Equipment permits**, which were **up 0.3 percent**. Despite the decline, development related fee revenues have been strong, and have already exceeded the annual budget. Collectively **development fees** were at **103.5 percent of budget** at the end of the third quarter, with **Building, Structural and Equipment permits (110.1 percent)**, **Engineering Services (157.2 percent)**, and **Planning fees (101.4 percent)** all being ahead of budget three quarters of the way through the year. Only **Plan Check fees** were behind with **65.2 percent of budget** collected through the end of September.
- **Fines and Forfeitures** were **down 1.4 percent** compared to 2013 and were slightly **ahead of budget expectations at 76.9 percent**, overcoming a slow start to the year in traffic infraction penalties due to collection timing, which has normalized in the third quarter.
- **Miscellaneous** revenue was **up \$198,400**, or **25.9 percent** from 2013 and was **ahead of budget at 126.7 percent**, largely due to an insurance recovery payment in 2014.
- **Interfund Transfers** represent expected revenues from other funds, these should be at 100 percent of budget by year end.

General Fund revenues ended the third quarter \$2.46 million higher than in 2013 (including interfund transfers), largely due to continued growth in sales tax, development activity, and the timing of the biannual EMS payments.

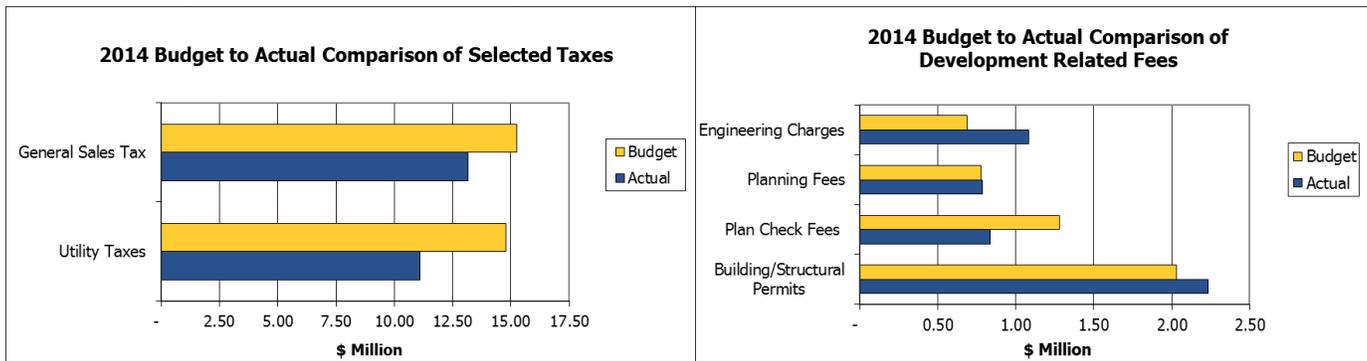
The General Fund is the largest of the General Government Operating funds. Primarily tax supported the fund accounts for services such as public safety, parks and recreation, and community development.

- Many significant General Fund revenue sources are economically sensitive, such as sales tax and development-related fees.

- In 2014 about 428 of the City's 556 regular employees were budgeted within the general fund.

General Fund Resource Category	Year-to-Date Actual			Budget			% of Budget	
	9/30/2013	9/30/2014	% Change	2013	2014	% Change	2013	2014
<b>Taxes:</b>								
Retail Sales Tax: General	12,041,445	13,154,175	9.2%	15,057,904	15,263,571	1.4%	80.0%	86.2%
Retail Sales Tax Credit: Annexation	2,757,965	2,704,101	-2.0%	3,415,626	3,415,626	0.0%	80.7%	79.2%
Retail Sales Tax: Criminal Justice	1,331,907	1,426,721	7.1%	1,634,287	1,666,973	2.0%	81.5%	85.6%
Property Tax	9,037,102	9,308,897	3.0%	16,619,200	16,953,959	2.0%	54.4%	54.9%
Utility Taxes	11,097,398	11,096,461	0.0%	14,618,866	14,779,443	1.1%	75.9%	75.1%
Rev Generating Regulatory License	1,848,246	1,932,250	4.5%	2,328,005	2,351,285	1.0%	79.4%	82.2%
Other Taxes	982,071	1,183,128	20.5%	1,063,975	1,073,303	0.9%	92.3%	110.2%
<b>Total Taxes</b>	<b>39,096,134</b>	<b>40,805,732</b>	<b>4.4%</b>	<b>54,737,863</b>	<b>55,504,160</b>	<b>1.4%</b>	<b>71.4%</b>	<b>73.5%</b>
<b>Licenses &amp; Permits:</b>								
Building, Structural & Equipment Permits	2,227,352	2,234,817	0.3%	2,013,727	2,029,631	0.8%	110.6%	110.1%
Business Licenses/Franchise Fees	3,277,786	3,375,448	3.0%	4,191,459	4,295,440	2.5%	78.2%	78.6%
Other Licenses & Permits	373,983	387,942	3.7%	319,266	330,001	3.4%	117.1%	117.6%
<b>Total Licenses &amp; Permits</b>	<b>5,879,121</b>	<b>5,998,208</b>	<b>2.0%</b>	<b>6,524,452</b>	<b>6,655,072</b>	<b>2.0%</b>	<b>90.1%</b>	<b>90.1%</b>
<b>Intergovernmental:</b>								
Grants and Federal Entitlements	54,987	106,042	92.8%	198,622	104,421	-47.4%	27.7%	101.6%
State Shared Revenues & Entitlements	716,390	825,141	15.2%	1,033,781	1,237,172	19.7%	69.3%	66.7%
EMS	442,323	884,645	100.0%	884,645	884,645	0.0%	50.0%	100.0%
<b>Total Intergovernmental</b>	<b>1,213,700</b>	<b>1,815,828</b>	<b>49.6%</b>	<b>2,117,048</b>	<b>2,226,238</b>	<b>5.2%</b>	<b>57.3%</b>	<b>81.6%</b>
<b>Charges for Services:</b>								
Internal Charges	3,936,674	4,229,034	7.4%	5,396,481	5,717,970	6.0%	72.9%	74.0%
Engineering Services	1,261,859	1,083,761	-14.1%	951,385	689,483	-27.5%	132.6%	157.2%
Plan Check Fee	999,774	835,057	-16.5%	1,082,220	1,279,914	18.3%	92.4%	65.2%
Planning Fees	857,680	786,588	-8.3%	848,164	775,550	-8.6%	101.1%	101.4%
Recreation	1,105,843	1,217,113	10.1%	1,160,300	1,160,300	0.0%	95.3%	104.9%
Other Charges for Services	1,606,292	1,570,276	-2.2%	2,210,020	2,190,907	-0.9%	72.7%	71.7%
<b>Total Charges for Services</b>	<b>9,768,121</b>	<b>9,721,828</b>	<b>-0.5%</b>	<b>11,648,570</b>	<b>11,814,124</b>	<b>1.4%</b>	<b>83.9%</b>	<b>82.3%</b>
<b>Fines &amp; Forfeits</b>	<b>1,505,155</b>	<b>1,484,804</b>	<b>-1.4%</b>	<b>1,928,925</b>	<b>1,929,999</b>	<b>0.1%</b>	<b>78.0%</b>	<b>76.9%</b>
<b>Miscellaneous</b>	<b>765,712</b>	<b>964,084</b>	<b>25.9%</b>	<b>743,138</b>	<b>760,627</b>	<b>2.4%</b>	<b>103.0%</b>	<b>126.7%</b>
<b>Total Revenues</b>	<b>58,227,943</b>	<b>60,790,484</b>	<b>4.4%</b>	<b>77,699,996</b>	<b>78,890,220</b>	<b>1.5%</b>	<b>74.9%</b>	<b>77.1%</b>
<b>Other Financing Sources:</b>								
Interfund Transfers	99,780	-	N/A	402,008	300,535	-25.2%	24.8%	N/A
<b>Total Other Financing Sources</b>	<b>99,780</b>	<b>-</b>	<b>N/A</b>	<b>402,008</b>	<b>300,535</b>	<b>-25.2%</b>	<b>24.8%</b>	<b>N/A</b>
<b>Total Resources</b>	<b>58,327,723</b>	<b>60,790,484</b>	<b>4.2%</b>	<b>78,102,004</b>	<b>79,190,755</b>	<b>1.4%</b>	<b>74.7%</b>	<b>76.8%</b>

**General Fund Revenue *continued***



**General Fund Expenditures**

General Fund Department Expenditures	Year-to-Date Actual			Budget			% of Budget	
	9/30/2013	9/30/2014	% Change	2013	2014	% Change	2013	2014
Non-Departmental	1,007,453	838,247	-16.8%	1,230,254	1,097,924	-10.8%	81.9%	76.3%
City Council	322,743	350,779	8.7%	403,932	457,470	13.3%	79.9%	76.7%
City Manager's Office	1,303,131	1,380,037	5.9%	2,064,111	1,911,468	-7.4%	63.1%	72.2%
Municipal Court	1,578,443	1,683,972	6.7%	2,249,404	2,299,621	2.2%	70.2%	73.2%
Human Resources	922,001	1,009,988	9.5%	1,263,257	1,451,068	14.9%	73.0%	69.6%
City Attorney's Office	998,617	1,001,716	0.3%	1,371,489	1,384,479	0.9%	72.8%	72.4%
Parks & Community Services	5,225,318	5,617,985	7.5%	7,435,801	7,629,713	2.6%	70.3%	73.6%
Public Works (Engineering)	3,072,053	3,437,935	11.9%	4,754,961	5,079,098	6.8%	64.6%	67.7%
Finance and Administration	3,411,480	3,457,839	1.4%	4,590,803	4,839,597	5.4%	74.3%	71.4%
Planning & Community Development	2,524,349	2,779,258	10.1%	3,753,152	3,871,077	3.1%	67.3%	71.8%
Police	14,524,786	15,129,888	4.2%	19,919,588	21,899,889	9.9%	72.9%	69.1%
Fire & Building	15,253,464	16,947,927	11.1%	21,648,253	22,639,423	4.6%	70.5%	74.9%
<b>Total Expenditures</b>	<b>50,143,839</b>	<b>53,635,571</b>	<b>7.0%</b>	<b>70,685,005</b>	<b>74,560,827</b>	<b>5.5%</b>	<b>70.9%</b>	<b>71.9%</b>
<b>Other Financing Uses:</b>								
Interfund Transfers	6,145,862	5,061,880	-17.6%	15,696,855	8,303,511	-47.1%	39.2%	61.0%
<b>Total Other Financing Uses</b>	<b>6,145,862</b>	<b>5,061,880</b>	<b>-17.6%</b>	<b>15,696,855</b>	<b>8,303,511</b>	<b>-47.1%</b>	<b>39.2%</b>	<b>61.0%</b>
<b>Total Expenditures &amp; Other Uses</b>	<b>56,289,701</b>	<b>58,697,450</b>	<b>4.3%</b>	<b>86,381,860</b>	<b>82,864,338</b>	<b>-4.1%</b>	<b>65.2%</b>	<b>70.8%</b>

**Comparing 2014 and 2013 expenditures:**

In the three quarters of 2014, excluding interfund transfers, General Fund expenditures were **7.0 percent higher** than 2013. This increase was budgeted for and expenditures were slightly below budget with **71.9 percent** of budgeted expenses spent through the end of September.

Across the General Fund, most of the \$2.41 million increase in expenditures were personnel related. A number of temporary, as well as some ongoing positions, were added during the 2013-14 Mid Biennial process, which accounts for a portion of the increase, while normal personnel increases make up the majority of the rest. Together salaries and benefits have increased \$2.8 million, but savings in supplies and professional services helped mitigate this increase. Significant expenditure changes are highlighted below; for departments not highlighted below, increases were largely due to personnel costs.

General Fund expenditures through the first three quarters (excluding "other financing uses") were 7 percent higher than they were in 2013.

- Actual expenditures for the **City Council** were **up 8.7 percent** compared to 2013 and finished the third quarter at **76.7 percent of budget**. Expenditures are ahead of budget because most of the City's dues and memberships are paid from the Council budget, and these are paid in full in January. Expenditures are higher than in 2013 because of the community survey, which was budgeted and carried out in early 2014.
- The **City Manager's Office** finished the third quarter of 2014 **5.9 percent higher** than in 2013. This is partly due to personnel costs, but also because of higher professional services spending in 2014 related to Kirkland 2035 efforts. This increase in expenses was anticipated, so the City Manager's office finished the third quarter at **72.2 percent of budget**.
- Public Works** General Fund expenditures were up **11.9 percent** due to new positions added in re-

Continued on page 5

**Financial Management Report as of September 30, 2014**

sponse to high demand for permit applications. These additional expenditures were budgeted for and have been mitigated by other staffing vacancies in the department, including the Maintenance Center Superintendent position, which was vacant until the middle of April, meaning Public Works finished the quarter at **67.7 percent of budget**.

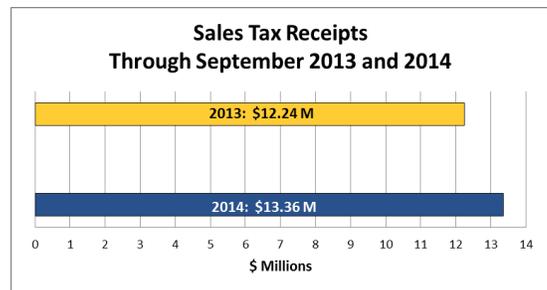
- **Police** expenditures finished the first nine months of 2014 at **69.1 percent of budget**. This is below budget, with 75 percent of the year complete. Within this overall number, contract jail costs are over 100 percent of budget, as a delay in moving the jail to the Kirkland Justice Center lengthened the time the City had to pay for jail beds. This has been offset by salary savings, including the delayed hire of three corrections officers, as well as professional services savings.
- Expenditures for the **Fire & Building Department grew 11.1 percent** over the third quarter of 2013. This increase is related to higher personnel costs as positions were added to deal with the increased workload from development services activities that has resulted in higher contract work and overtime costs (which are offset by revenues). As these expenses were anticipated based on 2013 development workloads, the department's expenses finished the third quarter at **74.9 percent of budget**. A summary of Fire District #41 funds is shown in the table to the right. Currently these funds are dedicated to the consolidated fire station capital project.
- The budget for **Interfund transfers** is lower than in 2013, because there were a large number of transfers budgeted for the Kirkland Justice Center in 2013. Not all transfers budgeted for the Kirkland Justice Center in 2013 were made, so these will be made in 2014, pushing 2014 transfers over 100 percent of budget. Since interfund transfers are known and planned expenses actual expenditures should equal 100 percent of the biennial budget by the end of 2014.

Summary of Fire District 41 Funds	
2014 Revenues & Expenditures	
Beginning Balance	5,223,879
Investment Interest	\$ 10,391
Expenditures:	\$ 35,384
<b>Current Balance</b>	<b>\$ 5,198,886</b>

**Sales Tax Revenue Analysis**

The total in this section contains \$202,500 that has been passed to the Street Operating Fund so far in 2014. As a result the total is \$202,500 higher than the sales tax figure in the General Fund Revenue table on page 3.

Sales tax revenue was **9.1 percent** higher through September 2014 than in the same period in 2013. This growth in revenue was broadly spread across all categories, led by key retail sectors. Sales tax revenue received through September was from sales between November 2013 – July 2014.



**Review by business sectors:**

- The **contracting** sector was **up 7.3 percent** compared to 2013. Contracting was among the largest growth sectors in the City through the first half of 2013, but slowed later in the year. A decline in January 2014 meant receipts started lower than in 2013, but growth through the second and third quarters led to the overall revenue increase.
- Sales tax revenues for retail sectors were **up 7.7 percent** collectively compared to 2013.
  - The **auto/gas retail** sector was **up 6.4 percent** compared to last year. Vehicle sales accounted for 17.6 percent of sales tax growth through the first three quarters of 2014.
  - **General merchandise/miscellaneous retail** sector was **up 4.3 percent** in 2014 compared to 2013.
  - The **retail eating/drinking** sector was **up 8.5 percent**, an increase of \$85,300, compared to the same period in 2013.
  - Other retail was **up 12.8 percent** compared to 2013 due to increases in a number of categories particularly food and beverage, online, and building & garden retailers.
- The **services** sector was **up 8.5 percent** compared to last year. Revenues in professional-scientific, administrative support and accommodation contributed significantly to this increase.
- **Wholesale** was **up 10.3 percent** compared to last year, an increase of \$58,600. Following declining revenue in February, wholesale revenues have improved steadily over the past seven months, and now account for the same percentage of the City's total sales tax revenue as in 2013.
- The **miscellaneous** sector was **up 28.6 percent** due to a large payment that has been previously reported as well as increased statewide pool revenues - which is how the State distributes improperly coded revenues out to local jurisdictions.
- The **communications** sector was **up 12.8 percent** compared to last year, due to broad growth amongst the wireless and cable providers within the category.

*Third quarter Sales Tax data was unavailable at the time of publication, below are highlights from the second quarter*

**Neighboring Cities Sales Tax**

Sales tax in Bellevue was up 12.4 percent through June 2014, compared to the same period last year. Redmond was up 5.7 percent.

Unincorporated King County was up 5.5 percent.

**City of Kirkland Actual Sales Tax Receipts**

Business Sector Group	January-September		Dollar Change	Percent Change	Percent of Total		Percent of \$ Change
	2013	2014			2013	2014	
Services	1,561,530	1,694,078	132,548	8.5%	12.8%	12.7%	11.9%
Contracting	1,961,282	2,105,379	144,097	7.3%	16.0%	15.8%	12.9%
Communications	338,071	381,488	43,417	12.8%	2.8%	2.9%	3.9%
Auto/Gas Retail	3,060,464	3,256,438	195,974	6.4%	25.0%	24.4%	17.6%
Gen Merch/Misc Retail	1,522,864	1,588,981	66,117	4.3%	12.4%	11.9%	5.9%
Retail Eating/Drinking	1,003,013	1,088,336	85,323	8.5%	8.2%	8.1%	7.7%
Other Retail	1,581,994	1,784,539	202,545	12.8%	12.9%	13.4%	18.2%
Wholesale	570,351	628,933	58,582	10.3%	4.7%	4.7%	5.3%
Miscellaneous	644,376	828,503	184,127	28.6%	5.3%	6.2%	16.5%
<b>Total</b>	<b>12,243,945</b>	<b>13,356,675</b>	<b>1,112,730</b>	<b>9.1%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

*Kirkland's sales tax base is comprised of a variety of businesses which are grouped and analyzed by business sector (according to NAICS, or "North American Industry Classification System"). Nine business sector groupings are used to compare 2013 and 2014 sales tax receipts in the table to the left.*

**City of Kirkland Actual Monthly Sales Tax Receipts**

Month	Sales Tax Receipts		Dollar Change	Percent Change
	2013	2014		
January	1,333,113	1,390,304	57,191	4.3%
February	1,618,028	1,800,690	182,662	11.3%
March	1,225,511	1,291,149	65,638	5.4%
April	1,181,984	1,285,803	103,819	8.8%
May	1,387,795	1,601,648	213,853	15.4%
June	1,264,563	1,402,468	137,905	10.9%
July	1,380,475	1,462,879	82,404	6.0%
August	1,369,409	1,542,047	172,638	12.6%
September	1,483,067	1,579,687	96,620	6.5%
<b>Total</b>	<b>12,243,945</b>	<b>13,356,675</b>	<b>1,112,730</b>	<b>9.1%</b>

*When analyzing monthly sales tax receipts, there are two items of special note: First, most businesses remit their sales tax collections to the Washington State Department of Revenue on a monthly basis. Small businesses only have to remit their sales tax collections either quarterly or annually, which can create anomalies when comparing the same month between two years. Second, for those businesses which remit sales tax monthly, there is a two month lag from the time that sales tax is collected to the time it is distributed to the City.*

- The average monthly gain during the third quarter was 8.4 percent, lower than in the second quarter.
- Despite a decline in services revenue, **July** posted overall growth due to strong performance in the wholesale and auto/gas retail sectors.
- **August** sales tax revenues saw the highest percentage increase of the third quarter, and the second highest increase of 2014 compared to 2013. The growth was spread widely, with most categories posting increases over 10 percent.
- In **September** there were large increases in services, contracting and retail eating/drinking, but auto/gas retail was down for the first time in 2014.
- Growth in sales tax revenues continued during the third quarter of 2014, although at a slower rate than the second quarter. Within individual sectors there was some volatility with strong growth in some months being followed by smaller gains, or even slight declines during others. However, the overall picture of broad moderate growth established during the first two quarters continued creating a strong revenue base through the end of September.

*Kirkland's sales tax base is further broken down by business district (according to geographic area), as well as "unassigned or no district" for small businesses and businesses with no physical presence in Kirkland.*

**Comparing to the same period last year:**

**Totem Lake**, which accounted for 28.4 percent of the total sales tax receipts through the third quarter of 2014, was **up 2.5 percent** compared to 2013, or \$91,700. Growth in

Totem Lake would be stronger, but for a large refund paid to a manufacturing business in 2014. Continued growth in the auto/gas retail section, which is up \$101,100, led this sector.

**NE 85<sup>th</sup> Street**, which made up 14.0 percent of the total sales tax receipts in the first three quarters of 2014, was **up 7.1 percent** compared to the same period last year. This area's sales grew due to improving retail performance which accounted for 96.7 percent of the revenue in this neighborhood.

**Downtown**, which accounted for **6.4 percent** of combined first, second, and third quarter sales tax receipts in 2014, was **up 4.2 percent** largely due to the growth in the retail eating/drinking category. However, third quarter revenue was lower in 2014 than 2013 as information sector receipts were higher in the third quarter of 2013.

**Carillon Point & Yarrow Bay**, which accounted for 2.0 percent of the total sales tax receipts in the first three quarters of 2014, were **up 5.2 percent** compared to 2013, or \$13,100.

Taken together, retail eating and accommodation categories make up 63.8 percent of sales in this neighborhood.

**Houghton & Bridle Trails**, which produced 2.5 percent of the total sales tax receipts through the third quarter, were **up 0.8 percent**.

**Juanita**, which generated 1.5 percent of the total sales tax receipts during the first half of 2014, was **up 4.0 percent** compared to the same period in 2013. Continued positive growth in eating & drinking revenues along with growth in miscellaneous retail stores combined with small increases in some other categories for a total increase of \$7,600.

**North Juanita, Kingsgate, & Finn Hill** accounted for 3.0 percent of the total sales tax receipts in the first nine months of 2014 and were collectively **up 3.0 percent** over the first three quarters of 2013.

**Contracting** revenue, which is not assigned to a district, grew by 7.3 percent, as discussed in the previous section.

**Other revenue** not assigned to a single district grew by 24.0 percent over 2013 due to a number of one-time large payments and refunds, which were not assigned to any business districts.

*Third quarter tax receipts by business district for 2013 and 2014 are compared in the table on the next page.*

## Financial Management Report as of September 30, 2014

When reviewing sales tax receipts by business district, it's important to be aware that 46.6 percent of the revenue received in the first quarter of 2014 was in the "unassigned or no district" category largely due to contracting and other revenue, which includes revenue from internet, catalog sales and other businesses located outside of the City. This percentage has grown in recent years as internet sales have grown in volume.

Business District	Jan - Sep Receipts		Dollar Change	Percent Change	Percent of Total	
	2013	2014			2013	2014
Totem Lake	3,700,946	3,792,616	91,670	2.5%	30.2%	28.4%
NE 85th St	1,753,134	1,876,948	123,813	7.1%	14.3%	14.1%
Downtown	822,043	856,161	34,118	4.2%	6.7%	6.4%
Carillon Pt/Yarrow Bay	252,621	265,763	13,142	5.2%	2.1%	2.0%
Houghton & Bridle Trails	332,934	335,476	2,542	0.8%	2.7%	2.5%
Juanita	191,466	199,031	7,565	4.0%	1.6%	1.5%
Kingsgate	123,424	129,599	6,175	5.0%	1.0%	1.0%
North Juanita	178,281	180,690	2,409	1.4%	1.5%	1.4%
Finn Hill	72,939	75,647	2,708	3.7%	0.6%	0.6%
Unassigned or No District:						
Contracting	1,959,270	2,102,877	143,607	7.3%	16.0%	15.7%
Other	2,856,887	3,541,868	684,981	24.0%	28.0%	30.9%
<b>Total</b>	<b>12,243,945</b>	<b>13,356,675</b>	<b>1,112,730</b>	<b>9.1%</b>	<b>100.0%</b>	<b>100.0%</b>

- Sales Tax Revenue Outlook** Sales tax revenue in 2014 has continued to grow compared to 2013, although year-on-year gains are much smaller between 2013 and 2014 than they were between 2012 and 2013. Additionally, the sectors driving the growth in 2013, while still growing, have slowed in 2014 which has led to the overall slow down in the rate of growth. This suggests that the pent up demand in the construction and auto industry seen in 2013 may be levelling off. Despite this, growth has remained consistent across most sectors and major business districts throughout the year, and as long as the wider economy remains strong through the final three months of the year sales tax revenue for 2014 should be higher than it was in 2013.

#### OFFICE VACANCIES:

According to the latest report from CB Richard Ellis Real Estate Services, Kirkland's office vacancy rate in the third quarter of 2014 was 4.6 percent, less than half the Puget Sound average of 13.7 percent, and the lowest in the Puget Sound region. The Eastside also has the lowest vacancy rate among regions in the Puget Sound region, with a vacancy rate of 11.2 percent, ahead of Tacoma/Fife at 12.2 percent.

Overall vacancy rates in the Puget Sound region have fallen for the fifth straight quarter with net absorption totaling over 600,000 square feet.

The region currently has 3,689,094 SF of office space under construction, including 180,000 SF in Kirkland and the continued expansion of Amazon near their current South Lake Union headquarters.

#### LODGING TAX REVENUE:

Lodging tax revenue grew compared to 2013, finishing the third quarter up 8.6 percent, an increase of almost \$15,000, which put revenues at 78.1 percent of budget.

**Economic Environment Update** The October update from the Washington State Economic and Revenue Forecast Council (ERFC) found the Washington economy added 21,600 net new jobs from December 2013 through June 2014, a strong seasonally adjusted 2.98 percent rate of annual growth. Private, service-providing industries accounted for most of the job growth adding a net 15,200 jobs. The construction sector added 2,500, with manufacturing adding an additional 2,100, in part due to an unexpected 1,200 aerospace jobs.

The **Consumer Confidence Index** rose to its highest level since 2007 during the third quarter before declining in September. The index rose from 86.4 to peak at 93 in August, before finishing the third quarter at 89. According to the Conference Board, "Consumer confidence retreated in September after four consecutive months of improvement. A less positive assessment of the current job market, most likely due to the recent softening in growth, was the sole reason for the decline in consumers' assessment of present-day conditions. Looking ahead, consumers were less confident about the short-term outlook for the economy and labor market, and somewhat mixed regarding their future earnings potential. All told, consumers expect economic growth to ease in the months ahead."

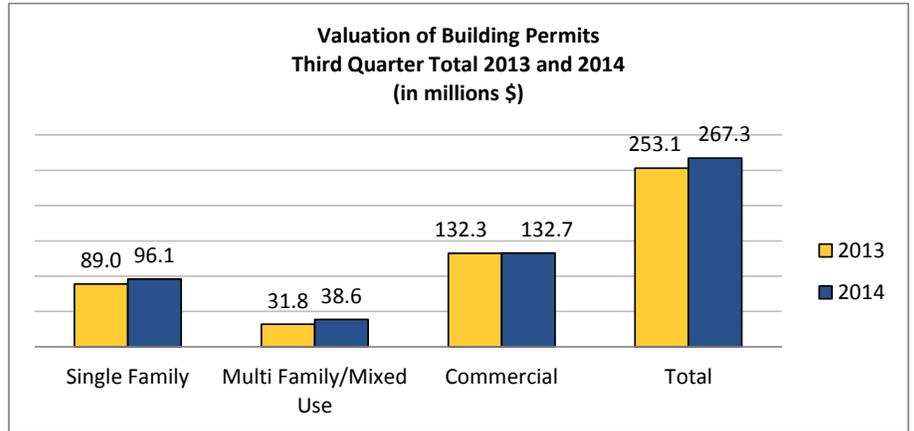
The U.S. **unemployment rate** for September 2014 was 5.9 percent, the lowest rate since before the recession. The rate for Washington State also reached a post-recession low of 5.6 in July and August, before climbing slightly to 5.7. The unemployment rate in Kirkland finished the third quarter at 5 percent, which was an increase from 4.3 percent in the second quarter of 2014, although still below the national and state average. Note that the Bureau of Labor Statistics (BLS) data for the City of Kirkland does not yet include the 2011 annexation areas, and these areas will not be included until early 2015 when the database will be updated based on Census data according to the BLS. Unemployment data is reported on a one month lag at the national and state levels and on a two month lag at the county and city levels.

The Institute of Supply Management Western Washington Index grew slightly in the third quarter of 2014, peaking at 62.9 in August before falling slightly to 60.3 in September. Despite the decline the index remains healthy, indicated by a score above 50, where it has remained in every month since July 2009.

(Continued on page 8)

## Economic Environment Update *continued*

Local **development activity**, in terms of the valuation of the City's building permits for the third quarter of 2014, has risen compared to 2013. This is illustrated in the chart to the right. Development activity has increased with the largest percentage increase in the multi family sector and the largest dollar increase in the single family sector. The overall rate of increase through the first three quarters of 2014 is 6 percent, which is an increase of \$14 million.



Regional **home prices** continued to rise in the third quarter. According to the S&P/Case-Shiller Home Price Indices, Seattle area

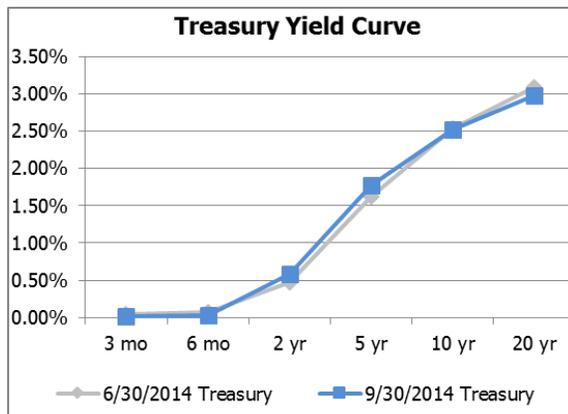
home prices have not experienced a monthly decline for over two and a half years. However, the rate of increase has slowed, and the results for the third quarter were more stable suggesting the housing market might have peaked.

After rising in the second quarter **inflation** in the Seattle area remained stable throughout the third quarter. In August 2014, the Seattle CPI-w was 1.8 percent higher than the previous year compared to the 1.7 percent increase for the U.S. city average. Analysts have suggested that the above average inflation rate in Seattle is entirely due to more rapidly rising shelter costs.

## Investment Report

### MARKET OVERVIEW

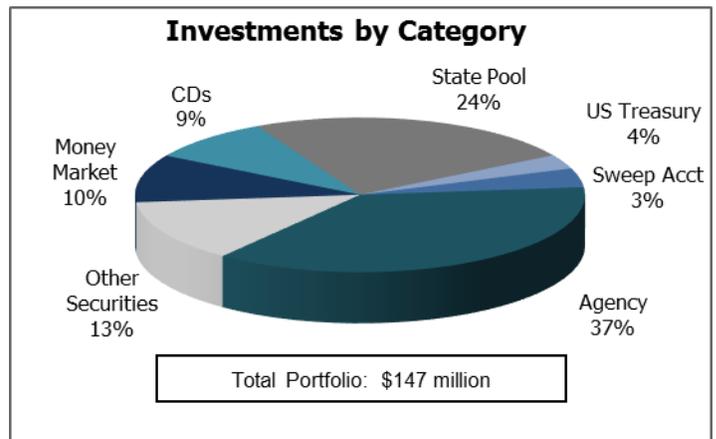
The growth in economic activity continued in the 3<sup>rd</sup> quarter with Gross Domestic Product (GDP) increasing at an annual rate of 3.5 percent. The Fed Funds rate continued to remain at 0.25 percent, where it is expected to stay until mid-to-late 2015. The yield curve steepened slightly in the middle with rates falling on the short and long end and rising slightly in the 2 to 5 year range.



### CITY PORTFOLIO

The primary objectives for the City of Kirkland's investment activities are: legality, safety, liquidity and yield. Additionally, the City diversifies its investments according to established maximum allowable exposure limits so that reliance on any one issuer will not place an undue financial burden on the City.

The City's portfolio increased slightly in the 3<sup>rd</sup> quarter of 2014 to \$147 million compared to \$146.5 million on June 30, 2014. The stability of the portfolio is related to the increase in tax revenues compared to prior years. Normal cash flows of the 3<sup>rd</sup> quarter result in declining balances as the second half of property taxes is received at the end of October and early November.



### Diversification

The City's current investment portfolio is composed of Government Sponsored Enterprises (GSEs) bonds, US Treasury bonds, US Government Obligations, State and Local Government bonds, Bank CDs, Money Market Accounts, the State Investment Pool and an overnight bank sweep account. City investment procedures allow for 100% of the portfolio to be invested in U.S. Treasury or Federal Government obligations.

**2014 ECONOMIC OUTLOOK and INVESTMENT STRATEGY**

The outlook for growth in the U.S. economy looks mostly unchanged from that of three months ago, according to 43 forecasters surveyed by the Federal Reserve Bank of Philadelphia. The U.S. economy is expected to grow at an annual rate of 2.1 percent in 2014 and 3.1 percent in 2015. CPI inflation is expected to average 2.3 percent in 2014 and 2.2 percent in 2015. The unemployment rate is expected to average 6.3 percent in 2014 and fall to 5.7 percent in 2015. The Fed Funds rate, currently at 0.25%, is expected to remain at this level throughout 2014 and into 2015.

The duration of the portfolio has been declining as securities move closer to maturity. In the next two quarters the City will begin the process of rebalancing the investment portfolio to take advantage of rising interest rates. Rebalancing would involve selling some of the low performing securities to be replaced with securities generating greater interest returns.

The State Pool is currently at 0.08% and will continue to remain low as the Fed Funds rate remains at 0.00 to 0.25 percent. Total estimated investment income for 2014 is \$690,000.

**Investment Report *continued***

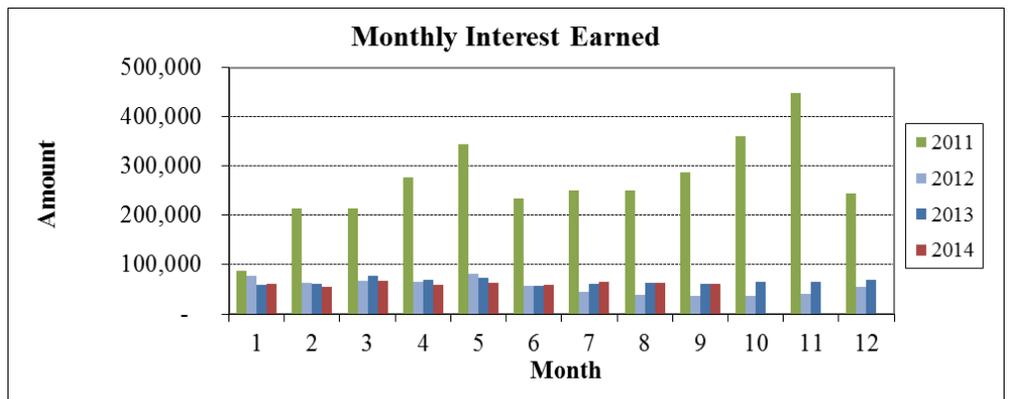
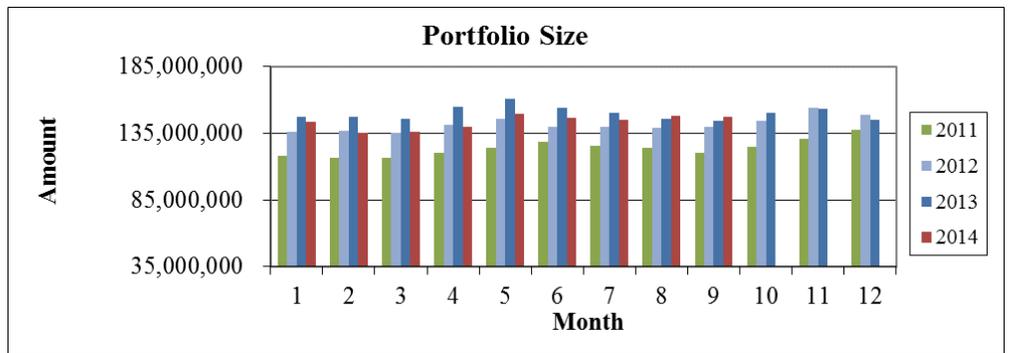
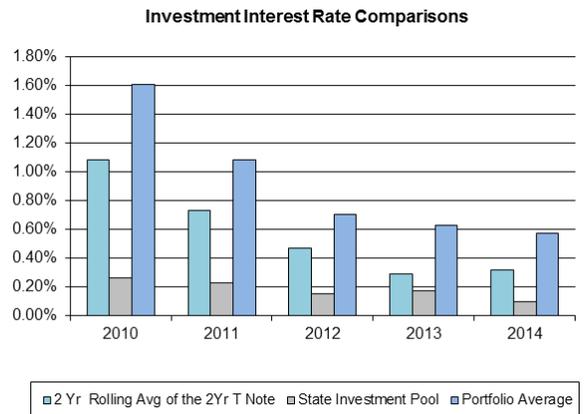
**Liquidity**

The target duration for the City's portfolio is based on the 0-5 year U.S. Treasury. The average maturity of the City's investment portfolio decreased from 1.56 years on June 30, 2014 to 1.38 years on September 30, 2014 as the securities in the portfolio move closer to maturity.

**Yield**

The City Portfolio yield to maturity increased slightly to 0.57 percent on September 30, 2014 from 0.56 percent on June 30, 2014. Through September 30, 2014, the City's annual average yield to maturity remained steady at 0.57 percent. The City's portfolio benchmark is the range between the 90 day Treasury Bill and the 2 year rolling average of the 2 year Treasury Note. This benchmark is used as it is reflective of the maturity guidelines required in the Investment Policy adopted by City Council. The City's portfolio outperformed both the 90 day T Bill and the 2 year rolling average of the 2 year Treasury Note which was 0.32 percent on September 30, 2014 .

The City's practice of investing further out on the yield curve than the State Investment Pool results in earnings higher than the State Pool during declining interest rates and lower earnings than the State Pool during periods of rising interest rates. This can be seen in the adjacent graph.



**Reserves** are an important indicator of the City's fiscal health and effectively represent "savings accounts" that are established to meet unforeseen budgetary needs (general purpose reserves) or are dedicated to a specific purpose. The reserves display budgeted beginning 2013 and ending 2014 balances, with changes caused by subsequent authorized uses or additions.

**Reserve Analysis**

**General Purpose Reserves**

- The **Revenue Stabilization Reserve** was used almost in its entirety during the 2009-10 biennium as part of the budget balancing strategy to address the severe economic downturn, which allowed the City to mitigate some negative impacts to services. Contributions have been made to replenish the reserves since then and with planned contributions in 2014, the reserve is expected to be at target by the end of 2014.
- The **Building and Property Reserve** has been identified as an available funding source for facility expansion and renovation projects and a significant portion was used as planned during the current biennium, which will bring the reserve just slightly below target.
- The **General Capital Contingency Reserve** was used to fund project cost increases in the previous biennium, so replenishment from General Fund 2012 year-end cash was planned in 2013. The recent use of \$820,000 of this reserve to provide funding for property acquisition for Totem Lake Park expansion is planned to be replenished from King County Park Levy revenue over approximately 4 years.

**General Capital Reserves**

- Real estate activity continues at a strong pace in 2014, although slightly below the same period in 2013. As of the third quarter, **Real Estate Excise Tax (REET)** collections are **4.1 percent behind** 2013. Revenue is still on trending above budget expectations at **139 percent of budget**.
- **Impact fees** are 338 and 621 percent of budget for Park and Transportation respectively. Third quarter revenues were especially strong primarily due to substantial transportation impact fee revenue related to the Google expansion. Compared to the third quarter last year, **Parks Impact Fees** are **49.7 percent ahead** and **Transportation Impact fees** are **87.2 percent ahead**. There is minimal planned use of transportation impact fees for capital projects and no planned use of park impact fees for park capital projects in the current budget cycle except for debt related to parks.
- Improved results from these revenue sources are not currently being programmed in anticipation of the completion of several master plans by the end of 2014 which will result in identifying capital project needs in the next biennium.

Reserves	Est. 2013 Beginning Balance	Adopted 2014 Ending Balance	Revised 2014 Ending Balance	2013-14 Target	Revised Over (Under) Target
<b>GENERAL PURPOSE RESERVES WITH TARGETS</b>					
General Fund Reserves:					
General Fund Contingency	50,000	50,000	3,382	50,000	(46,618)
General Oper. Reserve (Rainy Day)	2,806,513	2,806,513	2,806,513	4,219,482	(1,412,969)
Revenue Stabilization Reserve	1,231,431	2,468,068	2,468,068	2,468,068	0
Building & Property Reserve	2,137,598	571,579	571,579	600,000	(28,421)
Council Special Projects Reserve	250,000	178,372	33,072	250,000	(216,928)
Contingency	2,201,870	2,426,425	2,426,425	4,275,442	(1,849,017)
General Capital Contingency*	2,686,587	4,810,795	3,990,795	5,735,330	(1,744,535)
<b>General Purpose Reserves with Targets</b>	<b>11,363,999</b>	<b>13,311,752</b>	<b>12,299,834</b>	<b>17,598,322</b>	<b>(5,298,488)</b>
<b>ALL OTHER RESERVES WITH TARGETS</b>					
General Fund Reserves:					
Litigation Reserve	350,000	350,000	350,000	50,000	300,000
Firefighter's Pension Reserve*	1,746,298	1,484,958	1,484,958	1,568,207	(83,249)
Health Benefits Fund:					
Claims Reserve*	1,187,813	2,615,856	2,615,856	1,424,472	1,191,384
Rate Stabilization Reserve	1,000,000	1,000,000	1,000,000	500,000	500,000
Excise Tax Capital Improvement:					
REET 1**	3,477,948	4,507,512	2,922,724	1,071,000	1,851,724
REET 2**	2,284,826	2,319,112	1,933,483	2,225,500	(292,017)
Water/Sewer Operating Reserve:					
Water/Sewer Debt Service Reserve:	488,200	498,591	498,591	508,717	(10,126)
Water/Sewer Capital Contingency:	1,107,600	1,107,600	1,107,600	250,000	857,600
Surface Water Operating Reserve:	706,364	706,364	706,364	412,875	293,489
Surface Water Capital Contingency:	816,480	816,480	816,480	758,400	58,080
<b>Other Reserves with Targets</b>	<b>15,580,000</b>	<b>17,820,944</b>	<b>15,850,527</b>	<b>10,748,551</b>	<b>5,101,976</b>
<b>Reserves without Targets</b>	<b>35,751,424</b>	<b>35,847,270</b>	<b>33,881,002</b>	<b>n/a</b>	<b>n/a</b>
<b>Total Reserves</b>	<b>62,695,423</b>	<b>66,979,966</b>	<b>62,031,363</b>	<b>n/a</b>	<b>n/a</b>

The target comparison reflects revised ending balances to the targets established in the budget process for those reserves with targets.

General Purpose reserves are funded from general revenue and may be used for any general government function.

All Other Reserves with Targets have restrictions for use either from the funding source or by Council-directed policy (such as the Litigation Reserve).

\*Includes replenishments adopted in early April 2013 and adjustments to actual cash balances adopted in June.

\*\*Includes replenishments adopted in early April 2013 and adjustments to actual cash balances adopted in June; does not reflect increased collections in 2013.

The summary to the right details all Council authorized uses and additions through September 2014

**USES AND ADDITIONS HIGHLIGHTS**

RESERVE	AMOUNT	DESCRIPTION
<b>2013-14 Council Authorized Uses</b>		
2013 First Quarter Uses	\$302,000	
2013 Second Quarter Uses	\$626,319	
2013 Third Quarter Uses	\$489,981	
2013 Fourth Quarter Uses	\$1,103,451	
2014 First Quarter Uses	\$1,369,000	
2014 Second Quarter Uses	\$174,300	
REET 1 Reserves	\$11,100	Juanita Heights Park Property Acquisition
REET 2 Reserves	\$50,317	Park Lane Pedestrian Improvements
Surface Water Transp. Reserve	\$869,936	Park Lane Pedestrian Improvements
Street Improvement Reserve	\$2,002	2013 Crosswalk Upgrade Program
REET 2 Reserves	\$90,000	Kirkland Intelligent Transportation Phase IB
<b>2013-14 Council Authorized Additions</b>		
Real Estate Excise Tax 2 - Transp.	\$77,303	Return from NE 120th Street Extension (East)
Surface Water Transportation	\$49,000	Return from NE 112th Street Sidewalk
Council Special Projects Reserve	\$13,500	Return from 9-11 Memorial Sculpture

*General Fund and Contingency reserves are funded from general purpose revenue and are governed by Council-adopted policies.*

*Special Purpose reserves reflect both restricted and dedicated revenue for specific purpose, as well as general revenue set aside for specific purposes.*

*General Capital Reserves provide the City the ability to respond to unexpected changes in costs and accumulate funds for future projects. It is funded from both general revenue and restricted revenue.*

*Utility reserves are funded from utility rates and provide the utilities with the ability to respond to unexpected costs and accumulate funds for future replacement projects.*

*Internal service funds are funded by charges to operating departments. They provide for the accumulation of funds for replacement of equipment, as well as the ability to respond to unexpected costs.*

Reserves	Description	Est. 2013 Beginning Balance	Adopted 2014 Ending Balance	Additional Authorized Uses/Additions	Revised 2014 Ending Balance
<b>GENERAL FUND/CONTINGENCY</b>					
General Fund Reserves:					
General Fund Contingency	Unexpected General Fund expenditures	50,000	50,000	(46,618)	3,382
General Oper. Reserve (Rainy Day)	Unforeseen revenues/temporary events	2,806,513	2,806,513	0	2,806,513
Revenue Stabilization Reserve	Temporary revenue shortfalls	1,231,431	2,468,068	0	2,468,068
Building & Property Reserve	Property-related transactions	2,137,598	571,579	0	571,579
Council Special Projects Reserve	One-time special projects	250,000	178,372	(145,300)	33,072
Contingency	Unforeseen expenditures	2,201,870	2,426,425	0	2,426,425
<b>Total General Fund/Contingency</b>		<b>8,677,412</b>	<b>8,500,957</b>	<b>(191,918)</b>	<b>8,309,039</b>
<b>SPECIAL PURPOSE RESERVES</b>					
General Fund Reserves:					
Litigation Reserve	Outside counsel costs contingency	350,000	350,000	0	350,000
Labor Relations Reserve*	Labor negotiation costs contingency	65,348	65,348	0	65,348
Police Equipment Reserve*	Equipment funded from seized property	48,685	58,685	0	58,685
LEOFF 1 Police Reserve	Police long-term care benefits	618,079	618,079	0	618,079
Facilities Expansion Reserve	Special facilities expansions reserve	800,000	-	0	0
Development Services Reserve*	Revenue and staffing stabilization	1,004,194	1,187,020	0	1,187,020
Development Svcs. Technology Reserve	Permit system replacement	264,810	159,792	0	159,792
Tour Dock*	Dock repairs	138,892	171,392	0	171,392
Tree Ordinance*	Replacement trees program	29,717	29,717	0	29,717
Revolving/Donation Accounts*	Fees/Donations for specific purposes	451,090	537,890	0	537,890
Lodging Tax Fund*	Tourism program and facilities	240,991	221,951	0	221,951
Cemetery Improvement*	Cemetery improvements/debt service	662,614	712,174	0	712,174
Off-Street Parking	Downtown parking improvements	147,016	212,836	0	212,836
Firefighter's Pension*	Long-term care/pension benefits	1,746,298	1,484,958	0	1,484,958
<b>Total Special Purpose Reserves</b>		<b>6,567,734</b>	<b>5,809,842</b>	<b>0</b>	<b>5,809,842</b>
<b>GENERAL CAPITAL RESERVES</b>					
Excise Tax Capital Improvement:					
REET 1**	Parks/transportation/facilities projects, parks debt service	3,477,948	4,507,512	(1,584,788)	2,922,724
REET 2**	Transportation and other capital projects	2,284,826	2,319,112	(385,629)	1,933,483
Impact Fees					
Roads**	Transportation capacity projects	2,060,540	2,066,737	0	2,066,737
Parks**	Parks capacity projects	685,727	598,023	0	598,023
Street Improvement	Street improvements	995,958	995,958	(2,002)	993,956
General Capital Contingency*	Changes to General capital projects	2,686,587	4,810,795	(820,000)	3,990,795
<b>Total General Capital Reserves</b>		<b>12,191,586</b>	<b>15,298,137</b>	<b>(2,792,419)</b>	<b>12,505,718</b>
<b>UTILITY RESERVES</b>					
Water/Sewer Utility:					
Water/Sewer Operating Reserve	Operating contingency	2,414,471	2,414,471	0	2,414,471
Water/Sewer Debt Service Reserve*	Debt service reserve	488,200	498,591	0	498,591
Water/Sewer Capital Contingency	Changes to Water/Sewer capital projects	1,107,600	1,107,600	0	1,107,600
Water/Sewer Construction Reserve	Replacement/re-prioritized/new projects	9,093,871	8,228,606	0	8,228,606
Surface Water Utility:					
Surface Water Operating Reserve	Operating contingency	706,364	706,364	0	706,364
Surface Water Capital Contingency	Changes to Surface Water capital projects	816,480	816,480	0	816,480
Surface Water-Transp. Related Rsv	Replacement/re-prioritized/new projects	3,794,629	4,580,229	(153,619)	4,426,610
Surface Water Construction Reserve	Trans. related surface water projects	1,990,126	1,485,091	(1,334,936)	150,155
<b>Total Utility Reserves</b>		<b>20,411,741</b>	<b>19,837,432</b>	<b>(1,488,555)</b>	<b>18,348,877</b>
<b>INTERNAL SERVICE FUND RESERVES</b>					
Health Benefits:					
Claims Reserve*	Health benefits self insurance claims	1,187,813	2,615,856	0	2,615,856
Rate Stabilization Reserve	Rate stabilization	1,000,000	1,000,000	0	1,000,000
Equipment Rental:					
Vehicle Reserve*	Vehicle replacements	9,154,784	9,260,709	0	9,260,709
Radio Reserve	Radio replacements	7,686	7,686	0	7,686
Information Technology:					
PC Replacement Reserve*	PC equipment replacements	308,256	482,150	0	482,150
Technology Initiative Reserve	Technology projects	690,207	523,835	0	523,835
Major Systems Replacement Reserve	Major technology systems replacement	245,500	656,200	0	656,200
Facilities Maintenance:					
Operating Reserve	Unforeseen operating costs	550,000	550,000	0	550,000
Facilities Sinking Fund*	20-year facility life cycle costs	1,702,704	2,437,162	(475,711)	1,961,451
<b>Total Internal Service Fund Reserves</b>		<b>14,846,950</b>	<b>17,533,598</b>	<b>(475,711)</b>	<b>17,057,887</b>
<b>Grand Total</b>		<b>62,695,423</b>	<b>66,979,966</b>	<b>(4,948,603)</b>	<b>62,031,363</b>

\*Includes replenishments adopted in early April 2013 and adjustments to actual cash balances adopted in June.  
 \*\*Includes replenishments adopted in early April 2013 and adjustments to actual cash balances adopted in June; does not reflect increased collections in 2013, which will be considered for budget adjustments.



The Financial Management Report (FMR) is a high-level status report on the City's financial condition that is produced quarterly.

- It provides a **summary budget to actual and year over year comparisons** for year-to-date revenues and expenditures for all operating funds.
  - The **Sales Tax Revenue Analysis** report takes a closer look at one of the City's larger and most economically sensitive revenue sources.
  - **Economic environment** information provides a brief outlook at the key economic indicators for the Eastside and Kirkland such as office vacancies, residential housing prices/sales, development activity, inflation and unemployment.
  - The **Investment Summary** report includes a brief market overview, a snapshot of the City's investment portfolio, and the City's year-to-date investment performance.
  - The **Reserve Summary** report highlights the uses of and additions to the City's reserves in the current year as well as the projected ending reserve balance relative to each reserve's target amount.
- Tracey Dunlap, Director of Finance & Administration
  - Michael Olson, Deputy Director of Finance & Administration
  - Tom Mikesell, Financial Planning Manager
  - Neil Kruse, Senior Financial Analyst
  - Kyle Butler, Budget Analyst
  - George Dugdale, Budget Analyst



City of Kirkland  
123 5th Avenue  
Kirkland, WA 98033

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***Economic Environment Update References:***

- The Conference Board Consumer Confidence Index Press Release September, 2014
- Carol A. Kujawa, MA, A.P.P., *ISM-Western Washington, Inc. Report On Business*, Institute for Supply Management-Western Washington, September, 2014
- Quarterly Economic and Revenue Publication, September 2014—Washington State Economic & Revenue Forecast Council
- CB Richard Ellis Real Estate Services, Market View Puget Sound, Third Quarter 2014
- CB Richard Ellis Real Estate Services, Market View Puget Sound, Third Quarter 2013
- Northwest Multiple Listing Service
- U.S. Bureau of Labor Statistics
- Washington State Employment Security Department
- Washington State Department of Revenue
- Washington State Department of Labor & Industries
- City of Kirkland Building Division
- City of Kirkland Finance & Administration Department

**CITY OF KIRKLAND**

Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

[www.kirklandwa.gov](http://www.kirklandwa.gov)

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Jenny Gaus, Surface Water Engineering Supervisor  
Rob Jammerman, Development Engineering Manager  
Kathy Brown, Public Works Director

**Date:** November 6, 2014

**Subject:** 2014 SURFACE WATER MASTER PLAN ADOPTION

**RECOMMENDATION:**

It is recommended that City Council approves the attached Resolution that adopts the 2014 Surface Water Master Plan.

**BACKGROUND DISCUSSION:**

Appropriate management of surface water in the City of Kirkland achieves multiple goals, all of which improve the quality of life for Kirkland citizens. The Surface Water Master Plan improves safety, reduces risk to public and private property, and enhances our natural environment. Improved safety is achieved by reduced flooding. Properly sizing and maintaining the City's stormwater conveyance system keeps water from ponding on the streets and sidewalks, creating safer conditions for motorists, bicyclists, and pedestrians. Reduced flooding also means a reduction in the risk of damage to property and business operations. The Plan also benefits groundwater management, which can contribute to reduced risk of landslides. Improved water quality and fish passage in the City's waterways, ponds, and lakes provides for enhanced recreation opportunities, including fishing, swimming, and enjoying the beauties of nature in our City. Management of the urban forest insures that Kirkland will remain a green and livable community for many years to come.

Council discussed the Draft Surface Water Master Plan at the September 2<sup>nd</sup> Study Session and the October 21<sup>st</sup> Regular Council meeting ([9-2-14 Study Session - SWMP](#) , [October 21st Regular Meeting - SWMP](#)).

A public comment period on the Draft Surface Water Master Plan was held October 8-29. One comment was received. That comment and a response from City staff will be incorporated into Appendix O of the final SWMP, and are attached here (Attachment A).

In response to Council comments and to finalize the document, the following changes were made to the Draft Surface Water Master Plan:

- The paragraph at the beginning of the Background section above was inserted into the Executive Summary and into the Introduction regarding the community benefits of appropriate surface water management including property protection, safety, and enhancement of the natural environment.
- The cover and document footers were altered to note the date of the final plan.
- Characterizations for additional basins were added to Appendix F – Basin Characterization Summaries, and additional species of wildlife were added to the Denny Creek Characterization per public comment.
- Appendix O – Public Comments and Staff Responses were added to the document.

The 2014 Surface Water Master Plan is available on the City website: [2014 Surface Water Master Plan](#)

If the Council has no additional questions or input, staff is recommending that Council passes the Resolution adopting the 2014 Surface Water Master Plan.

Following adoption, implementation of the Surface Water Master Plan will take place through the budget process, the capital improvement program process, and through the work of Surface Water Utility staff. Staff will report to Council annually on implementation progress using the performance measures contained in the 2014 Surface Water Master Plan. The Plan can be amended or updated as needed if new conditions warrant or the performance measures indicate that progress in a particular area of the Plan is not satisfactory.

Attachment A: Public Comment and staff response on the Draft Surface Water Master Plan

**Jenny Gaus**

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**From:** luigi [REDACTED]  
**Sent:** Thursday, October 30, 2014 9:47 AM  
**To:** Jenny Gaus  
**Subject:** FHNA comments on Draft Kirkland 2014 Surface Water Master Plan

Hi, Jenny:

Sorry for the late submission. Lots of information in the plan with many separate appendices.

This is quite a document. Congratulations for completing the plan and reaching this significant milestone!

Here are my comments:

- It is difficult to understand how the sequence of CIP projects was determined. For example, on page XIX, why schedule CH-02 in 2015 but push out CDE-01 to 2021? Some rationale or rating criteria would help there – e.g., budget-driven? Impact-driven?
- It would be ideal to have a neighborhood pivot or grouping for work on the ground. For example, what are the roads, storm water, CIP, parks, etc. projects planned for my neighborhood next year? What are the projects that are currently underway in a given neighborhood?
- Where are the sampling sites for water quality, macro invertebrates, etc. in sub-basins across the city? What are the sampling intervals? How will results be used to determine additional efforts?
- The Denny Creek sub-basin includes the presence of fish species that you mentioned. Other wetland and riparian species that should be included for Denny Creek: Great blue heron, mallards and other ducks, bald eagles, beaver, deer, Pacific chorus frogs, and belted kingfisher.
- Additional projects that were not mentioned or not prominent in the plan:
  - Re-watering the tributary of Denny Creek immediately south of the Big Finn lacrosse field. Diversion of water from this tributary to the bioswale and drainage for the lacrosse field continues to aggravate flood-prone residences immediately downstream. The de-watered tributary is listed as sensitive wetland on the Kirkland sensitive areas map. Let's discuss details.
  - Completion of maintenance tasks of the bioswale south of the lacrosse field at Big Finn Hill Park.
  - Removal of the concrete bulkhead along the lake shore at OO Denny park.

Thanks,

Lou Berner  
Finn Hill Neighborhood Alliance

November 4, 2014

Lou Berner  
Finn Hill Neighborhood Alliance  
P.O. Box 682  
Kirkland, WA 98083

Dear Mr. Berner:

Thank you for taking the time to comment on the Draft Surface Water Master Plan (SWMP) and to discuss these comments on the phone. I appreciate the effort that you and others at the Finn Hill Neighborhood Alliance put into making your interests and needs known during the public involvement process for the SWMP. Below are responses to specific items in your email. A few of your concerns will need further discussion and field visits. Although the Surface Water Master Plan is being finalized as I write this, this is not the last opportunity for input on surface water issues in Kirkland. I will continue to work with you and FHNA to resolve these issues.

- 1. It is difficult to understand how the sequence of CIP projects was determined. For example, on page XIX, why schedule CH-02 in 2015 but push out CDE-01 to 2021? Some rationale or rating criteria would help there – e.g., budget-driven? Impact-driven?*

Chapters 6 and 7 of the SWMP discuss how CIP projects are identified and how they are scheduled for construction. This is a combination of overall priorities (i.e. flooding comes first), interaction with other projects (i.e. it makes sense to rebuild the culvert under Juanita Drive (CDE-01) as part of the Juanita Drive Corridor improvements), ranking according to a set of environmental and feasibility criteria (see Appendix M), the general order in which it makes sense to construct (i.e. do flow control first, then do channel reconstruction of physical habitat features), and assumptions about available funding.

The capital project schedule is recommended in the SWMP, but this is not a construction schedule. The Capital Improvement Program development takes place each year and consists of developing a 6-year construction schedule based on recommendations in the SWMP and on current project needs and opportunities and available funding.

- 2. It would be ideal to have a neighborhood pivot or grouping for work on the ground. For example, what are the roads, storm water, CIP, parks, etc. projects planned for my neighborhood next year? What are the projects that are currently underway in a given neighborhood?*

Kari Page, Neighborhood Services Coordinator, reports that the Neighborhood Hot Sheet that integrated various city and development activities was discontinued about 6 months ago. Production of the Hot Sheet took significant staff time and there are online resources available that show the same information including:

City capital projects on the 2013-2018 Capital Improvement Program are shown on this interactive

map: [http://www.kirklandwa.gov/depart/Public Works/Construction Projects/Capital Improvements.htm](http://www.kirklandwa.gov/depart/Public%20Works/Construction%20Projects/Capital%20Improvements.htm)

Development Projects are displayed on the City's GIS browser, which can be accessed at this link: <http://maps.kirklandwa.gov/SilverlightViewer/Viewer.html?Viewer=KirklandPublic>

Once the projects from the SWMP are incorporated into a 6-year Capital Improvement Program – a process that will begin next year, then they will also be shown on the Capital Improvement Program Map.

3. *Where are the sampling sites for water quality, macro invertebrates, etc. in sub-basins across the city? What are the sampling intervals? How will results be used to determine additional efforts?*

B-IBI sample sites are noted on figure 4-8, and a description of B-IBI results for Kirkland streams is presented in Appendix H. Water quality is currently sampled in Forbes and Juanita Creeks by King County – see this site for further info:

<http://green2.kingcounty.gov/StreamsData/Data.aspx>

In addition we have a volunteer that monitors Forbes Lake as part of the King County Volunteer Lake monitoring program – data and maps can be found here:

<http://green2.kingcounty.gov/SmallLakes/LakePage.aspx?SiteID=61>

Additional monitoring is recommended and is described as programmatic actions CW-17 and CW-21 in Appendix L. The purpose is to provide a baseline for comparison of conditions in the future, and to use in setting goals for water quality and habitat. Sampling intervals would be determined as part of a request that will take place as part of the 2017-2018 budget process.

4. *The Denny Creek sub-basin includes the presence of fish species that you mentioned. Other wetland and riparian species that should be included for Denny Creek: Great blue heron, mallards and other ducks, bald eagles, beaver, deer, Pacific chorus frogs and other amphibians, and belted kingfisher.*

We will note these species in the Denny Creek Basin Characterization in Appendix F.

5. Additional projects that were not mentioned or not prominent in the plan:

- *Re-watering the tributary of Denny Creek immediately south of the Big Finn lacrosse field. Diversion of water from this tributary to the bioswale and drainage for the lacrosse field continues to aggravate flood-prone residences immediately downstream. The de-watered tributary is listed as sensitive wetland on the Kirkland sensitive areas map. Let's discuss details.*

This situation developed prior to annexation by Kirkland, and has to do with construction of play fields in Big Finn Hill Park that took place in approximately the 1990s. It appears that water was diverted from one tributary of Denny Creek into another during construction of the fields, and a downstream homeowner feels that this contributes to drainage problems on his property. This is essentially a dispute between property owners – a matter in which the City does not have authority to intervene. A representative of the Finn Hill Neighborhood Alliance contacted King County Parks about this matter during the recent reconstruction of one of the fields, but King County did not pursue the matter.

- *Completion of maintenance tasks of the bioswale south of the lacrosse field at Big Finn Hill Park.*

We will coordinate with you and with King County Parks to resolve this issue. A list of required maintenance actions was presented to King County Parks as part of the redevelopment of the playfield in Big Finn Hill Park, and maintenance of storm drainage facilities is required per City Code.

- *Removal of the concrete bulkhead along the lake shore at OO Denny park.*

Projects that are being constructed by entities other than the City and/or that already have funding and are underway were not included in the SWMP, as the purpose of the SWMP is to lay out plans and priorities for the future. You mentioned in our conversation that King County had done some permitting and design work on the project – I will research this matter and try to pass on contact information for the King County staff that are or have been working on this project.

Again, thank you for taking the time to provide comments on the Surface Water Master Plan. Should you wish to discuss these comments or other surface water issues, please contact me at (425) 587-3850 or [jgaus@kirklandwa.gov](mailto:jgaus@kirklandwa.gov).

Sincerely  
Public Works Department

Jenny Gaus, Surface Water Engineering Supervisor

RESOLUTION R-5082

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND  
ADOPTING THE 2014 SURFACE WATER MASTER PLAN.

WHEREAS, appropriate management of surface water in the City of Kirkland achieves multiple goals, all of which improve the quality of life for Kirkland residents; and

WHEREAS, the goals of the Surface Water Utility include flood reduction, water quality improvement, infrastructure maintenance, and fish habitat protection, which collectively are intended to improve safety, reduce risk to public and private property, and enhance our natural environment; and

WHEREAS, the most recent Surface Water Master Plan was adopted in 2005, and the projects and programs in that plan have been implemented; and

WHEREAS, the City annexed the Finn Hill, Juanita and Kingsgate neighborhoods in 2011, resulting in new stormwater systems and streams coming under City management; and

WHEREAS, the City intends to meet obligations for water quality improvement under the National Pollutant Discharge Elimination System (NPDES) Phase II Municipal Separate Storm Sewer Permit; and

WHEREAS, the City intends to meet obligations for water quality improvement and fish habitat improvement under the Water Resource Inventory Area (WRIA) 8 Lake Washington/Cedar/Sammamish Watershed, Chinook Salmon Conservation Plan and the Federal Endangered Species Act; and

WHEREAS, the 2014 Surface Water Master Plan recommends programs and projects for the next ten years of Surface Water Utility Operation in accordance with the goals noted above.

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

Section 1. The 2014 Surface Water Master Plan is adopted.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2014.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk



**CITY OF KIRKLAND**  
**City Manager's Office**  
**123 Fifth Avenue, Kirkland, WA 98033 425.587.3001**  
**www.kirklandwa.gov**

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## **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Marilynne Beard, Deputy City Manager  
Tracey Dunlap, Director of Finance and Administration  
William Evans, Assistant City Attorney

**Date:** November 3, 2014

**Subject:** NORTHSORE UTILITY FRANCHISE AGREEMENT EXTENSION

## **RECOMMENDATION:**

City Council provides direction regarding extension of the franchise agreement between the City and the Northshore Utility District.

## **BACKGROUND DISCUSSION:**

The Northshore Utility District (NUD) operates a water and sewer utility for properties in the northern portion of the City including most of the new neighborhoods of Finn Hill, Juanita and Kingsgate. NUD operates under a franchise agreement whereby they are granted use of City rights-of-way for providing utility services. In consideration of the use of City rights-of-way, NUD pays a franchise fee to the City based on the lineal feet of their plant in the ground. The franchise agreement provides the conditions under which NUD will use the City's rights-of-way for placement of their system and equipment, assigns responsibility and standards for pavement repairs following construction and establishes the franchise fee (see Attachment A – O-4141). Two interrelated provisions of the franchise relate to the term of the agreement and a non-assumption clause (emphasis provided):

*Section 8. Franchise Term. Subject to the provisions of Section 9 and 10 below, this Franchise is and shall remain in full force and effect from January 1, 2009 until December 31, 2013, provided that on January 1, 2014, and on January 1 every five (5) years thereafter, the term shall automatically be extended for an additional five (5) years, unless either NUD or the City gives the other party written notice of non-renewal prior to any such renewal date, in which case this franchise shall terminate five (5) years after such renewal date; and provided further, however, NUD shall have no rights under this Franchise nor shall NUD be bound by the terms and conditions of the Franchise unless NUD shall, within thirty (30) days after the passage date of the Ordinance, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney. On any renewal date, the City has the option of extending the term for more than 5 years but all subsequent renewal dates would remain automatically five (5) years unless the City again opted to extend any of them for more than five (5) years.*

*Section 9: Non-assumption. In consideration for the franchise fee and acceptance of the other terms and conditions of this Franchise, the City agrees that it will not exercise its statutory authority to assume jurisdiction over NUD or any NUD responsibilities, property, facilities or equipment within the City's corporate limits while this Franchise is in effect.*

Note that the current agreement was extended for one year through 12/31/14, as described later in this memo.

## **Recent Policy Issues**

Over the past five years, a number of policy issues have arisen with regard to the NUD Franchise agreement as a result of the 2011 annexation and various court decisions regarding the relative authorities of a city and a utility district operating within its corporate boundaries.

### Impacts of Annexation

NUD operated within the City limits long before the 2011 annexation. Districts that operate within the corporate boundaries of a city may be assumed by the City under certain conditions specified in state law. RCW 35.13A provides the conditions under which a municipality can assume all or a portion of a water and sewer utility located within its corporate boundaries (see Attachment B – RCW 35.13A). If the district lies completely within the corporate boundaries of a municipality, the City may, by ordinance, assume the district including all of its operations and assets. If more than 60% of the assessed value of the district lies within the municipality, the City may still assume all or instead that portion of the district within its limits by ordinance, depending on whether the balance of the district lies within another city or cities (RCW 35.13A.030). If the district's assessed value within the corporate boundaries is less than sixty percent, the City may only assume that portion of the district within its limits. As of January 30, 2014, the portion of NUD's assessed valuation lying within Kirkland's corporate boundaries were 58.08%. State law dictates how the disposition of assets and operational responsibilities will be transferred, however, many of the details are left to be negotiated between the City and the District.

The Growth Management Act encourages the assumption of special purpose districts following annexation as a way to centralize and simplify municipal services. However, it should be noted that, in any of the scenarios provided for in RCW 35.13A, assumption of a utility district the size of NUD is a difficult process that takes years to accomplish, even when both parties have agreed to the assumption.

When the City annexed the Finn Hill, Juanita and Kingsgate areas, staff was asked to determine whether the City should pursue assumption of the special purpose districts within its boundaries. There were three different water and sewer providers within the annexed area – NUD, the Woodinville Water District and the City of Redmond, which served a small portion of the annexed area (see Attachment C for map of utility districts). Since the annexation took place, the City has negotiated a franchise agreement with the Woodinville district and transferred the Redmond accounts to Kirkland's utility. The NUD franchise agreement already contained provisions that contemplated the annexation. NUD also serves the cities of Bothell, Kenmore and Lake Forest Park.

### Fire Protection Services

In addition to providing residential and commercial utility services, NUD also maintains fire protection devices (hydrants). Historically, maintenance of hydrants and the system serving the hydrants was the responsibility of the water and sewer utility serving the area. In Kirkland's case, the City's Public Works Department maintains hydrants within its utility boundaries and NUD and Woodinville maintained hydrants within their respective service areas with the cost incorporated in the utility rate. In 2008, the Washington State Supreme Court ruled that fire hydrant costs are a general government function and should be paid out of general tax revenues (*Lane v. Seattle*). By implication, this includes the costs for other fire suppression facilities as well. The result of the decision was that hydrants could not be funded from utility rates. In response, Kirkland followed the practice of other utilities and reduced the utility rate to remove hydrant and fire suppression facilities costs and made a corresponding increase in the water utility tax so that the impact to the ratepayer was minimal.

NUD approached the City to request a similar solution to transfer its costs for hydrants and fire suppression facilities to the City. The District proposed that it would increase the franchise fee charged to customers with a corresponding decrease in water rates. The City would then remit back to NUD that increased portion of the franchise fee, which would be equivalent to fire protection costs. However, the City believed it was unclear whether the above referenced *Lane* decision applied to a relationship such as existed between the City and the District. Therefore, the City informed the district it would wait until this uncertainty was resolved before agreeing to the solution proposed. NUD, believing there was no such uncertainty, sent a bill to the City on December 23, 2011, in the amount of \$293,736 for the past three years of its hydrant and fire suppression facilities costs.

Before the City responded, the Washington State Supreme Court decided the case of *City of Tacoma v. City of Bonney Lake* in January of 2012. There the Court held that the franchise agreement between a city and a water/sewer utility is also a contract to which it would apply general tools of contract interpretation. The Court needed such tools because the contract was silent on whether the utility there was supposed to provide hydrants. The Court concluded the best tool to determine who was responsible for those costs would be using the course of dealing between the parties to see who had been paying them. In that case, it had been the utility and the Court therefore held that the franchise agreement contractually required the utility to provide and maintain the hydrants and, presumptively, the other fire suppression facilities.

From this, the City concluded NUD was responsible for covering the cost of fire hydrant and suppression facilities as they had been providing and billing customers for those services since the inception of the franchise agreement and advised the District of this interpretation. However, in December of 2012, the City received another bill from NUD for the past four years and totaling \$654,841. According to the letter from NUD General Manager, Fanny Yee, "The billing represents the costs for the District to provide fire hydrants within the City limits for the five years ending December 31<sup>st</sup> 2012, along with the statutory judgment interest of 12% per annum." The City Manager declined to pay the invoice and replied with the following rationale:

*Thank you for your letter of December 31, 2012. Respectfully, I must disagree with your conclusion that Kirkland must reimburse Northshore Utility District (NUD) for its fire hydrants and other fire suppression infrastructure within Kirkland city limits. Since the case you cite was decided, the Washington Supreme Court has issued its opinion in City of Tacoma v. City of Bonney Lake, 269 P.3d 1,017, 173 Wn.2d 584 (Wash 2012). There the Court made it clear that a utility could provide fire hydrants and other such facilities pursuant to a course of dealing under a franchise agreement with a city.*

*Here, NUD has been providing fire hydrants and other fire suppression facilities within Kirkland city limits under a franchise agreement with the City for many years. Clearly, a course of dealing has been established that NUD shall bear these costs. Consequently, the City does not believe any reimbursement is due to NUD for providing these facilities and no payment will be made.*

*As you are aware, a consortium of agencies and interests (FirePALS) will be pursuing a legislative change that, if passed, should clarify the District's ability to collect these costs in rates rather than pursue reimbursement from cities within which NUD provides these facilities.*

That coalition of cities, counties and utility districts worked together to draft legislation to clarify that a utility can provide hydrants and fire suppression facilities as part of its basic services to ratepayers (the so-called "FirePALS" legislation) and collect those costs in its rates. The legislation was approved in during the 2013 session and did specifically provide that utilities, including districts, could do so.

After the FirePALS legislation was passed, NUD agreed to continue to maintain the hydrants as part of their utility's functions. However, they contended that the City owed them for past hydrant charges for the period since the Lane case was decided.

Notwithstanding the Tacoma case and the FirePals legislation, NUD sent another invoice at the end of 2013 for \$754,563.42 and the City replied in the same manner as it had previously and declined to pay the invoice. NUD has indicated that they will continue to send annual invoices and the City will continue to decline to pay them. The City Attorney's Office believes that the cost of providing hydrants and other fire suppression facilities incurred before the date of the FirePals legislation are the responsibility of the district due to the course of dealing between the parties. Further, that even in the absence of the FirePals legislation, those same costs incurred going forward are also the responsibility of NUD on that same theory. However, in addition to the foregoing, the Legislation makes it clear that, even absent a contractual obligation to pay those costs, NUD can pay them. Consequently no change is needed to the franchise agreement to formalize that fact. However, the District has suggested clarifying this in the franchise agreement and formally acknowledging that NUD will not pursue collection of back charges. While the City would have no objection to this as a stand-alone proposition, in consideration of such an amendment to the franchise agreement, NUD was seeking other language changes regarding non-assumption as described below, to which the City does object.

### Street Lights

As noted during the 2015-2016 Budget process, most of the street lights in the annexation area are billed to residents through lighting districts that were established when new developments

were built when the area was unincorporated King County. Earlier in 2014, NUD notified the City that they no longer had the legal authority to form lighting districts within incorporated cities. The City Attorney's Office researched this claim and concluded that they did still have the authority to form such districts but they were not obligated to do so. The City asked that NUD continue billing the existing street utilities (see Attachment D, Budget Issue Paper regarding street lights in the annexation area). The Council has given preliminary approval to the staff's recommended approach to assuming responsibility for street lights beginning in mid-2015, which will eliminate this outstanding issue with the district.

### Utility Taxes

Historically, cities has not been allowed to impose utility taxes in utility districts located within its boundaries. Utility taxes on water, sewer, surface water, electricity, natural gas, cable and telecommunications are considered a general government revenue and collectively account for 15.4% of General Fund revenue. Franchise fees are also considered a general government revenue and, while not imposed on the same basis or through the same statutory authority, provide some level of tax equity for all City residents contributing to the support of general government services such as public safety, parks and streets. A State Court of Appeals decision, *City of Wenatchee v. Chelan County Public Utility District #1*, issued in May 2014 held that cities do have authority to impose utility taxes on utility district revenue collected within the City's boundaries (see Attachment E, MRSC Insight excerpt "Important New Court Decision on a City's Utility Tax Authority). NUD had inquired as to whether the City was interested in imposing a utility tax in lieu of the franchise fee or creating a new formula for calculating the franchise fee that would mirror the tax rate. Because this decision is from the Court of Appeals, the City is reluctant to do either of these things until the Supreme Court at some point reviews the issue and confirms taxation of one municipality by another is acceptable. Staff is recommending that no action on this be taken until such a decision occurs.

### **Current Franchise Negotiations with NUD**

The last NUD Franchise agreement term was January 1, 2009 through December 31, 2013. Based on the Council's interest in exploring a possible assumption and the number of policy issues that arose over the course of the franchise period, the City began meeting with NUD staff in 2013. Both parties agreed that the complexity of the issues were such that it was agreed that more time was needed. Staff of the City and District requested that their respective governing bodies approve a one-year extension of the franchise which was subsequently approved (see Attachment E, staff memo and Resolution 5021).

Therefore, in 2014, the City continued meeting with district staff. After the first meeting, the following list of interests and issues was developed:

- 1) *Clarify hydrant responsibility (past/current/future)*
- 2) *Provide for ongoing discussion about the possibility of Kirkland assuming all or its portion of NUD.*
  - a. *2011 Kirkland AV in District is approximately 58%, approaching 60%*
  - b. *Discuss rules of engagement, agree on legal parameters, anticipate process with language in the franchise extension agreement*

- c. Consider the interests of other cities (Lake Forest Park, Bothell, Kenmore) -- does NUD continue serving or should COK serve, or does each city take their respective parts – more research needed*
- d. Consider the timing considerations -- Kirkland is not interested in providing a five year notice now but may want to adjust franchise agreement to allow for a 3 year extension plus 5 years notice for assumption ...*
- 3) Billing of street lights – it is a valuable service the district provides and the City would like to continue for now until we can transition street lights to City*
- 4) Discuss the franchise fee calculation and the franchise fee's relationship to City's utility tax – recent case law suggests that the franchise fee can be replaced with a percentage-based fee or tax that can be uniform with the existing City's utility tax rates. Does the City want to pursue?*
- 5) Recognition that proposed/potential legislative changes may impact most of these topics.*

Over the ensuing months, City staff also evaluated the financial feasibility of assuming all or a portion of the District, and determined that, unless the entire District were assumed through an agreement between all of the cities served by NUD, assumption of the district would have a negative financial impact on the City's water/sewer utility. The City contacted Bothell, Kenmore and Lake Forest Park to determine their interest in assuming the District. There were various responses, however, not enough positive responses to merit further discussion at this time. Staff indicated to NUD that the City would not be in a position to assume the District for at least eight years, but asked whether the District would be willing to amend the Franchise agreement so that the renewal period coincided with Bothell's (the only other City with an existing water and sewer utility) at the end of 2017. This would shorten the next franchise renewal period from five years to three years.

NUD staff responded with the following email indicating that their Commissioners were willing consider this provision provided the following conditions were also included:

*There are four major obstacles to reaching a new franchise agreement. Assuming we reach agreement on these, all other provisions of the existing agreement can stay the same.*

*The "Every three-year opener with five-year notice" is acceptable if:*

- 1. The first notice cannot be given until ten years after the date of the updated franchise agreement.*

*The Bothell franchise agreement opens up for notice every three years from 12/31/2013, then 2016, 2019, 2022, 2025, etc. The City can give notice in 2025 to match the city of Bothell.*

- 2. The updated franchise will require NUD to provide future fire protection functions within its distribution system for facilities like hydrant and fire flow storage and waive its claim for past fire protection costs billed to the City.*

*According to most legal experts, the City has responsibility for the fire protection costs within city limits per the Lane decision. Even if the City doesn't agree, it will eventually take over that responsibility when it assumes control over the system. Nevertheless, the City can have the District assume that responsibility under the Firepal bill. In other words, the District can accept that responsibility if it is something we agree to do in the franchise agreement. The District cannot simply do it for no consideration. We are not asking for anything in particular; we will accept the ten-year no notice period reference in 1 above as sufficient consideration. We have already negotiated franchise containing similar terms with Kenmore to shoulder its fire protection costs.*

3. *Street Lights*

*The City is responsible for street lights in the newly annexed area based on the Okesson decision. While we understand that there may have been some issues following the annexation, this needs to get resolved. The current arrangements put both agencies at risk. We do not want to put undue pressure on the City, but the City should find a way to take over the costs of street lighting in the annexed area by the end of the first quarter of 2015.*

4. *Placeholder for discussion about the City's road restoration requirements.*

*We are not clear about the City's requirements for street paving. Section 3 makes reference to OCI*

*...Overall Condition Index (OCI)\* rating of 40 or less prior to NUD's excavation, then the area shall be restored with a permanent asphalt patch per City of Kirkland Pre-approved Plans in lieu of an asphalt street overlay...*

and

*The City of Kirkland's Overall Condition Index (OCI) rating is based upon standard pavement condition rating methodologies as recognized by the Washington State Department of Transportation (WSDOT) and the Northwest Pavement Managers Association (NWPMA).*

*We understand that the City cannot continuously update the OCI of all of its streets to keep them current. We propose that the District establish the OCI rating based on the above criteria at the time paving is needed. If the City disagrees with the District's assessment, it can provide an alternate rating within five business days of the District's submittal. If the parties cannot agree, our representatives can meet for a resolution. This allows the District to proceed with the project promptly and does not require additional work on part of the City unless there is a disagreement.*

Following receipt of this email, staff spoke with the District and indicated a preference to allow the franchise agreement to roll over as is for another five year period pending a final check-in with the City Council. The District was advised of the pending budget recommendation to assume responsibility for the lights and the question about street repair responsibility can be handled administratively between staff.

### **Recommendation**

Staff is recommending that the City take no action on the franchise agreement in 2014, effectively continuing all existing provisions for the next five year period. There is no compelling reason to amend the franchise agreement for the following reasons:

1. The street light issue will be resolved providing the City assumes responsibility for all street lights in 2015.
2. The utility tax option has still not been considered by the Supreme Court and, once it is, the City would still need to consider whether and how to replace the franchise fee with a utility tax in a way that does not negatively impact ratepayers and City revenue.
3. The City and NUD are not in agreement about the hydrant maintenance charges and this issue will remain unresolved. NUD is the only utility district we are aware of seeking back hydrant payments and, presumably, payments going forward from cities following the FirePALS legislation.
4. The financial and operational implications of assuming the district are problematic, particularly in light of the fact the City does not comprise 60% of the assessed value of the District. In addition, NUD has not indicated a desire to have that portion assumed by Kirkland, although they agreed to work with Kirkland in the best interests of the customers.
5. The District is effective in providing utility services to its customers and the City has a good working relationship on operational matters.

An alternative to "no action" would be to request another one-year extension on the current franchise and attempt to resolve the outstanding policy issues within the next year. The City can also provide a non-renewal notice before the end of 2014, which would end the current agreement at the end of five years (December 31, 2019). After that date, the City would no longer receive a franchise fee from NUD. However, assuming the notice would be given to initiate an assumption process, loss of the fee might not matter. If that is the alternative chosen and assumption is the reason for that choice, staff would prepare an ordinance in accordance with 35A.13.050 for the Council to consider at the appropriate time. However, because less than 60% of the value of the property comprising NUD territory is within Kirkland City limits, only the partial assumption could be undertaken, which would not be financially advantageous for the City or its residents.

If the Council accepts the staff recommendation, the fact that the franchise agreement is silent on some of the unresolved policy issues described above will require continued collaboration between the City and District to bring them to some resolution in the future. If needed, the franchise agreement can be amended with both parties' agreement over the course of the next five year franchise period. Staff will continue to work with District representatives regarding outstanding policy issues.

## ORDINANCE NO. 4141

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING NORTSHORE UTILITY DISTRICT, A WASHINGTON MUNICIPAL CORPORATION, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT AND MAINTAIN, REPAIR, REPLACE, OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF ITS WATER AND SEWER UTILITY BUSINESS.

WHEREAS, Northshore Utility District ("NUD") was previously granted a franchise agreement to operate within the City of Kirkland ("City") limits under ordinance number 3767, approved on December 11<sup>th</sup>, 2000; and

WHEREAS, this existing agreement needed to be updated and NUD and the City have therefore re-negotiated the agreement;

NOW THEREFORE, City Council of the City of Kirkland do ordain as follows:

Section 1. Definitions. Where used in this franchise (the "Franchise") these terms have the following meanings:

(a) "NUD" means Northshore Utility District, a Washington municipal corporation, and its respective successors and assigns.

(b) "City" means the City of Kirkland, a municipal corporation of the State of Washington, and its respective successors and assigns.

(c) "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways and rights-of-way of the City as now laid out, platted, dedicated or improved in NUD's service area within the present limits of the City.

(d) "Facilities" means tanks, meters, pipes, mains, services, valves, manholes, pressure reducing valves ("PRVs"), pump stations, meter stations, lines, and all necessary or convenient facilities and appurtenances thereto, whether the same be located over or under ground.

(e) "Ordinance" means this Ordinance No. \_\_\_\_\_, which sets forth the terms and conditions of this Franchise.

Section 2. Franchise.

A. Facilities within Franchise Area. The City does hereby grant to NUD the right, privilege, authority and franchise to:

(a) Construct, support, attach, and connect Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, through and across the Franchise Area for purposes of its water and sewer utility business as defined in RCW 82.04.065.

B. Permission Required to Enter Onto Other City Property. Nothing contained in this Ordinance is to be construed as granting permission to NUD to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City.

C. Compliance with Laws and Regulations. At all times during the term of this Franchise, NUD shall fully comply with all applicable federal, state, and local laws and regulations.

### Section 3. Non-interference of Facilities.

NUD's Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Nothing herein shall preclude NUD from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided NUD receives prior City approval, which shall not be unreasonably withheld. Whenever it is necessary for NUD, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, NUD shall, upon completion of such excavation, restore the surface of the Franchise Area to the specifications established within the City of Kirkland Public Works Policies and pre-approved plans and in accordance with standards of general applicability imposed by the City by ordinance or administrative order; provided, however, if the surface of the affected Franchise Area has an Overall Condition Index (OCI)\* rating of 40 or less prior to NUD's excavation, then the area shall be restored with a permanent asphalt patch per City of Kirkland Pre-approved Plans in lieu of an asphalt street overlay.

If NUD should fail to leave any portion of any Franchise Area so excavated in a condition that meets the City's specifications per the Public Works Policies and Standards, then, subject to the foregoing sentence, the City may after notice of not less than five (5) days to NUD, which notice shall not be required in case of an emergency, order any and all work considered necessary to restore to a safe condition that portion of the Franchise Area so excavated, and NUD shall pay to the City the reasonable cost of such work; which shall include among other things the overhead expense of the City in obtaining completion of said work. The parties agree that this provision may be renegotiated upon the request of either party.

\*The City of Kirkland's Overall Condition Index (OCI) rating is based upon standard pavement condition rating methodologies as recognized by the Washington State Department of Transportation (WSDOT) and the Northwest Pavement Managers Association (NWPMA).

B. Any surface or subsurface failure occurring during the term of this Agreement and caused by any excavation by NUD shall be repaired to the City's specifications, within fifteen (15) days or upon five (5) days written notice to NUD by the City; if NUD fails to so timely repair, then the City shall order all work necessary to restore the damaged area to a safe and acceptable condition and NUD shall pay the reasonable costs of such work to the City.

#### Section 4. Relocation of Facilities.

A. Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of any water, sanitary sewer or storm drainage line, lighting, signalization, sidewalk improvement, pedestrian amenities, or other public street improvement [for purposes other than those described in section 4(B) below] and such project requires the relocation of NUD's then existing Facilities within the Franchise Area, the City shall:

(a) Provide NUD, at least ninety (90) days prior to the commencement of such project, written notice that a project is expected to require relocation; and

(b) Provide NUD with reasonable plans and specifications for such grading, widening, or construction and a proposed new location within the Franchise Area for NUD's Facilities.

After receipt of such notice and such plans and specifications, NUD shall relocate such Facilities within the Franchise Area so as to accommodate such street and utility improvement project; provided, however, NUD may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocations. The City shall within a reasonable time evaluate such alternatives and advise NUD in writing whether one or more of the alternatives is suitable to accommodate work that would otherwise necessitate relocation of the Facilities. If so requested by the City, NUD shall submit such additional information as is reasonably necessary to assist the City in making such evaluation. The City shall give each alternative full and fair consideration. In the event the City ultimately reasonably determines that there is no other reasonable or feasible alternative, then NUD shall relocate its Facilities as otherwise provided in this Section 4. The City shall cooperate with NUD to designate a substitute location for its Facilities within the Franchise Area. City will establish a date by which Facilities will be relocated, which date will be not less than sixty (60) days after written notice to NUD as to the facility to be relocated. NUD must finish relocation of each such Facility by the date so established. The cost of relocating such Facilities existing within the present limits of the City shall be paid as follows:

- (a) if the relocation occurs within six (6) years after NUD initially constructed such Facility, then the relocation shall be at the City's sole cost;
- (b) if the relocation occurs more than six (6) years but within ten (10) years after NUD initially constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and NUD shall pay the remaining fifty percent (50%); and
- (c) if the relocation occurs more than ten (10) years after NUD initially constructed such Facility, then the relocation shall be at NUD's sole cost.

- (d) For the purpose of planning, NUD and the City shall provide each other with a copy of their respective current adopted Capital Improvement Plan annually and upon request by the other party.

B. Whenever any person or entity, other than the City, requires the relocation of NUD's Facilities to accommodate the work of such person or entity within the Franchise Area, or whenever the City requires the relocation of NUD's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then NUD shall have the right as a condition of such relocation to require such person or entity to:

- (a) make payment to NUD at a time and upon terms acceptable to NUD for any and all costs and expense incurred by NUD in the relocation of NUD's Facilities; and
- (b) protect, defend, indemnify and save NUD harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of NUD's Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the relocation of NUD's Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of NUD's Facilities.

C. Any condition or requirement imposed by the City upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which necessitates the relocation of NUD's Facilities within the Franchise Area shall be subject to the provisions of subsection 4(B). However, in the event the City reasonably determines (and promptly notifies NUD in writing of such determination) that the primary purpose of imposing such condition or requirement upon such person or entity which necessitates such relocation is to cause the construction of an improvement on the City's behalf and in a manner consistent with City approved improvement plans [as described in 4(A) above] within a segment of the Franchise Area then:

NUD shall require only those costs and expenses incurred by NUD in integrating and connecting such relocated Facilities with NUD's other Facilities to be paid to NUD by such person or entity, and NUD shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with the provisions of subsection 4(A) above.

The provisions of this Section 4(C) shall in no manner preclude or restrict NUD from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by such person or entity are not or will not become City owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

E. This Section 4 shall govern all relocations of NUD's Facilities required in accordance with this Franchise. Any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other rights not in the Franchise Area, excluding rights arising under any prior King County franchise, shall be borne by the City. Costs for location or relocation of any Facilities existing under any prior King County franchise shall be borne solely by NUD.

F. NUD recognizes the need for the City to maintain adequate width for installation and maintenance of City owned utilities such as, but not limited to, sanitary sewer, water, storm drainage and telecommunication facilities. Thus, the City reserves the right to maintain reasonable clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each right-of-way segment shall be noted and conditioned with the issuance of each right-of-way permit. If adequate clear zones are unable to be achieved on a particular right-of-way, NUD shall locate in an alternate right-of-way, obtain easements from private property owners, or propose alternate construction methods, which maintain and/or enhance the existing clear zones.

G. For the purpose of this Section 4, a project or improvement is considered to be caused by the City [as described in 4(A) above] if it is permitted by the City and both of the following conditions exist:

1. the City is lead agency for the project or improvement, and
2. the City is responsible for over 50% of the overall costs of said improvement or project, which 50%, if applicable, includes any grant money received from another entity for the project.

However, regardless of its percentage of participation, the City will never be liable for NUD's costs of location or relocation simply because a participating agency that would have been responsible for those costs was able to avoid paying NUD for those costs on a claim of exemption under state or federal law so long as the exempt agency was the entity to initiate the project.

Section 5. Indemnification. NUD shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of NUD or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted NUD in this Franchise; provided, however, such indemnification shall not extend to injury or damage caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify NUD thereof, and NUD shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, the City shall likewise promptly notify NUD

thereof, and NUD shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

Section 6. Default. If NUD shall fail to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon NUD a written order to so comply within thirty-days from the date such order is received by NUD. If NUD is not in compliance with this Franchise after expiration of said thirty-day period, the City may act to remedy the violation and may charge the costs and expenses of such action to NUD. The City may act without the thirty-day notice in case of an emergency. The City may in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which NUD will have an opportunity to be heard) on the impending ordinance is given to NUD, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by NUD cannot be corrected with due diligence within said thirty (30) day period (NUD's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which NUD may so comply shall be extended for such time as may be reasonably necessary and so long as NUD commences promptly and diligently to effect such compliance), provided good faith dispute does not exist concerning such compliance.

In addition to other remedies provided herein, if NUD is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending NUD right-of-way use permits until compliance is achieved.

Section 7. Non-exclusive Franchise. This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area, which do not interfere with NUD's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 8. Franchise Term. Subject to the provisions of Section 9 and 10 below, this Franchise is and shall remain in full force and effect from January 1, 2009 until December 31, 2013, provided that on January 1, 2014, and on January 1 every five (5) years thereafter, the term shall automatically be extended for an additional five (5) years, unless either NUD or the City gives the other party written notice of non-renewal prior to any such renewal date, in which case this Franchise shall terminate five (5) years after such renewal date; and provided further, however, NUD shall have no rights under this Franchise nor shall NUD be bound by the terms and conditions of this Franchise unless NUD shall, within thirty (30) days after the passage date of the Ordinance, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney. On any renewal date, the City has the option of extending the term for more than 5 years but all subsequent renewal dates would remain automatically five (5) years unless the City again opted to extend any of them for more than five (5) years.

Section 9. Non-assumption. In consideration for the franchise fee and acceptance of the other terms and conditions of this Franchise, the City agrees that it will not exercise its statutory authority to assume jurisdiction over NUD or any NUD responsibilities, property, facilities or equipment within the City's corporate limits while this Franchise is in effect.

Section 10. Franchise Fee. In consideration for the rights granted NUD under this Agreement for Facilities in the Franchise Area, NUD agrees to pay to the City an annual franchise fee of \$3.25 per foot of the ~~126,627~~ 125,668 feet of the roads, streets, avenues, alleys, highways and rights-of-way of the City as now laid out, platted, dedicated or improved in NUD's service area within the present limits of the City. For 2009 this results in a fee of ~~\$411,538~~ \$408,421 which fee will be raised by inclusion in NUD's rate calculation for ratepayers within City limits. The fee will be adjusted for inflation each January 1<sup>st</sup> thereafter during the term of this agreement using the June-to-June CPI-U index for the Seattle - Tacoma - Bremerton area for the preceding year, as the CPI-U more closely reflects the changes in real estate value. Said annual Franchise Fee shall be paid in four equal quarterly installments. Fees for each calendar quarter shall be due thirty (30) days following the end of the calendar quarter. Should NUD be prevented by judicial or legislative action from paying any or all of the franchise fee, NUD shall be excused from paying that portion of the franchise fee. Should a court of competent jurisdiction declare, or a change in law make the franchise fee invalid, in whole or in part, or should a court of competent jurisdiction hold that the franchise fee is in violation of a pre-existing contractual obligation of NUD, then NUD's obligation to pay the fee to the City under this Section shall be terminated in accordance with and to the degree required to comply with such court action. NUD agrees that the franchise fee established by this Section is appropriate and that NUD will not be a party to or otherwise support legal or legislative action intended to result in judicial determinations or legislative action referred to above. City shall defend, indemnify and hold NUD harmless from and against any and all claims, suits, actions or liabilities (including costs and attorneys' fees) incurred or asserted against NUD directly or indirectly arising out of NUD's payment of the franchise fee as provided in this Franchise. If new roads, streets, avenues, alleys, highways and rights-of-way of the City are added to the Franchise Area, the City will notify NUD no more than once per year of the number of feet added, which amount will then be added to the calculation of the franchise fee for the next calendar quarter.

Section 11. Compliance With Codes And Regulations.

A. The rights, privileges and authority herein granted are subject to and governed by this ordinance and all other applicable ordinances and codes of the City of Kirkland, as they now exist or may hereafter be amended. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by NUD shall be performed by NUD in accordance with applicable federal, state and city rules and regulations, including the City Public Works Policies and Pre-approved Plans, and any required permits, licenses or fees, and applicable safety standards then in effect or any Memorandum of Understanding with NUD.

B. Upon written inquiry, NUD shall provide a specific reference to either the federal, state or local law or the Washington Utilities and Transportation Commission ("WUTC") order or action establishing a basis for NUD's actions related to a specific franchise issue.

C. In the event that any territory served by NUD is annexed to the City after the effective date of this Franchise, this franchise agreement shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this franchise agreement for the Franchise Area, whichever is longer. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation. The first franchise fee for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next calendar quarter and paid to the City at the same time as the fee for the Franchise Area is paid for that quarter.

Section 12. Location of Facilities and Equipment. With the exception of components that are traditionally installed above ground such as fire hydrants, blow-offs, vault lids, risers and utility markers, all Facilities and equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such Facilities may be installed above ground if so authorized by the City, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with the provisions of the City's Land Use Code and applicable development pre-approved plans.

Section 13. Record of Installations and Service. With respect to excavations by NUD and the City within the Franchise Area, NUD and the City shall each comply with its respective obligations pursuant to Chapter 19.122, RCW and any other applicable state law.

Upon written request of the City, NUD shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

As-built drawings of the precise location of any Facilities placed by NUD in any street, alley, avenue, highway, easement, etc., shall be made available to the City within ten (10) working days of request.

Section 14. Shared Use of Excavations. NUD and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. NUD and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

If at any time, or from time to time, either NUD, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

(a) Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. The parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

The City reserves the right to not allow open trenching for five (5) years following a street overlay or improvement project. NUD shall be given written notice at least ninety (90) days prior to the commencement of the project. Required trenching due to an emergency will not be subject to five (5) year street trenching moratoriums.

The City reserves the right to require NUD to joint trench with other facilities if both parties are anticipating trenching within the same portion of the Franchise Area and provided that the terms of (a) and (b) above are met.

Section 15. Insurance. NUD shall maintain in full force and effect throughout the term of this Franchise, a minimum of One Million Dollars (\$ 1,000,000.00) liability insurance for property damage and bodily injury.

The City shall be named as an additional insured on any policy of liability insurance obtained by NUD for the purpose of complying with the requirements of this Section.

In satisfying the insurance requirement set forth in this section, NUD may self-insure against such risks in such amounts as are consistent with good utility practice. NUD shall provide the City with sufficient written evidence, the sufficiency of which shall be determined at the reasonable discretion of the City, upon request, that such insurance (or self-insurance) is being so maintained by NUD. Such written evidence shall include, to the extent available from NUD's insurance carrier, a written certificate of insurance with respect to any insurance maintained by NUD in compliance with this Section.

Section 16. Tariff Changes. If NUD shall file, pursuant to Chapter 80.28 RCW, with the WUTC (or its successor) any tariff affecting the City's rights arising under this Franchise, NUD shall give the City Clerk written notice thereof within five (5) days of the date of such filing.

Section 17. Assignment. All of the provisions, conditions, and requirements herein contained shall be binding upon NUD, and no right, privilege, license or authorization granted to NUD hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which

the City may not unreasonably withhold, condition or delay. Notwithstanding the foregoing, NUD may assign this agreement to an affiliate, parent or subsidiary or as part of any corporate financing, reorganization or refinancing which does not require assignment to any but an affiliate, parent or subsidiary without the consent of, but upon notice to, the City.

Section 18. Notice. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by facsimile transmission with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) business days after the deposit thereof in the United States Mail. If such notice is sent by facsimile transmission, it shall be deemed given at the time of the sender's receipt of electronic confirmation. Each such notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To City:                      Multimedia Communications Manager  
City of Kirkland  
123 Fifth Avenue  
Kirkland, WA 98033-6169  
Fax: (425) 576-2921

To NUD:                      General Manager  
Northshore Utility District  
6830 NE 185<sup>th</sup> St.  
Kenmore, WA 98028  
Fax:(425) 398-4435

With copy to:              Kinnon Williams  
Williams & Williams, PSC  
18806 Bothel Way NE Bothell, Washington 98011-1933  
Fax: (425) 485-8449

Any party hereto may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

Section 19. Miscellaneous. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are

for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

In addition to the franchise fee due under Section 10 above, NUD shall pay for the City's reasonable administrative costs in drafting and processing this franchise agreement and all work related thereto. NUD shall further be subject to all permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the laws of the City. Where the City incurs cost and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, NUD shall pay such costs and expenses directly to the City. In addition to the above, NUD shall promptly reimburse the City for any and all costs it reasonably incurs in response to any emergency involving NUD's facilities.

City has the right, but not the obligation, to take over control and ownership of Franchisee's Facilities in the Franchise Area, specifically including the water and sewer plant network, without compensation, if (1) such facilities are abandoned; or (2) in the event this Franchise is terminated and Franchisee does not remove such facilities at its own expense within a reasonable period of time. Furthermore, the City is specifically interested in retaining abandoned water and sewer lines for use as conduit for communication purposes and NUD shall notify the City at least 180 days prior to abandonment of any water or sewer line.

This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise, and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 5 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by NUD of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

- (a) references this Franchise; and
- (b) states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document that does not comply with subsections (a) and (b) referenced immediately above, the provisions of this Franchise shall control.

This Franchise is subject to the provisions of any applicable tariff now or hereafter on file with the WUTC or its successor. In the event of any conflict of inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

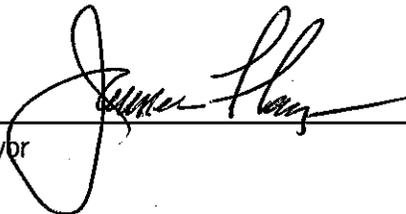
Section 20. Termination of Prior Franchise Agreement. Upon NUD's acceptance of this franchise agreement in accordance with Section 8 above, the prior Franchise Agreement negotiated in December 2000 and previously approved under City Ordinance No. 3767 and NUD Resolution No. 2000-11-20 shall be deemed terminated on December 31, 2008. The terms and conditions of that 2000 Franchise Agreement shall have no further force and effect after that date.

Section 21. Effective Date. The franchise agreement established in this ordinance shall go into effect and become the new NUD Franchise Agreement as of January 1, 2009.

Section 22. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in regular meeting this 21<sup>st</sup> day of October, 2008.

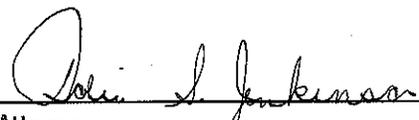
Signed in authentication thereof this 21<sup>st</sup> day of October, 2008.

  
\_\_\_\_\_  
Mayor

Attest:

Acting   
\_\_\_\_\_  
City Clerk

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

PUBLICATION SUMMARY OF  
ORDINANCE NO. 4141

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING NORTHSORE UTILITY DISTRICT, A WASHINGTON MUNICIPAL CORPORATION, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, AND MAINTAIN, REPAIR, REPLACE, REMOVE AND OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF ITS WATER AND SEWER UTILITY BUSINESS.

SECTIONS 1-15. Provide for: the grant to Northshore Utility District of a franchise for a water and sewer utility business for 10 years on specified terms and conditions with the possibility of 5 year or, at the City's discretion, longer, extensions thereafter, payment of franchise fees to the City and non-assumption of NUD facilities within Kirkland for as long as the franchise is in effect or, in the event of annexation, as long as required by RCW 35A.14.900, whichever is later.

SECTIONS 16-21. Sets forth administrative provisions and establishes the effective date of this new franchise.

SECTION 21. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The ordinance was passed by the Kirkland City Council at its regular meeting on the 21st day of October, 2008.

I certify that the foregoing is a summary of Ordinance 4141 approved by the Kirkland City Council for summary publication.

Acting Karen R. Juel  
City Clerk

## **Chapter 35.13A RCW**

# **WATER OR SEWER DISTRICTS — ASSUMPTION OF JURISDICTION**

[Chapter Listing](#) | [RCW Dispositions](#)

### **RCW Sections**

- [35.13A.010](#) Definitions.
- [35.13A.020](#) Assumption authorized -- Disposition of properties and rights -- Outstanding indebtedness -- Management and control.
- [35.13A.030](#) Assumption of control if sixty percent or more of area or valuation within city.
- [35.13A.0301](#) Assumption of water-sewer district before July 1, 1999 -- Limitations.
- [35.13A.040](#) Assumption of control if less than sixty percent of area or valuation within city.
- [35.13A.050](#) Territory containing facilities within or without city -- Duties of city or district -- Rates and charges -- Assumption of responsibility -- Outstanding indebtedness -- Properties and rights.
- [35.13A.060](#) District in more than one city -- Assumption of responsibilities -- Duties of cities.
- [35.13A.070](#) Contracts.
- [35.13A.080](#) Dissolution of water district or sewer district.
- [35.13A.090](#) Employment and rights of district employees.
- [35.13A.100](#) Assumption of substandard water system -- Limited immunity from liability.
- [35.13A.111](#) Assumption of water-sewer district with fewer than two hundred fifty customers.
- [35.13A.900](#) Severability -- 1971 ex.s. c 95.

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### **35.13A.010**

#### **Definitions.**

Whenever used in this chapter, the following words shall have the following meanings:

(1) The words "district," "water district," and "sewer district" shall mean a "water-sewer district" as that term is used in Title

[57](#) RCW.

(2) The word "city" shall mean a city or town of any class and shall also include any code city as defined in chapter [35A.01](#) RCW.

(3) The word "indebtedness" shall include general obligation, revenue, and special indebtedness and temporary, emergency, and interim loans.

[1998 c 326 § 1; 1971 ex.s. c 95 § 1.]

**Notes:**

**Effective date -- 1998 c 326:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 3, 1998]." [1998 c 326 § 4.]

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**35.13A.020**

**Assumption authorized — Disposition of properties and rights — Outstanding indebtedness — Management and control. (*Effective until January 1, 2015.*)**

(1) Except as provided in RCW

[35.13B.030](#), whenever all of the territory of a district is included within the corporate boundaries of a city, the city legislative body may adopt a resolution or ordinance to assume jurisdiction over all of the district.

(2) Upon the assumption, all real and personal property, franchises, rights, assets, taxes levied but not collected for the district for other than indebtedness, water, sewer, and drainage facilities, and all other facilities and equipment of the district shall become the property of the city subject to all financial, statutory, or contractual obligations of the district for the security or performance of which the property may have been pledged. The city, in addition to its other powers, shall have the power to manage, control, maintain, and operate the property, facilities and equipment and to fix and collect service and other charges from owners and occupants of properties so served by the city, subject, however, to any outstanding indebtedness, bonded or otherwise, of the district payable from taxes, assessments, or revenues of any kind or nature and to any other contractual obligations of the district.

(3) The city may by resolution or ordinance of its legislative body, assume the obligation of paying such district indebtedness and of levying and of collecting or causing to be collected the district taxes, assessments, and utility rates and charges of any kind or nature to pay and secure the payment of the indebtedness, according to all of the terms, conditions and covenants incident to the indebtedness, and shall assume and perform all other outstanding contractual obligation of the district in accordance with all of their terms, conditions, and covenants. An assumption shall not be deemed to impair the obligation of any indebtedness or other contractual obligation. During the period until the outstanding indebtedness of the district has been discharged, the territory of the district

and the owners and occupants of property therein, shall continue to be liable for its and their proportionate share of the indebtedness, including any outstanding assessments levied within any local improvement district or utility local improvement district thereof. The city shall assume the obligation of causing the payment of the district's indebtedness, collecting the district's taxes, assessments, and charges, and observing and performing the other district contractual obligations. The legislative body of the city shall act as the officers of the district for the purpose of certifying the amount of any property tax to be levied and collected therein, and causing service and other charges and assessments to be collected from the property or owners or occupants thereof, enforcing the collection and performing all other acts necessary to ensure performance of the district's contractual obligations in the same manner and by the same means as if the territory of the district had not been included within the boundaries of a city.

When a city assumes the obligation of paying the outstanding indebtedness, and if property taxes or assessments have been levied and service and other charges have accrued for this purpose but have not been collected by the district prior to the assumption, the same when collected shall belong and be paid to the city and be used by the city so far as necessary for payment of the indebtedness of the district existing and unpaid on the date the city assumes the indebtedness. Any funds received by the city which have been collected for the purpose of paying any bonded or other indebtedness of the district, shall be used for the purpose for which they were collected and for no other purpose. Any outstanding indebtedness shall be paid as provided in the terms, conditions, and covenants of the indebtedness. All funds of the district on deposit with the county treasurer at the time of title transfer shall be used by the city solely for the benefit of the assumed utility and shall not be transferred to or used for the benefit of the city's general fund.

[2010 c 102 § 6; 1999 c 153 § 28; 1998 c 326 § 2; 1971 ex.s. c 95 § 2.]

**Notes:**

**Application -- Expiration date -- 2010 c 102:** See notes following RCW [35.13B.010](#).

**Part headings not law -- 1999 c 153:** See note following RCW [57.04.050](#).

**Effective date -- 1998 c 326:** See note following RCW [35.13A.010](#).

## **35.13A.020**

### **Assumption authorized — Disposition of properties and rights — Outstanding indebtedness — Management and control. (*Effective January 1, 2015.*)**

(1) Whenever all of the territory of a district is included within the corporate boundaries of a city, the city legislative body may adopt a resolution or ordinance to assume jurisdiction over all of the district.

(2) Upon the assumption, all real and personal property, franchises, rights, assets, taxes levied but not collected for the district for other than indebtedness, water, sewer, and drainage facilities, and all other facilities and equipment of the district shall become the property of the city subject to all financial, statutory, or contractual obligations of the district for the security or performance of which the property may have been pledged. The city, in addition to its other powers, shall have the power to manage, control, maintain, and operate the property, facilities and equipment and to fix and collect service and other charges from owners and occupants of properties so served by the city, subject, however, to any outstanding indebtedness, bonded or otherwise, of the district payable from taxes, assessments, or revenues of any kind or nature and to any other contractual obligations of the district.

(3) The city may by resolution or ordinance of its legislative body, assume the obligation of paying such district indebtedness and of levying and of collecting or causing to be collected the district taxes, assessments, and utility rates and charges of any kind or nature to pay and secure the payment of the indebtedness, according to all of the terms, conditions and covenants incident to the indebtedness, and shall assume and perform all other outstanding contractual obligation of the district in accordance with all of their terms, conditions, and covenants. An assumption shall not be deemed to impair the obligation of any indebtedness or other contractual obligation. During the period until the outstanding indebtedness of the district has been discharged, the territory of the district and the owners and occupants of property therein, shall continue to be liable for its and their proportionate share of the indebtedness, including any outstanding assessments levied within any local improvement district or utility local improvement district thereof. The city shall assume the obligation of causing the payment of the district's indebtedness, collecting the district's taxes, assessments, and charges, and observing and performing the other district contractual obligations. The legislative body of the city shall act as the officers of the district for the purpose of certifying the amount of any property tax to be levied and collected therein, and causing service and other charges and assessments to be collected from the property or owners or occupants thereof, enforcing the collection and performing all other acts necessary to ensure performance of the district's contractual obligations in the same manner and by the same means as if the territory of the district had not been included within the boundaries of a city.

When a city assumes the obligation of paying the outstanding indebtedness, and if property taxes or assessments have been levied and service and other charges have accrued for this purpose but have not been collected by the district prior to the assumption, the same when collected shall belong and be paid to the city and be used by the city so far as necessary for payment of the indebtedness of the district existing and unpaid on the date the city assumes the indebtedness. Any funds received by the city which have been collected for the purpose of paying any bonded or other indebtedness of the district, shall be used for the purpose for which they were collected and for no other purpose. Any outstanding indebtedness shall be paid as provided in the terms, conditions, and covenants of the indebtedness. All funds of the district on deposit with the county treasurer at the time of title transfer shall be used by the city solely for the benefit of the assumed utility and shall not be transferred to or used for the benefit of the city's general fund.

[1999 c 153 § 28; 1998 c 326 § 2; 1971 ex.s. c 95 § 2.]

**Notes:**

**Part headings not law -- 1999 c 153:** See note following RCW [57.04.050](#).

**Effective date -- 1998 c 326:** See note following RCW [35.13A.010](#).

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**35.13A.030**

**Assumption of control if sixty percent or more of area or valuation within city. (*Effective until January 1, 2015.*)**

Except as provided in RCW

[35.13B.030](#), whenever a portion of a district equal to at least sixty percent of the area or sixty percent of the assessed valuation of the real property lying within such district, is included within the corporate boundaries of a city, the city may assume by ordinance the full and complete management and control of that portion of the entire district not included within another city, whereupon the provisions of RCW [35.13A.020](#) shall be operative; or the city may proceed directly under the provisions of RCW [35.13A.050](#).

[2010 c 102 § 7; 1999 c 153 § 29; 1971 ex.s. c 95 § 3.]

**Notes:**

**Application -- Expiration date -- 2010 c 102:** See notes following RCW [35.13B.010](#).

**Part headings not law -- 1999 c 153:** See note following RCW [57.04.050](#).

**35.13A.030**

**Assumption of control if sixty percent or more of area or valuation within city. (*Effective January 1, 2015.*)**

Whenever a portion of a district equal to at least sixty percent of the area or sixty percent of the assessed valuation of the real property lying within such district, is included within the corporate boundaries of a city, the city may assume by ordinance the full and complete management and control of that portion of the entire district not included within another city, whereupon the provisions of RCW [35.13A.020](#) shall be operative; or the city may proceed directly under the provisions of RCW [35.13A.050](#).

[1999 c 153 § 29; 1971 ex.s. c 95 § 3.]

**Notes:**

Part headings not law -- 1999 c 153: See note following RCW [57.04.050](#).

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### **35.13A.0301**

#### **Assumption of water-sewer district before July 1, 1999 — Limitations.**

During the period commencing with April 3, 1998, and running through July 1, 1999, a city may not assume jurisdiction of all or a portion of a water-sewer district under RCW

[35.13A.030](#) or [35.13A.040](#), unless voters of the entire water-sewer district approve a ballot proposition authorizing the assumption under general election law with the city paying for the election costs, and during the same period a water-sewer district may not:

(1) Merge or consolidate with another water-sewer district unless each city that is partially included within any of the districts proposing to merge or consolidate indicates that it has no interest in assuming jurisdiction of the district; or

(2) Take any action that would establish different contractual obligations, requirements for retiring indebtedness, authority to issue debt in parity with the district's existing outstanding indebtedness, rates of compensation, or terms of employment contracts, if a city assumes jurisdiction of all or a portion of the district. Nothing in this subsection shall be construed to prevent a district from issuing obligations on a parity with its outstanding obligations, to repeat terms and conditions of obligations provided with respect to earlier parity obligations, or to provide covenants that are customary for obligations of similar utilities whether those utilities are operated by cities or special purpose districts.

[1998 c 326 § 3.]

#### **Notes:**

**Effective date -- 1998 c 326:** See note following RCW [35.13A.010](#).

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### **35.13A.040**

#### **Assumption of control if less than sixty percent of area or valuation within city. (*Effective until January 1, 2015.*)**

Except as provided in RCW

[35.13B.030](#), whenever the portion of a district included within the corporate boundaries of a city is less than sixty percent of the area of the district and less than sixty percent of the assessed valuation of the real property within the district, the city may elect to proceed under the provisions of RCW [35.13A.050](#).

[2010 c 102 § 8; 1999 c 153 § 30; 1971 ex.s. c 95 § 4.]

**Notes:**

**Application -- Expiration date -- 2010 c 102:** See notes following RCW [35.13B.010](#).

**Part headings not law -- 1999 c 153:** See note following RCW [57.04.050](#).

## **35.13A.040**

### **Assumption of control if less than sixty percent of area or valuation within city. (*Effective January 1, 2015.*)**

Whenever the portion of a district included within the corporate boundaries of a city is less than sixty percent of the area of the district and less than sixty percent of the assessed valuation of the real property within the district, the city may elect to proceed under the provisions of RCW [35.13A.050](#).

[1999 c 153 § 30; 1971 ex.s. c 95 § 4.]

**Notes:**

**Part headings not law -- 1999 c 153:** See note following RCW [57.04.050](#).

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## **35.13A.050**

### **Territory containing facilities within or without city — Duties of city or district — Rates and charges — Assumption of responsibility — Outstanding indebtedness — Properties and rights.**

When electing under RCW

[35.13A.030](#) or [35.13A.040](#) to proceed under this section, the city may assume, by ordinance, jurisdiction of the district's responsibilities, property, facilities and equipment within the corporate limits of the city: PROVIDED, That if on the effective date of such an ordinance the territory of the district included within the city contains any facilities serving or designed to serve any portion of the district outside the corporate limits of the city or if the territory lying within the district and outside the city contains any facilities serving or designed to serve territory included within the city (which facilities are hereafter in this section called the "serving facilities"), the city or district shall for the economically useful life of any such serving facilities make available sufficient capacity therein to serve the sewage or water requirements of such territory, to the extent that such facilities were

designed to serve such territory at a rate charged to the municipality being served which is reasonable to all parties.

In the event a city proceeds under this section, the district may elect upon a favorable vote of a majority of all voters within the district voting upon such propositions to require the city to assume responsibility for the operation and maintenance of the district's property, facilities and equipment throughout the entire district and to pay the city a charge for such operation and maintenance which is reasonable under all of the circumstances.

A city acquiring property, facilities and equipment under the provisions of this section shall acquire such property, facilities and equipment, and fix and collect service and other charges from owners and occupants of properties served by the city, subject, to any contractual obligations of the district which relate to the property, facilities, or equipment so acquired by the city or which are secured by taxes, assessments or revenues from the territory of the district included within the city. In such cases, the property included within the city and the owners and occupants thereof shall continue to be liable for payment of its and their proportionate share of any outstanding district indebtedness. The district and its officers shall continue to levy taxes and assessments on and to collect service and other charges from such property, or owners or occupants thereof, to enforce such collections, and to perform all other acts necessary to insure performance of the district's contractual obligations in the same manner and by the same means as if the territory of the district had not been included within the boundaries of a city.

[1971 ex.s. c 95 § 5.]

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### **35.13A.060**

#### **District in more than one city — Assumption of responsibilities — Duties of cities.**

Whenever more than one city, in whole or in part, is included within a district, the city which has within its boundaries sixty percent or more of the area of the assessed valuation of the district (in this section referred to as the "principal city") may, with the approval of any other city containing part of such district, assume responsibility for operation and maintenance of the district's property, facilities and equipment within such other city and make and enforce such charges for operation, maintenance and retirement of indebtedness as may be reasonable under all the circumstances.

Any other city having less than sixty percent in area or assessed valuation of such district, within its boundaries may install facilities and create local improvement districts or otherwise finance the cost of installation of such facilities and if such facilities have been installed in accordance with reasonable standards fixed by the principal city, such other city may connect such facilities to the utility system of such district operated by the principal city upon providing for payment by the owners or occupants of properties

served thereby, of such charges established by the principal city as may be reasonable under the circumstances.

[1999 c 153 § 31; 1971 ex.s. c 95 § 6.]

**Notes:**

**Part headings not law -- 1999 c 153:** See note following RCW [57.04.050](#).

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**35.13A.070**

**Contracts.**

Notwithstanding any provision of this chapter to the contrary, one or more cities and one or more districts may, through their legislative authorities, authorize a contract with respect to the rights, powers, duties, and obligation of such cities, or districts with regard to the use and ownership of property, the providing of services, the maintenance and operation of facilities, allocation of cost, financing and construction of new facilities, application and use of assets, disposition of liabilities and debts, the performance of contractual obligations, and any other matters arising out of the inclusion, in whole or in part, of the district or districts within any city or cities, or the assumption by the city of jurisdiction of a district under \*RCW

[35.13A.110](#). The contract may provide for the furnishing of services by any party thereto and the use of city or district facilities or real estate for such purpose, and may also provide for the time during which such district or districts may continue to exercise any rights, privileges, powers, and functions provided by law for such district or districts as if the district or districts or portions thereof were not included within a city or were not subject to an assumption of jurisdiction under \*RCW [35.13A.110](#), including but not by way of limitation, the right to promulgate rules and regulations, to levy and collect special assessments, rates, charges, service charges, and connection fees, to adopt and carry out the provisions of a comprehensive plan, and amendments thereto, for a system of improvements, and to issue general obligation bonds or revenue bonds in the manner provided by law. The contract may provide for the transfer to a city of district facilities, property, rights, and powers as provided in RCW [35.13A.030](#), [35.13A.050](#), and \*[35.13A.110](#), whether or not sixty percent or any of the area or assessed valuation of real estate lying within the district or districts is included within such city. The contract may provide that any party thereto may authorize, issue, and sell revenue bonds to provide funds for new water or sewer improvements or to refund any water revenue, sewer revenue, or combined water and sewer revenue bonds outstanding of any city, or district which is a party to such contract if such refunding is deemed necessary, providing such refunding will not increase interest costs. The contract may provide that any party thereto may authorize and issue, in the manner provided by law, general obligation or revenue bonds of like amounts, terms, conditions, and covenants as the outstanding bonds of any other party to the contract, and such new bonds may be substituted or exchanged for such outstanding bonds. However, no such exchange or

substitution shall be effected in such a manner as to impair the obligation or security of any such outstanding bonds.

[1997 c 426 § 2; 1971 ex.s. c 95 § 7.]

**Notes:**

\*Reviser's note: RCW [35.13A.110](#) expired December 31, 1998.

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**35.13A.080**

**Dissolution of water district or sewer district.**

In any of the cases provided for in RCW

[35.13A.020](#), [35.13A.030](#), [35.13A.050](#), and \*[35.13A.110](#), and notwithstanding any other method of dissolution provided by law, dissolution proceedings may be initiated by either the city or the district, or both, when the legislative body of the city and the governing body of the district agree to, and petition for, dissolution of the district.

The petition for dissolution shall be signed by the chief administrative officer of the city and the district, upon authorization of the legislative body of the city and the governing body of the district, respectively and such petition shall be presented to the superior court of the county in which the city is situated.

If the petition is thus authorized by both the city and district, and title to the property, facilities, and equipment of the district has passed to the city pursuant to action taken under this chapter, all indebtedness and local improvement district or utility local improvement district assessments of the district have been discharged or assumed by and transferred to the city, and the petition contains a statement of the distribution of assets and liabilities mutually agreed upon by the city and the district and a copy of the agreement between such city and the district is attached thereto, a hearing shall not be required and the court shall, if the interests of all interested parties have been protected, enter an order dissolving the district.

In any of the cases provided for in RCW [35.13A.020](#), [35.13A.030](#), and \*[35.13A.110](#), if the petition for an order of dissolution is signed on behalf of the city alone or the district alone, or there is no mutual agreement on the distribution of assets and liabilities, the superior court shall enter an order fixing a hearing date not less than sixty days from the day the petition is filed, and the clerk of the court of the county shall give notice of such hearing by publication in a newspaper of general circulation in the district once a week for three successive weeks and by posting in three public places in the district at least twenty-one days before the hearing. The notice shall set forth the filing of the petition, its purposes, and the date and place of hearing thereon.

After the hearing the court shall enter its order with respect to the dissolution of the district. If the court finds that such district should be dissolved and the functions

performed by the city, the court shall provide for the transfer of assets and liabilities to the city. The court may provide for the dissolution of the district upon such conditions as the court may deem appropriate. A certified copy of the court order dissolving the district shall be filed with the county auditor. If the court does not dissolve the district, it shall state the reasons for declining to do so.

[1997 c 426 § 3; 1971 ex.s. c 95 § 8.]

**Notes:**

\*Reviser's note: RCW [35.13A.110](#) expired December 31, 1998.

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**35.13A.090**

**Employment and rights of district employees.**

Whenever a city acquires all of the facilities of a district, pursuant to this chapter, such a city shall offer to employ every full time employee of the district who is engaged in the operation of such a district's facilities on the date on which such city acquires the district facilities. When a city acquires any portion of the facilities of such a district, such a city shall offer to employ full time employees of the district as of the date of the acquisition of the facilities of the district who are not longer needed by the district.

Whenever a city employs a person who was employed immediately prior thereto by the district, arrangements shall be made:

(1) For the retention of all sick leave standing to the employee's credit in the plan of such district.

(2) For a vacation with pay during the first year of employment equivalent to that to which he or she would have been entitled if he or she had remained in the employment of the district.

[2009 c 549 § 2011; 1999 c 153 § 32; 1971 ex.s. c 95 § 9.]

**Notes:**

Part headings not law -- 1999 c 153: See note following RCW [57.04.050](#).

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**35.13A.100**

**Assumption of substandard water system — Limited immunity from liability.**

A city assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the city has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith.

[1994 c 292 § 5.]

**Notes:**

**Findings -- Intent -- 1994 c 292:** See note following RCW [57.04.050](#).

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**35.13A.111**

**Assumption of water-sewer district with fewer than two hundred fifty customers.**

The board of commissioners of a water-sewer district, with fewer than two hundred fifty customers on July 24, 2005, and the city council of a code city with a population greater than one hundred thousand on July 24, 2005, may provide for assumption by the city of the district in accordance with RCW

[35.13A.020](#), except as provided herein, pursuant to the terms and conditions of a contract executed in accordance with RCW [35.13A.070](#). None of the territory of the water-sewer district need be included within the territory of the city. The contract and assumption shall be approved by resolution of the board of commissioners and ordinance of the city council. If the water-sewer district has no indebtedness or monetary obligations on the date of assumption, the city shall use any surplus funds only for water services delivered to and water facilities constructed in the former territory of the district, unless provided otherwise in the contract. In connection with the assumption, the water-sewer district or the city, or both, may provide for dissolution of the district pursuant to RCW [35.13A.080](#).

[2005 c 43 § 1.]

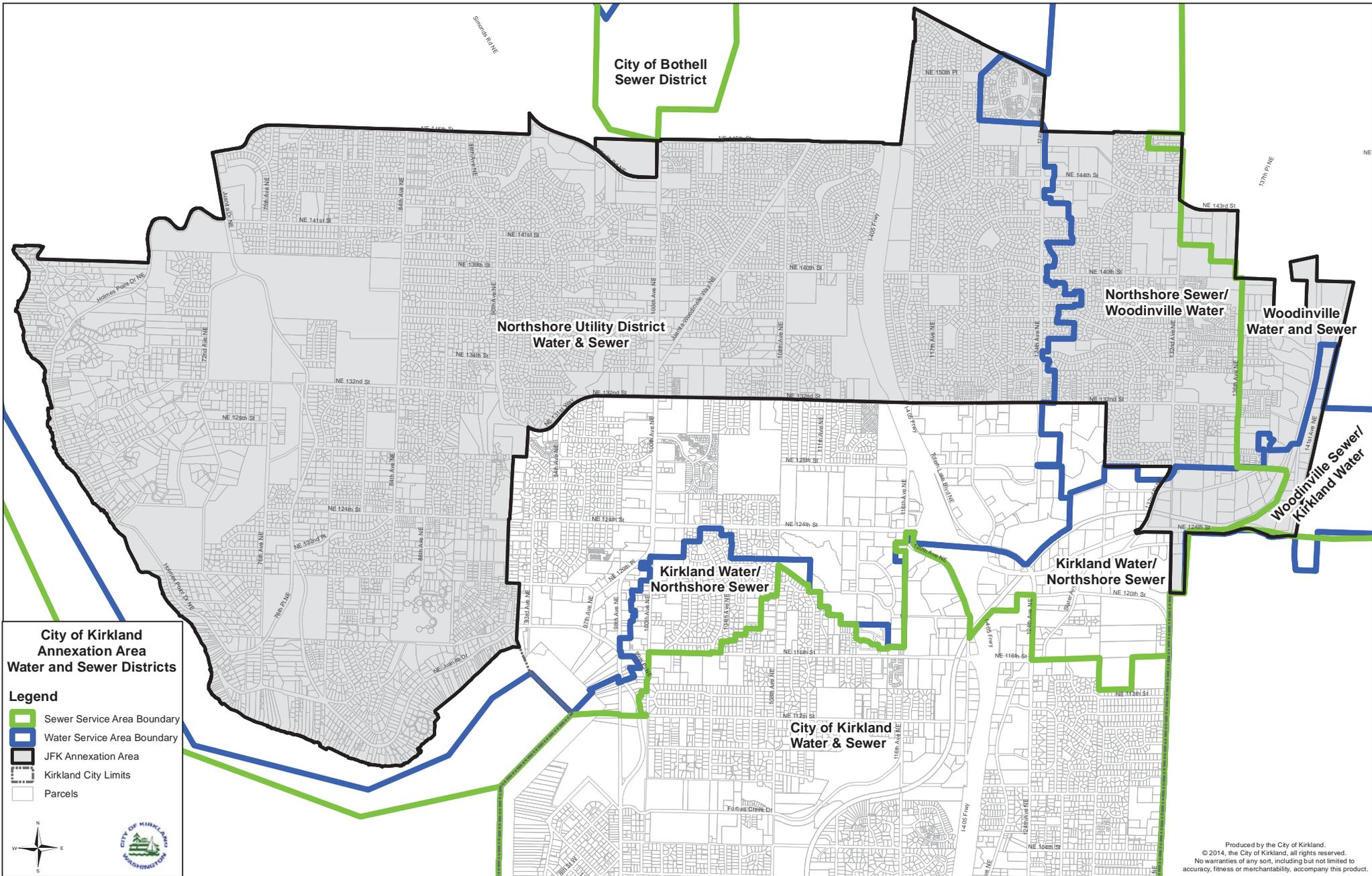
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**35.13A.900**

**Severability — 1971 ex.s. c 95.**

If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

[1971 ex.s. c 95 § 12.]





**CITY OF KIRKLAND**  
**Department of Public Works**  
**123 Fifth Avenue, Kirkland, WA 98033 425.587.3800**  
**www.kirklandwa.gov**

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## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Ray Steiger, P.E., Streets and Public Grounds Manager  
Erin Devoto, Public Works Superintendent  
Marilynne Beard, Interim Public Works Director

**Date:** September 29, 2014

**Subject:** STREET LIGHTING ADMINISTRATION IN THE JFK ANNEXATION AREA

The purpose of this memo is to provide background on street light power costs in the JFK annexation area, describe the current status and provide options for City Council consideration in the 2015-2016 Budget process.

### Background

Prior to annexation, the City's practice was to pay the power costs for all street lights in the City, regardless of whether they were located on arterials and collectors or neighborhood (local) streets. When the City requested an inventory of street lights from King County, there were 600 street lights identified for which the County paid power costs. King County does not require street lights on local streets as a condition of a development permit, unlike the City of Kirkland which requires street lights on arterials, collectors and local streets when a short plat is developed or any significant redevelopment occurs. Based on the inventory of 600 street lights, staff included an initial budget of \$100,000 that was later reduced to \$84,000 for street light power in the annexation budget. During the City's franchise negotiations with the Northshore Utility District and the Woodinville Water District, it was discovered that as many as 1,500 additional street lights located on local residential streets existed that were paid for through lighting districts established through the water/sewer utility districts. The utility districts bill each parcel \$3.00 per month for lighting district charges and Puget Sound Energy in turn bills the utility districts for actual power costs. Based on the information available at that time, staff estimated an additional annual funding need of \$190,000 to assume the remaining street lights in the area.

The updated information about street lights was obtained after the annexation election and just prior to the effective date of annexation (June 1, 2011). The City Council was advised by staff of the update and staff requested direction regarding how to proceed (see attached memo from Public Works for the June 7, 2011 City Council meeting). At the June 7, 2011 meeting, the City Council approved Ordinance #4309 that relates to the provision of street lighting services in the JFK Annexation Area. Key provisions stated that:

*"WHEREAS, the City intends to assume the costs associated with street lighting in the JFK Annexation Area in accordance with a phasing plan that will be developed by no later than 2014"*

*"The cost of providing and maintaining street light service in existing street light districts in the JFK Annexation Areas and street lights districts subsequently created in the JFK Annexation Areas shall be borne by the lots and lot residents within the street light districts who are billed for utility services provided to the lots."*

*"The City shall develop a phasing plan by no later than 2014 which identifies how and when the City shall assume responsibility for providing and paying for street light utility services in the portions of the JFK Annexation Area currently or hereafter serviced by a street light district. The street light districts in the JFK Annexation Area shall be disbanded at such time as the City assumes responsibility for providing and paying for street light utility services in the portions of the JFK Annexation Area served by street light districts."*

In short, the City deferred assuming responsibility for local street lights for three years and required that any new street lights installed on neighborhood streets be paid for through new street light districts established with the local water/sewer utilities. The Council did express their intent to eventually assume responsibility for all street lights (consistent with the practice in pre-annexation Kirkland) and committed to establishing a phasing plan by 2014.

Between June 2011 and 2014, new street lights were installed for a number of development and redevelopment projects that have occurred in the annexation area that were permitted by the City under the City's development regulations. One example is the construction of Sandburg Elementary School. The school is located on one parcel, a portion of which is located on a collector with another portion located along a local access street. Under King County's development standards, street lights would not have been required on the local access street, only on the collector. The County would have assumed responsibility for utility costs on the lights located on the collector. Under the City's development standards, the school district was required to install street lights along the collector and the local access street and was directed to form a lighting district to pay for the utilities on street lights located on the local access street (and the City would assume responsibility for the street lights on the collector) consistent with the adopted ordinance.

### **Current Status**

The Sandburg Elementary School project is nearly complete and the street lights are being installed. Earlier this year, City staff contacted Northshore Utility District (NUD) regarding the street light installation at Sandburg Elementary and NUD advised City staff that no longer had the legal authority to form new lighting districts that were for properties located within an incorporated city that would otherwise provide street lighting as a general service. The legal rationale for NUD's conclusion was reviewed by the City Attorney's Office who agreed with their conclusion. Cities do not have legal authority to form lighting districts. As a result, new lighting districts cannot be created as provided for in Kirkland's ordinance, although existing lighting districts could be continued provided they were established prior to annexation.

At the same time, several new subdivisions have been permitted and are under construction. PSE has advised us that there is no practical way for PSE to bill the utility costs of shared street lights to multiple parcels, even if a homeowners association is formed. PSE will either bill the lighting district or the City. The only other alternative would be to turn off the lights until funding is established. Since 2011, a physical inventory of street lights was conducted by City staff. There are 160 street lights on arterials and collectors in the annexation area (billed directly to the City) and 1,800 street lights on neighborhood (local) streets that are billed through lighting districts. PSE's current rate for an average street light (rates vary based on wattage and type of light fixture) is \$13.10 per month. If the City assumes the cost of power for all street lights in the annexation area, additional funding of \$283,000 would be needed to cover the costs.

City-sponsored roadway improvements are designed to include roadway lighting in order to provide safe and efficient systems. During private development projects, developers are required to meet similar lighting standards, and the developer installs them at their own cost and then, turns them over to the City for the ongoing operation and maintenance. A city has no statutory obligation to provide street lights. However failing to require them would be contradictive to a long standing City standard to provide street lights along all types of streets (neighborhood access to Arterials) and would set us up for long-term challenges as neighbors come to the City requesting street lights at a later date

Given this new information – no new lighting districts and cost of assuming existing lights -- the City will need amend the existing ordinance and reconsider its approach to requiring and paying for new street lights in the annexation area when developing the phasing plan called for in the 2011 ordinance.

## **Options**

As long as the water/sewer utility districts are willing to continue billing for pre-existing lighting districts, there is not a pressing legal or financial need to assume lighting districts at this time. However, some provision will need to be made to account for new street lights that are required by the City but that are not eligible for a lighting district or that cannot be assessed to a property owners. The following options describe different financial approaches to assuming street light costs.

Option 1: Assume responsibility for all street lights in the near term and include the costs in the shortfall that supports the Annexation Sales Tax Credit (ASTC), resulting in an increase in the amount requested from the State. The preliminary budget keeps the ASTC revenues flat with the 2014 budget. Given the growth in sales tax, there is capacity to add these costs to the ASTC reimbursement request for the next State fiscal year, beginning July 1, 2015. If this option is selected, the City will become more reliant on this one-time revenue source that expires in 2021, so an on-going funding source would need to be identified on or before that date. The ASTC would not be available until July 1, 2015 at the earliest (with notice given to the State by March 1, 2015).

Option 2: Continue to leave the street light districts in operation until the City has closed the gap left by the expiring ASTC in 2021, unless additional on-going revenues increase sufficiently to absorb the costs. Amend the current ordinance to provide for gradual assumption of new street lights required as a condition of a development permit. Under this scenario, no action would be taken on assuming pre-existing street light utilities until 2021 and the process for transitioning away from the street light districts would be evaluated at that time.

Option 3: Phase in ongoing funding for all street lights over the next seven years and backfill with one time ASTC revenue and/or street reserves.

Option 4: Incorporate City assumption of all street lights as an ongoing expense in the 2015-2016 Budget.

As a corollary policy to assuming street light utility costs, the City Council may want to consider a phased approach to transitioning to LED light fixtures throughout the City for both street lights and pedestrian lighting. LED lights consume far less energy and are therefore more sustainable and less expensive. The monthly maintenance and energy cost of an LED street light is \$9.07 per month compared to the \$13.10 per month for High Pressure Sodium lights (most of the current inventory). A first step would be to require all new developments and City capital projects (with lighting) to install LED lights. The marginal cost for an LED light ranges

from \$150 to \$400 per light depending on the wattage (cost of a new street light installation with pole is currently estimated at \$4,000).

Ultimately, the City can retrofit all street lights throughout the City. Grants and PSE rebate funding for retrofit of existing High Pressure Sodium lights with LED lights are available periodically, but require a significant City match that would be amortized over about a 10-12 year period. Other agencies have utilized this program to replace their aging electrical system in the region (<http://rentonwa.gov/news/default.aspx?id=37967>), however the current Department of Energy Systems grant program awaits funding during future sessions.

## **Summary**

The disparate approach to streetlight utility and maintenance costs between pre-annexation Kirkland and the annexation area was necessitated as an interim approach until more was known about the cost of providing services to the annexation area. However, new information about lighting utilities requires that the City modify its approach. Staff is seeking Council direction the following policies:

- When should the City assume street light costs throughout the City? (e.g. beginning in 2015, phased-in over the next six years)
- How should the City finance the cost when and if street lights are assumed? (e.g. ongoing revenue, one-time funds, annexation sales tax credit, phase in from one-time to ongoing).
- Should the City require all new street lights to be LED fixtures for new private development and/or City capital improvement projects?

The preliminary 2015-2016 budget reflects assuming the street light costs using the annexation sales tax credit (ASTC) revenue, with the intent of phasing out reliance on the ASTC credit by 2021.

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## Important New Court Decision on a City's Utility Tax Authority

Posted on May 20, 2014 by Bob Meinig

In a decision issued today (5/20/2014), Division III of the state court of appeals decided that a code city has the legal authority to impose its utility tax on the revenues of a public utility district's provision of water service to customers within the city limits, except to the extent that the district's revenues "were derived from governmental activities." The court's decision in *City of Wenatchee v. Chelan County Pub. Util. Dist. No. 1* will have significance for all classes of cities and for other municipal entities, such as water-sewer districts, that provide utility service within cities.

In reaching its decision, the court first had to determine the scope of a prior state supreme court decision, *King County v. Algona*, 101 Wn.2d 789 (1984), which held that the City of Algona did not have the authority to impose its business and occupation tax on revenues generated by a King County solid waste plant located in the city. The court in *City of Wenatchee v. Chelan County Pub. Util. Dist. No. 1* determined that the supreme court's decision in *King County v. Algona* meant that a governmental entity's immunity from taxation applied only to the sovereign, or governmental, activities of that entity, and not to its proprietary activities. When a municipal entity, such as a public utility district or a water-sewer district, provides utility services, it is, for the most part, acting in its proprietary capacity.

When is a governmental entity acting in its "proprietary capacity"? Quoting the state supreme court, the court of appeals noted that a municipal corporation acting in that capacity "acts as the proprietor of a business," as it does when it operates a utility. Putting it another way, the court of appeals stated that, "If it operates to serve customers, a utility is serving a proprietary function."

However, some aspects of a municipal utility's operation may be governmental, and, as such, its revenues from those aspects of its operation may not be taxed. For example, in providing fire hydrants for fire protection purposes, a municipal corporation is acting in its sovereign or governmental capacity. So, if a municipal utility's revenues include recovering the costs of fire suppression water facilities and services, those revenues may not be taxed.

Although the court's decision concerned the taxing authority of code cities, other classes of cities have similar authority to tax all kinds of businesses within their boundaries, including municipal utilities. See RCW 35.22.195 (first class cities); RCW 35.23.440(8) (second class cities); and RCW 35.27.370(9) (towns).

Also, although the court's decision addressed the city's taxing of the water utility revenues of a public utility district, the decision will affect other municipal corporations, such as water-sewer districts, that provide utility services – and not just water – within cities.

The court's decision here may, of course, be appealed. But its reasoning appears solid to me. Stay tuned!

Follow

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**CITY OF KIRKLAND**

Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.kirklandwa.gov

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Rob Jammerman, Development Engineering Manager  
Pam Bissonnette, Interim Public Works Director

**Date:** November 18, 2013

**Subject:** ONE-YEAR EXTENSION OF THE NORTHSHORE UTILITY DISTRICT FRANCHISE AGREEMENT

**RECOMMENDATION:**

It is recommended that the City Council approves the attached resolution that authorizes the City Manager to sign a one year extension to the Northshore Utility District (NUD) Franchise Agreement.

**BACKGROUND DISCUSSION:**

NUD provides water and sewer service to about 45% of the City. A Franchise Agreement gives NUD the authority to own and operate their water and sewer utilities in the Kirkland public right-of-way. The current Franchise Agreement has a five-year term. It is set to automatically rollover for an additional five years on January 1, 2014 unless either party gives written notice of non-renewal. If a non-renewal notice is given, the Franchise Agreement will expire in five years.

Staff is recommending that we extend the Franchise Agreement for one year. During this one-year extension, representatives from NUD and the City will draft some amendments to the Agreement and present a new Franchise Agreement to the City Council and the NUD Board of Commissioners by the end of 2014. NUD has agreed to the one-year extension amendment. A copy of the proposed Amendment signed by the NUD General Manager is included as Exhibit A.

c: William Evans, Assistant City Attorney

Attachments (2)

RESOLUTION R-5021

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AN AMENDMENT TO THE FRANCHISE GRANTED TO NORTHSORE UTILITY DISTRICT PURSUANT TO ORDINANCE NO. 4141 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT.

WHEREAS, the City of Kirkland ("City") granted a franchise to the Northshore Utility District ("NUD") on October 11, 2008, ("Agreement") for the purpose of allowing NUD to use City right of way for its infrastructure; and

WHEREAS, both the City and NUD would like to propose amendments to the Agreement before the next five year term provided by Section 8 of the Agreement begins; and

WHEREAS, pursuant to Section 8, the next five year term begins on January 1, 2014, which does not leave enough time to negotiate the proposed amendments; and

WHEREAS, the City and NUD agree amending the Agreement to allow for a year of negotiations before another five year term begins is in the interest of both parties;

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

Section 1. The City Manager is authorized and directed to execute an amendment to the Agreement substantially in the form of the attached Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of December, 2013.

Signed in authentication thereof this \_\_\_\_ day of December, 2013.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

AMENDMENT TO THE FRANCHISE AGREEMENT GRANTED TO NORTHSORE UTILITY  
DISTRICT PURSUANT TO CITY OF KIRKLAND ORDINANCE #4141

This amendment to the franchise granted to the Northshore Utility District ("NUD") by the City of Kirkland ("City") on October 11, 2008 ("Agreement") is entered into this \_\_\_\_ day of November by and between the City and NUD; and

WHEREAS, both the City and NUD would like to propose amendments to the Agreement before the next five year term provided by Section 8 of the Agreement begins; and

WHEREAS, pursuant to Section 8, the next five year term begins on January 1, 2014, which does not leave enough time to negotiate the proposed amendments; and

WHEREAS, the City and NUD agree amending the Agreement to allow for a year of negotiations before another five year term begins is in both parties interest,

NOW THEREFORE, by their signatures below the City and NUD agree as follows:

1. Section 8 of the Agreement is amended as follows:

Section 8. Franchise Term. Subject to the provisions of Section 9 and 10 below, this Franchise is and shall remain in full force and effect from January 1, 2009 until December 31, 2014, provided that on January 1, 2015, and on January 1 every five (5) years thereafter, the term shall automatically be extended for an additional five (5) years, unless either NUD or the City gives the other party written notice of non-renewal prior to any such renewal date, in which case this Franchise shall terminate five (5) years after such renewal date; and provided further, however, NUD shall have no rights under this Franchise nor shall NUD be bound by the terms and conditions of this Franchise unless NUD shall, within thirty (30) days after the passage date of the Ordinance, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney. On any renewal date, the City has the option of extending the term for more than 5 years but all subsequent renewal dates would remain automatically five (5) years unless the City again opted to extend any of them for more than five (5) years.

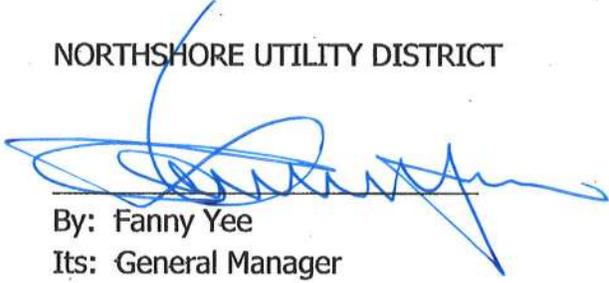
2. The intent of this amendment is only to effect a one year extension of the Agreement. The reproduction of the entirety of Section 8 is not intended to change the existing relations between the parties, create new obligations or require repetition of any duties.

3. Except as modified herein, all terms and conditions of the Agreement remain in full force and effect.

CITY OF KIRKLAND

NORTHSHORE UTILITY DISTRICT

\_\_\_\_\_  
By: Kurt Triplett  
Its: City Manager

  
\_\_\_\_\_  
By: Fanny Yee  
Its: General Manager

**CITY OF KIRKLAND**

**City Attorney's Office**  
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030  
[www.kirklandwa.gov](http://www.kirklandwa.gov)

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Oskar Rey, Assistant City Attorney

**Date:** November 12, 2014

**Subject:** Public Safety Emergency Radio Network Implementation ILA

**RECOMMENDATION**

That the City Council considers and adopts the enclosed Resolution authorizing the City Manager to sign, on behalf of the City, the Public Safety Emergency Radio Network Implementation Period Interlocal Cooperation Agreement ("PSERN Implementation ILA" or "Agreement").

**BACKGROUND**

The City Manager briefed the City Council on the proposed Public Safety Emergency Radio Network ("PSERN") at the October 21, 2014 Council Meeting. A copy of the staff memo providing the history and background leading up to this point is attached to this staff report as Attachment A.

The attached PSERN Implementation ILA addresses implementation of the new PSERN system. The PSERN Implementation ILA is between the following parties: King County and the cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle and Tukwila (the "Parties").

The PSERN Implementation ILA covers the planning, procurement, financing and implementation of the new PSERN system. A second interlocal agreement will cover the creation of a new regional PSERN entity to operate the PSERN system once it is fully implemented and tested ("Entity ILA"). The Entity ILA, which will govern the creation of the new PSERN entity, is currently being negotiated between the parties and will be brought to Council at a subsequent Council Meeting.

On September 11, 2014, the EPSCA Board adopted a resolution recommending that its member cities support the PSERN project and adopt the Implementation ILA and the Entity ILA so long as seven items are addressed. Those items, coupled with a description of how they are addressed, are as follows:

- EPSCA member jurisdictions retain the ability to select and appoint the EPSCA area PSERN Board member according to the process and terms decided by EPSCA member jurisdictions;

**PSERN Implementation ILA Section 4.2.1 provides that EPSCA Cities may collectively appoint one of the four Joint Board Representatives.**

- All remaining EPSCA reserves stay with EPSCA member cities when the transition to PSERN occurs;

**The PSERN Implementation ILA does not contain any language or requirements regarding transfer of reserves. EPSCA successfully objected to language that could have been interpreted as requiring transfers of reserves.**

- All emergency radios are owned by the individual jurisdictions and not by PSERN;

**PSERN Implementation ILA Section 7 provides that King County will make the initial purchase of emergency radios and transfer ownership to the user agencies.**

- A rate stabilization fund that phases in the cost increases to all jurisdictions in King County associated with the new radio system is included in the ballot measure;

**Section 8.8 of the PSERN Implementation ILA provides for a stabilization fund to cover rate increases in radios or consoles. The fund amount is currently blank because the amount is in the process of being finalized, but King County anticipates the amount of the fund will be approximately \$2,500,000.**

- An appropriate EPSCA staff retention and transition plan is reached between EPSCA and PSERN;

**This item is not addressed in the PSERN Implementation ILA because it relates more to the creation of the new PSERN entity and its hiring decisions. The Parties continue to negotiate this item and it will be addressed as part of the negotiation of the Entity ILA.**

- An "operations board" of emergency radio users is created that will advise the PSERN Board;

**Section 4.4.1.b of the PSERN Implementation ILA calls for creation of an advisory Operations Board.**

- Appropriate legal agreements are reached between EPSCA and PSERN that allow for EPSCA member jurisdictions to retain the rights to and value of the radio spectrum that EPSCA will transition to PSERN in the event that PSERN is not created or PSERN is abolished at some point in the future.

**PSERN Implementation ILA Section 5.4 and 5.5 provide that during the Implementation Period, existing frequencies will be co-licensed to King County. After Full System Acceptance and creation of the PSERN entity, necessary frequencies will be transferred to the PSERN entity. Any frequencies not transferred to the PSERN entity will remain in the name of the original licensee (Section 5.4.5). In the event Full System Acceptance does not occur,**

**or the PSERN system is abolished in its entirety, King County and the PSERN entity will take all steps necessary to transfer frequencies back to the original license holders (Section 5.4.6).**

Finally, the PSERN Implementation ILA contains a provision that clarifies that PSERN cannot deny any current dispatch center radio consoles, and that consoles will be made available to all Dispatch Centers on substantially similar terms and conditions (Section 6.2). This was an issue of particular concern to EPSCA since Issaquah, Redmond and NORCOM are all provide dispatch centers that serve EPSCA cities.

Cost to EPSCA and Kirkland of the PSERN System

The potential cost of the new system was a critical focus of EPSCA during the PSERN negotiations over the past year. Kirkland currently pays EPSCA approximately \$33 per radio per month for each radio that Kirkland owns. Initial levy estimates for the new radio system were anywhere from \$300 million to \$400 million dollars. Preliminary operating cost estimates for the PSERN system were that monthly rates could rise as high as \$40-\$45 dollars per radio in 2014 dollars. EPSCA staff and Steering Committee representatives worked hard with the County and the region to bring the levy and operating costs down. Although the final ballot measure has not been set, the very good news is that the current estimates are that the PSERN levy will likely be closer to \$225 million dollars, and that the monthly radio rates will range from \$20-\$27 per month in 2014 dollars. These lower radio rates will be partially offset by increased radio console charges from PSERN to dispatch centers. NORCOM rates will likely rise anywhere from \$100,000 to \$170,000 (in 2014 dollars) to pay for the consoles under PSERN. Staff is currently analyzing the total cost impact to EPSCA members and Kirkland from the combination of lower radio rates and higher console rates and NORCOM dues, but it appears that the final costs will be similar to or less than what Kirkland pays today for the emergency radio system. The financial analysis will be completed and presented at the City Council meeting.

Final ILA and Exhibits

The final PSERN Implementation ILA is being reviewed by multiple parties and is nearly complete, but signature blocks and exhibits have yet to be added to the Agreement. Staff expects the Implementation ILA to be fully complete before the Council meeting on Tuesday, November 18 and the final document will be presented to the Council at the meeting. At this time, staff believes there will be no significant changes to the PSERN Implementation ILA and that the final version will be substantially similar to the version that accompanies this staff report. If there are significant changes that would change the recommendation for adoption, staff will highlight them during the Council presentation.

**CITY OF KIRKLAND**

City Attorney's Office

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Oskar Rey, Assistant City Attorney

**Date:** October 28, 2014

**Subject:** Public Safety Emergency Radio Network Briefing and Update

**RECOMMENDATION**

That the City Council reviews this staff memo and provides any necessary direction regarding the City's participation in the process of forming a new regional Public Safety Emergency Radio Network ("PSERN").

**BACKGROUND****1. History of the Emergency Radio Network in King County.**

The City currently receives its emergency radio services through the Eastside Public Safety Communications Agency ("EPSCA"). EPSCA was formed in 1992 through an interlocal agreement between the cities of Bellevue, Redmond, Kirkland, Mercer Island, and later Issaquah. The purpose of EPSCA is to create an emergency radio sub-region in East King County to better serve and represent the area with respect public safety communications while maintaining local control of emergency radio assets and two way radio communications for public safety.

EPSCA is governed by an executive board consisting of the chief executive officer of each of the EPSCA cities. For Kirkland, Bellevue and Mercer Island, the City Managers are the EPSCA board members. For Issaquah and Redmond, the board members are the Mayors. Board members are allowed to appoint alternates. In addition, an operations board made up of public safety officials from each area manages EPSCA operations and advises the board. Overall operations are managed by an EPSCA Executive Director, which is currently Scott Hatfield. EPSCA is a separate legal entity tasked with developing, owning, operating, and managing an eastside radio system, which comprises a portion of a larger county-wide system.

There are four entities responsible for the current emergency radio system —EPSCA, King County, City of Seattle and Valley Communications (ValleyComm). The current radio system was formed in connection with a 1992 King County ballot measure. King County distributed funds to the four entities and each entity was responsible for building a portion of the overall system. Each entity owns separate towers and equipment, all of which is run by a central system. The current county-wide system was completed in 1997 and still provides the emergency radio network for this region serving 16,000 radios. In addition to first responders, the current system is used by some school districts, utilities, transportation providers, hospitals, and other government entities.

The Current system is approaching 20 years old and is built on a technology that is 30 years old. The vendor has indicated that support for the current system is coming to an end and will be eliminated in 2018. In addition, more repairs are required as the system ages, and replacement parts and support for some aspects of the system are no longer available. The system does not provide the desired level of coverage in certain parts of the County and its capacity is taxed during major events. Responder operational needs have changed since the first system was implemented and the current system no longer meets those needs.

## **2. Steps towards a New, Regional Emergency Radio System (PSERN).**

In 2012, King County convened a group of King County, EPSCA, Seattle and ValleyComm officials to consider how to implement a new state-of-the-art, seamless, unified emergency radio system. The new system was named the Public Safety Emergency Radio Network (PSERN). A Steering Committee from the four entities was created to guide the technology, policy and fiscal issues associated with a new system, and a King County project office was created for implementation. In 2013 the four parties cooperatively issued an RFP for replacement of the current system. The new system will require another countywide ballot measure to fund, take 5-6 years to complete and users will begin migrating from the current radio system to the new one in 2019. King County expenses will be reimbursed by the levy proceeds.

The Steering Committee has been developing two proposed interlocal agreements for the governance and implementation of the new system. One interlocal agreement will govern the implementation of the new system and the process of transferring users from the current system to the new system ("Implementation ILA"). During implementation of the new system and migration of users from the old to the new system, King County will be the lead agency responsible for overseeing the project. Major project decisions will be made by a Joint Board comprised of four members—one each from King County, EPSCA, Seattle and ValleyComm. Each entity will select its own member to the Joint Board. Unanimous Joint Board approval will be required for major project decisions that impact the cost or scope of the project.

Under the Implementation ILA, King County will be responsible for managing the project and overseeing the transition from the old to the new system until "full system acceptance" of the PSERN system. Full system acceptance will occur when all users are using the new system and it has been fully installed and successfully tested.

The second interlocal agreement will address the type of entity that will be responsible for operation and maintenance PSERN once full system acceptance has occurred ("Entity ILA"). The consensus is that the new entity should be a separate legal entity responsible for the entire system and not just portions of it. Under the current system there is already considerable overlap in coverage so that users often use facilities that are not part of their home jurisdiction. For example, an EPSCA user in Issaquah may communicate over facilities owned by one of the other three jurisdictions.

There will be even more overlap and interconnectivity under the new system, which is more advanced technologically. The increasing interdependence of the new system makes the regional divisions of the current system less meaningful. There will also be benefits associated with having a single entity responsible for the entire system and having consistent inspection, maintenance and repair practices across the entire system. The Implementation ILA has been the subject of

extensive negotiations, and staff anticipates that it will request Council authorization to sign the Implementation ILA at the November 18, 2014 Council Meeting.

The Entity ILA is not as far along, and staff anticipates bringing that ILA to a subsequent Council Meeting. Under the Entity ILA, each of the current owners will have one equally weighted vote on the Board governing the new system. In other words, EPSCA will select a single member to represent the Eastside, and that representative would be one of four members of the Board of the new PSERN entity. Under the new PSERN entity:

- All infrastructure including radio tower sites, backhaul equipment, and dispatch consoles would be owned by PSERN.
- All subscriber radios (mobile and portable radios) would be owned by the end user.
- All capital costs as well as initial emergency radios would be covered by a county wide ballot measure to occur in April 2015. End users would be responsible for subsequent replacement radios.
- Subscriber fees would be paid to the new PSERN entity to cover all maintenance of the infrastructure and console equipment as well as all upgrade and update costs.

King County has indicated that entering into the Implementation ILA is a prerequisite for it to place the PSERN measure on the ballot.

### **3. Funding PSERN**

The PSERN project, including sites, equipment, labor, sales tax, and interest on bonds will cost approximately \$225 million. The King County Executive anticipates asking the King County Council to put a funding measure on the ballot in April 2015. King County anticipates proposing a levy lid lift to fund PSERN. The current estimate of the impact of the ballot measure, if passed, is 6.5-7.0 cents per \$1,000 of assessed value over 9 years.

EPSCA and the City have worked hard on ensuring that user rates for radios and consoles stay relatively stable under the new PSERN system since rates will fund the ongoing operation of the system. Recent projections show that radio rates will remain stable or may drop slightly in connection with the new system. Nonetheless, EPSCA has requested that language be added to the Implementation ILA that would require funds to be reserved so that they can be used to reduce rates for users or entities that experience rate increases as a result of the PSERN transition.

### **4. Prior EPSCA Actions**

EPSCA has been working with King County, Seattle and ValleyComm on the various issues associated with the transition from the current system to a new PSERN system. This transition can only occur if approved by each of the EPSCA member cities. On September 11, 2014, the EPSCA Board adopted a resolution recommending that its member cities support the PSERN project and adopt the Implementation ILA and the Entity ILA so long as the following items are addressed:

- EPSCA member jurisdictions retain the ability to select and appoint the EPSCA area PSERN Board member according to the process and terms decided by EPSCA member jurisdictions;

- All remaining EPSCA reserves stay with EPSCA member cities when the transition to PSERN occurs;
- All emergency radios are owned by the individual jurisdictions and not by PSERN;
- A rate stabilization fund that phases in the cost increases to all jurisdictions in King County associated with the new radio system is included in the ballot measure;
- An appropriate EPSCA staff retention and transition plan is reached between EPSCA and PSERN;
- An "operations board" of emergency radio users is created that will advise the PSERN Board;
- Appropriate legal agreements are reached between EPSCA and PSERN that allow for EPSCA member jurisdictions to retain the rights to and value of the radio spectrum that EPSCA will transition to PSERN in the event that PSERN is not created or PSERN is abolished at some point in the future.

The parties to the Implementation ILA are in the process of finalizing the ILA and prepare it for approval by their respective governing bodies. City staff anticipates bringing the Implementation ILA to the City Council for adoption at the November 18, 2014 Council Meeting.

## RESOLUTION R-5083

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A PUGET SOUND EMERGENCY RADIO NETWORK OPERATOR INTERLOCAL COOPERATION AGREEMENT TO PROVIDE FOR THE IMPLEMENTATION OF A NEW REGIONAL EMERGENCY RADIO NETWORK SYSTEM.

WHEREAS, the City currently receives its emergency radio services through the Eastside Public Safety Communications Agency ("EPSCA"), which was formed in 1992 through an interlocal agreement between the cities of Bellevue, Redmond, Kirkland, Mercer Island, and later Issaquah ("EPSCA Cities"); and

WHEREAS, the EPSCA Cities comprise a portion of the current emergency radio network, known as the King County Emergency Radio Communications System (KCERCS) along with King County, the City of Seattle and the cities comprising Valley Communications Center (collectively the "Parties"); and

WHEREAS, the Parties, under various interlocal agreements, are responsible for the ownership, operations and maintenance of various elements of KCERCS, a public safety voice radio system that is nearly twenty years old and is increasingly unsupported by the supplier of the system's equipment, software and repairs; and

WHEREAS, the Parties have determined that it is in the public interest that a new public safety radio system ("Puget Sound Emergency Radio Network System" or "PSERN System") be implemented that will provide public safety agencies and other user groups in the region with improved coverage and capacity, and uniformly high-quality emergency radio communications at a cost-effective price; and

WHEREAS, the Parties seek to enter into an Interlocal Agreement to establish the terms under which the Parties will undertake the planning, financing, procurement, site acquisition and development, equipment installation, and other activities necessary to implement the PSERN System ("Agreement"); and

WHEREAS, concurrent or subsequent to this Agreement, the Parties will enter into a second interlocal cooperation agreement ("PSERN Operations Interlocal Agreement") to establish the terms under which the Parties will create a new entity ("PSERN Operator), to be responsible for the ownership, operations, maintenance, and ongoing upgrading or replacing of the PSERN System during its anticipated useful life; and

WHEREAS, the Kirkland City Council finds that it is in the public interest of the City that a new public safety radio system be implemented that will provide public safety agencies and other user groups in the region with improved coverage and capacity, and uniformly high-quality emergency radio communications at a cost-effective price; and

WHEREAS, Chapter 39.34 RCW authorizes the Parties to enter into interlocal agreements to perform any governmental service, activity or undertaking which each contracting party is authorized by law to perform;

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

Section 1. The City Manager is 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 "Puget Sound Emergency Radio Network Implementation Period Interlocal Cooperation Agreement."

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2014.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

**PUGET SOUND EMERGENCY RADIO NETWORK  
IMPLEMENTATION PERIOD  
INTERLOCAL COOPERATION AGREEMENT**

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**EXHIBITS**

- Ex. 1 Contracting Plan
- Ex. 2 List of Party Owned/Controlled Sites
- Ex. 3 List of Frequencies
- Ex. 4 Cost Allocation Model
- Ex. 5 List of User Agencies Eligible for Radio Exchanges
- Ex. 6 Contact Information

**PUGET SOUND EMERGENCY RADIO NETWORK  
IMPLEMENTATION PERIOD  
INTERLOCAL COOPERATION AGREEMENT**

This Interlocal Cooperation Agreement (“Agreement”) is entered into pursuant to the Interlocal Cooperation Act (Chapter 39.34 RCW) by and among King County (“County”) and the Cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle and Tukwila, each a political subdivision of the State of Washington (individually, a “Party,” and collectively, the “Parties”).

**RECITALS**

A. The Parties, under various interlocal agreements, are responsible for the ownership, operations and maintenance of various elements in the current King County Emergency Radio Communications System (KCERCS), a voice radio system that is nearly twenty years old and is increasingly unsupported by the supplier of the system’s equipment, software and repairs.

B. The Parties have determined that it is in the public interest that a new public safety radio system be implemented that will provide public safety agencies and other user groups in the region with improved coverage and capacity, and uniformly high-quality emergency radio communications at a cost-effective price. Said new system is referred to herein as the “Puget Sound Emergency Radio Network System” or “PSERN System.”

C. The Parties seek to finance the costs of implementing the PSERN System by a funding measure to be placed on the ballot by the King County Council for consideration by the qualified electorate in King County.

D. The Parties desire that the County act as the lead agency for planning, procurement, financing and implementation of the PSERN System and that a new non-profit entity will be formed to assume the ownership and control of the PSERN System following Full System Acceptance.

E. The purpose of this Agreement is to establish the terms under which the Parties will undertake the planning, financing, procurement, site acquisition and development, equipment installation, and other activities necessary to implement the PSERN System.

F. Concurrent with this Agreement, the Parties have entered into a second interlocal cooperation agreement, referred to herein as the “PSERN Operations ILA,” to establish the terms under which the Parties will create a new entity, referred to herein as the “PSERN Operator”, to be responsible for the ownership, operations, maintenance, and on-going upgrading/replacing of the PSERN System during its anticipated useful life.

## TERMS AND CONDITIONS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, benefits and covenants contained herein and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree to the above Recitals and the following terms and conditions.

### 1.0 RULES OF CONSTRUCTION AND DEFINITIONS

#### 1.1 Rules of Construction

1.1.1 Unless the context requires otherwise, the singular form of a word shall also mean and include the plural (and vice versa), and the masculine gender shall also mean and include the feminine and neutral gender (and vice versa).

1.1.2 References to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to.

1.1.3 References to sections, exhibits, attachments or appendices are to this Agreement and references to articles or sections followed by a number shall be deemed to include all subarticles, subsections, subclauses, subparagraphs and other divisions bearing the same number as a prefix.

1.1.4 The words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation".

1.1.5 The words "shall" or "will" shall be deemed to require mandatory action.

1.1.6 Words such as "herein," "hereof" and "hereunder" are not limited to the specific provision within which such words appear but shall refer to the entire Agreement taken as a whole.

1.1.7 Words such as "person" or "party" shall be deemed to include individuals, political subdivisions, governmental agencies, associations, firms, companies, corporations, partnerships, and joint ventures.

1.1.8 References to "days" shall mean calendar days unless expressly stated to be "Business Days." If the due date for a task, payment, or any other requirement falls on a Saturday, Sunday or holiday observed by the County, the due date shall be deemed to be the next Business Day.

1.1.9 Words not otherwise defined that have well-known technical industry meanings are used in accordance with such recognized meanings.

1.1.10 The headings and captions inserted into this Agreement are for convenience of reference only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

1.1.11 This Agreement was negotiated and prepared by the Parties and their respective attorneys. The Parties acknowledge and agree that the rule of construction that an ambiguous contract should be construed against the drafter shall not be applied in any construction or interpretation of this Agreement.

## 1.2 Definitions

Words and terms shall be given their ordinary and usual meanings except that the following terms are defined for this Agreement as follows:

1.2.1 Agreement means this Puget Sound Emergency Radio Network Implementation Period Interlocal Cooperation Agreement.

1.2.2 Alternate means a person appointed to serve in the absence of a Joint Board Representative.

1.2.3 Appointing Party(ies) means the City of Seattle, the EPSCA Cities, the ValleyCom Cities and King County.

1.2.4 Confidential Information means any information in written, graphic, verbal or machine-recognizable form that: (a) is related to PSERN; (b) is provided to a Party by another Party, the PSERN Contractor or another person or entity; and (c) is marked or identified as “confidential”, “proprietary,” “trade secret” or similar designation.

1.2.5 Cost Allocation Model means the method used for determining the user rates applicable to Dispatch Centers and User Agencies for fees they will pay to either the County or the PSERN Operator during the Operations Period.

1.2.6 County means King County, Washington.

1.2.7 Dispatch Center means a facility or an entity that uses PSERN to dispatch users of Subscriber Radios.

1.2.8 EPSCA means the Eastside Public Safety Communications Agency.

1.2.9 EPSCA Cities means the Cities of Bellevue, Issaquah, Kirkland, Mercer Island and Redmond, Washington.

1.2.10 Full System Acceptance (FSA) means the determination issued to the PSERN Contractor upon satisfactorily completing the final system development phase milestone.

1.2.11 Implementation Period means that period of time from the effective date of this Agreement through and until the beginning of the first full month after issuance of FSA.

1.2.12 Joint Board means the board formed by the Parties under this Agreement.

1.2.13 KCERCS means the existing King County Emergency Radio Communication System.

1.2.14 NAC means a notice of apparent completion issued under the contract with the PSERN Contractor.

1.2.15 Operations Budget means the budget funded by fees from Dispatch Centers and User Agencies to pay for the costs of operating, maintaining and upgrading PSERN after FSA.

1.2.16 Operations Period means the period that commences with the first full month after FSA.

1.2.17 Party means a signatory to this Agreement and excludes a signatory that withdraws from this Agreement.

1.2.18 Project (or PSERN Project) means all authorized activities relating to the planning, analysis, design, development, acquisition, site development, installation, testing, training, and operation of the PSERN System until FSA, starting-up a new PSERN Operator, transferring the PSERN System to same and any decommissioning, contract close-out and other project completion activities.

1.2.19 Project Budget means the budget approved by the Joint Board to spend the funds the County Council has appropriated to carry out PSERN Project activities.

1.2.20 Project Fund means the funds held by the County to fund the Project Budget including proceeds from the County-wide levy and proceeds from any bond or debt instruments.

1.2.21 Project Director means the County employee assigned to lead Project activities.

1.2.22 PSERN means the Puget Sound Emergency Radio Network.

1.2.23 PSERN Contractor means the prime contractor under County Contract # \_\_\_\_\_ (or the County Contract) that is responsible, among other things, for supplying the PSERN System's equipment and software.

1.2.24 PSERN Operations Period ILA (or Operations Period ILA) means the interlocal cooperation agreement entered into by the Parties concurrent with this Agreement to establish the terms under which the Parties will create a new PSERN Operator to own, operate, maintain, manage and upgrade/replace the PSERN System during the Operations Period.

1.2.25 PSERN Operator means the new entity formed pursuant to the PSERN Operations Period ILA.

1.2.26 PSERN Project (see "Project").

1.2.27 Representative means a person appointed by an Appointing Party(ies) to serve on the Joint Board.

1.2.28 Subscriber Radio means an end user radio and includes a mobile (vehicular) and portable (handheld) radio which has been authorized and programmed to operate on the System.

1.2.29 System means all the elements constituting the PSERN System, excluding Subscriber Radios unless the context indicates inclusion.

1.2.30 User Agency means an entity that uses the PSERN System for its employees' radio communications.

1.2.31 User Agency Agreement means an agreement executed between the County or the PSERN Operator, as appropriate, and a User Agency establishing the terms under which a User Agency is allowed to access and use the System.

1.2.32 ValleyCom means the Valley Communications Center.

1.2.33 ValleyCom Cities means the Cities of Auburn, Federal Way, Kent, Renton, and Tukwila, Washington.

## **2.0 DURATION OF AGREEMENT**

2.1 This Agreement shall take effect on the date when last signed by an authorized representative of each Party.

2.2 Unless extended by written amendment as provided in Section 15.10 or terminated earlier as provided in Section 13, this Agreement shall expire upon the issuance of FSA and the County's written notice to the other Parties that all Project activities have been completed.

2.3 Notwithstanding Section 2.1 and 2.2 above, if the Project is not funded by a voter approved measure prior to January 1, 2018, this Agreement shall terminate on January 1, 2018 unless extended by agreement of the Parties.

## **3.0 THE PARTIES' RESPONSIBILITIES**

### **3.1 Appointing Representatives to Joint Board**

The Parties, or groups of Parties, shall appoint Representatives to the Joint Board as provided under Section 4.

### **3.2 Use of Land and Improvements**

To the extent provided in Section 5.3, each Party agrees to make land and improvements available for PSERN System use.

### **3.3 Use of Licensed Spectrum**

To the extent provided in Section 5.4, each Party agrees to make licensed spectrum under its direct or indirect control available for PSERN System use.

### 3.4 Cooperation on PSERN System Activities

Each Party understands and agrees that it is essential to public safety, within its jurisdiction and throughout King County, that the PSERN System be implemented without delay. In support of that objective, each Party agrees to cooperate in good faith with each other in all activities related to the PSERN System's implementation, operation and maintenance, which cooperation shall include: promptly responding to requests for information among the Parties; exercising best efforts to expedite the processing and execution of any requested reviews, inspections, approvals, permits, leases and agreements; and timely performing any construction, installation, testing and maintenance activities related to the PSERN System.

### 3.5 Other Responsibilities

The Parties shall be responsible for such other activities and obligations as are specified herein or arise from a Joint Board action.

## 4.0 JOINT BOARD

### 4.1 Creation of Joint Board

By executing this Agreement, the Parties hereby create a Joint Board pursuant to RCW 39.34.030(4). The Joint Board is not a separate legal or administrative entity within the meaning of RCW 39.34.030(3). The Joint Board shall oversee the activities of the Parties in connection with the PSERN System as provided in this Agreement. The Joint Board shall act on behalf of all Parties and as may be in the best interests of the PSERN Project. The Joint Board is not authorized to enter into contracts, own assets, or hire employees.

### 4.2 Joint Board Representatives

4.2.1 The Joint Board shall consist of four (4) voting Representatives appointed as follows by the Parties, or groups of Parties:

- a. City of Seattle: one (1) Representative and one (1) Alternate.
- b. Cities of Bellevue, Issaquah, Kirkland, Mercer Island and Redmond collectively: one (1) Representative and one (1) Alternate.
- c. Cities of Auburn, Federal Way, Kent, Renton and Tukwila collectively: one (1) Representative and one (1) Alternate.
- d. King County: one (1) Representative and one (1) Alternate.

4.2.2 The non-voting Chair of the Joint Board shall be the Deputy County Executive or his/her designee. The Chair or designee shall conduct the Joint Board's meetings and supervise the administrative activities related to meetings including scheduling, preparing the agendas, providing reports and other

information materials to the Representatives and creating records of Joint Board actions.

4.2.3 The Joint Board may also appoint a chief of a police agency and a chief of a fire agency to serve as non-voting participants on the Joint Board, provided they are from agencies within King County.

4.2.4 The County Executive, the Mayor of the City of Seattle, the Mayors of the EPSCA Cities, and the Mayors of the ValleyCom Cities shall each provide to the Joint Board's Chair a written notice identifying the names of a primary Representative and an alternative Representative (Alternate) who are authorized to speak, vote and otherwise act on behalf of their respective Appointing Party or group of Parties. Such notices shall include the name(s), contact information and effective date(s) of the appointments.

4.2.5 An Alternate may only speak and vote on behalf of his/her Appointing Party(ies) if: (a) the Chair has received written notice of the Alternate's appointment; and (b) the primary Representative is absent from the meeting. References in this Agreement to a "Representative" shall include an Alternate who has been appointed in accordance with this Agreement and is acting in the absence of the primary Representative.

4.2.6 The Appointing Party or group of Parties shall promptly replace any vacancy in its positions of Representative and Alternate and may, at any time, replace its Representative or Alternate by giving the Chair of the Joint Board written notice of the change including: the name(s), contact information and effective date(s) of the replacement(s).

4.2.7 Each Representative and each Alternate shall be an employee of his/her Appointing Party(ies), ValleyCom or EPSCA. No Representative or Alternate shall be deemed to be an employee of, or entitled to compensation from, any Party other than his/her Appointing Party.

#### 4.3 Quorum and Meeting Procedures

4.3.1 A quorum for a meeting of the Joint Board shall be all four (4) voting Representatives and the Chair or his/her designee.

4.3.2 The Joint Board shall establish procedures for its operations and meetings, including the establishing of a regular monthly meeting schedule and location and providing for the scheduling of special and emergency meetings. To the extent allowed by Washington law, the Joint Board may establish procedures for conducting meetings by telephonic or other electronic means provided that all Representatives and members of the public are able to hear each other during the meeting. If such procedures are established by the Joint Board, any Representative participating in a meeting by such means is deemed to be present at the meeting for all purposes including establishing a quorum.

4.3.3 The Joint Board shall take action by the unanimous vote of all four (4) voting Representatives.

4.3.4 Representatives must be present at a meeting to vote and may not vote by proxy.

4.3.5 The voting Representatives may select an acting Chair to serve in the absence of the Chair or his/her designee.

4.3.6 The Joint Board shall comply with applicable requirements of the Washington State Open Public Meetings Act (Chapter 42.30 RCW).

#### 4.4 Joint Board Actions

4.4.1 The Joint Board shall oversee the implementation, operation and maintenance of the PSERN System to the extent provided in this Agreement. In furtherance of that oversight, the Joint Board is specifically authorized to take the following actions:

- a. Amend this Agreement including any exhibits;
- b. Establish committees and advisory groups, including an advisory operations board of emergency radio users, to perform activities related to the PSERN Project or to provide reports or recommendations to the Joint Board related to the PSERN Project;
- c. Adopt and amend policies, business rules, procedures, standards and guidelines related to the PSERN System including System access and use, security, and System and Subscriber Radio maintenance, upgrading and security;
- d. Approve the Project Budget subject to County Council appropriation;
- e. Approve contracts related to the Implementation Period;
- f. Approve those leases related to the PSERN System for which the monthly rent exceeds the per site monthly rent authorized in the Project Budget;
- g. Approve changes to PSERN System-related contracts if the cost of the change exceeds the authority granted to the Project Director under the Contracting Plan attached hereto and made a part hereof as Exhibit 1;
- h. Approve the PSERN System design and any changes to same affecting System performance;
- i. Approve the issuance by the County to the PSERN Contractor of Notice of Apparent Completion (NAC) of the following milestones:
  - (i) Milestone 3H: System Optimization and RF Coverage Testing
  - (ii) Milestone 3J: Operational and Functional System Test

(iii) Milestone 3K Pilot Test with 100 Users

(iv) Milestone 5C Full System Acceptance

j. Approve a transition plan that defines the tasks, responsibilities and schedule for transitioning from the KCERCS to the PSERN System including moving Dispatch Centers and User Agencies onto the PSERN System;

k. Approve the County's entering into agreements with User Agencies and Dispatch Centers establishing the terms and conditions for access to and use of the PSERN System;

l. Approve such other actions as are specified under this Agreement as being made by the Joint Board;

m. Delegate the Joint Board's authority under this Agreement subject to such limitations and conditions as the Joint Board may establish; and

n. Approve a Party's request to withdraw from this Agreement and the terms and conditions of such approval in accordance with Section 13.

4.4.2 The PSERN System-related contracts will require prompt review of deliverables and notices of milestone completion. The Joint Board shall hold special meetings as needed and take action in a timely manner so as to avoid delay and other claims by PSERN System-related contractors.

#### 4.5 Impasse Resolution Procedure

4.5.1 If a matter requiring Joint Board action is moved at a Joint Board meeting but fails for lack of a unanimous vote by all four (4) Representatives, a voting Representative may submit written notice of an impasse to the other Representatives and the Joint Board Chair. The notice shall include a statement of the action being sought and the history of any Joint Board deliberation or vote(s) on the matter.

4.5.2 Within seven (7) days of receipt of a notice of impasse, the Chair or his/her designee shall designate a mediator to assist the Joint Board in resolving the impasse. The mediator shall be experienced in resolving disputes in public sector capital projects and may not be an employee of any of the Parties.

4.5.3 The Parties agree that it is essential to the success of the PSERN Project that any impasse be resolved as quickly as possible and accordingly agree to instruct their respective Representatives to cooperate with the mediator in good faith including expediting responses to any mediator requests for information and discussion.

4.5.4 The mediator shall promptly investigate the impasse and the respective positions of the voting Representatives. The mediator may recommend one or more non-binding alternatives for resolving the impasse. Regardless of the outcome of the mediation, each Party shall pay an equal percentage share of the

cost of the mediator's fees and expenses, if any. The County shall pay the mediator and invoice each Party for its share. Each party shall pay the County within thirty (30) days after receiving the invoice.

4.5.5 If the impasse is not resolved within ten (10) days of the mediator providing his/her recommendation(s), the Elected Executives Committee (EEC) shall meet with the Joint Board to attempt to resolve the impasse. The EEC shall be composed of the King County Executive; the Mayor of the City of Seattle; one elected official designated by the EPSCA Cities; and one elected official designated by the ValleyCom Cities. The Joint Board and the EEC shall convene to consider the matter and attempt to reach a resolution, which may include re-submitting the matter for a Joint Board vote, not later than twenty (20) days after the date the mediator provided his/her recommendation(s).

#### 4.6 Emergency Procedures

Consistent with applicable Washington State law, the Joint Board may adopt procedures for providing direction and decision-making in the event of emergencies that have or may have direct, significant and material negative effects on the implementation, operation and maintenance of the PSERN System when consideration of such emergencies by the Joint Board could not occur in a timely manner, all as determined by the Chair of the Joint Board. The procedures shall set forth how an emergency is declared and who declares it. Such procedures may allow expedited procurement and contracting procedures by the Project Director to address the emergency, as may be permitted by Washington State law. Each decision made pursuant to such procedures shall be communicated to the Parties as soon as reasonably possible and shall be subject to ratification by the Joint Board in a regular or special meeting within two (2) weeks after the finding of an emergency by the Chair of the Joint Board.

#### 4.7 Record of Action

Actions by the Joint Board shall be memorialized in writing and signed by the Chair or acting chair of the Joint Board. A copy of each action shall be distributed to each Joint Board Representative and Alternate within ten (10) Business Days of the action.

#### 4.8 Joint Board Administrative Support

The County shall provide administrative support for the Joint Board. The cost of providing such support shall be covered by the PSERN Project Budget during the Implementation Period and by the PSERN Operations Budget during the Operations Period.

### **5.0 PSERN SYSTEM IMPLEMENTATION**

#### 5.1 Project Management

The County will be responsible for performing all Project management activities including:

- a. all personnel actions related to the Project Director and other County employees assigned to Project activities;
- b. scheduling and management of day-to-day Project activities;
- c. developing a Project Budget and obtaining County Council appropriation(s), approving expenditures, and tracking expenditures against the Project Budget including its contingency;
- d. developing, tracking, and updating all required Project documentation;
- e. developing and performing all financial, accounting and inventory-control processes including establishing a Project Fund to receive levy and bond proceeds, processing invoices and making payments and distributions from the Project Fund, responding to audits, and tracking the receipt and distribution of equipment and other deliverables in accordance with applicable laws, regulations and policies;
- f. developing and implementing a transition plan for Joint Board approval;
- g. coordinating PSERN Project activities with the Parties and the KCERCS's users; and
- h. providing regular reports to the Joint Board on the Project's activities during the Implementation Period.

## 5.2 Contracting and Equipment Ownership

5.2.1 Subject to Joint Board approval, the County will procure, execute and administer all contracts, licenses and agreements related to the planning, analysis, design, development, installation, construction and testing of the equipment, software, facilities, improvements and other elements of the PSERN System.

5.2.2 The Project Director shall be responsible for contract procurement and contract administration activities in accordance with Exhibit 1 and any emergency contracting procedures approved by the Joint Board.

5.2.3 As the Party entering into the contract(s), the County will become the owner of the delivered PSERN System equipment except as provided in Section 7 for Subscriber Radios. The County will transfer said ownership to the new PSERN Operator formed under the PSERN Operations ILA in accordance with Section 9.

## 5.3 PSERN System Sites

5.3.1 Subject to Joint Board approval if required under Section 4.4.1(f), the County will enter into leases and other arrangements to acquire the rights, for itself and its contractors, successors and assigns, to access, install, use, develop, or construct towers, structures, equipment, facilities and other improvements as needed for PSERN System implementation.

5.3.2 The PSERN System sites identified in the List of Party Owned/Controlled Sites, attached hereto and made a part hereof as Exhibit 2, are controlled directly or indirectly by those Parties as indicated therein. If and to the extent a Party's interest permits, each such listed Party agrees to enter into a lease(s), assignment or other appropriate agreement with the County to permit the use by the PSERN System of the listed site(s) under its control on terms and conditions no worse than the best terms and conditions (for the lessee) that are then applicable in a comparable lease, license or agreement with another governmental entity. Consideration for such a lease may be provided as a cash payment, credit, or reciprocal benefit.

5.3.3 If during the PSERN System design process, other potential locations for PSERN System equipment or facilities are identified on any land or any improvement (such as buildings and towers) in which any Party has an ownership or tenancy interest, or otherwise controls, directly or indirectly through EPSCA or ValleyCom, then subject to any legal limitations, such Party agrees to enter into a lease(s), assignment or other appropriate agreement with the County to permit the use of such land or improvements by the PSERN System. Notwithstanding the forgoing, a Party shall not be required to enter into any lease, assignment, or other agreement that impairs a Party's right and ability to use the equipment or facilities as necessary for KCERCS or the Party's own purposes. The land and improvements shall be offered to the County:

- a. with a right of first refusal; and
- b. on terms and conditions no worse than the best terms and conditions (for the lessee) that are then applicable in a comparable lease, license or assignment with another governmental entity. Consideration for such a lease may be provided as a cash payment, credit, or reciprocal benefit.

5.3.4 Nothing in this Agreement shall require a Party, ValleyCom, or EPSCA to terminate or interfere with an existing lease or use of land or improvements.

5.3.5 The Parties will cooperate with the County in fulfilling its role and responsibilities under this Agreement. Without limiting the foregoing, the EPSCA Cities and the ValleyCom Cities shall propose and support measures at the EPSCA and ValleyCom boards, respectively, as necessary to effect the purposes and intent of this Section 5.3 and to the extent permitted by law.

5.3.6 In the event the Project is not funded by a voter approved measure prior to January 1, 2018, and this Agreement terminates on January 1, 2018, all leases and agreements entered into pursuant to this Section 5.3 shall also terminate on January 1, 2018 unless otherwise agreed to by the parties to the lease or agreement.

#### 5.4 Frequencies

5.4.1 The Parties agree that they will cooperate with the County in any Federal Communications Commission process or application necessary to make available, or cause to be made available, for use in the PSERN System the

licensed frequencies identified in the List of Frequencies attached hereto and made a part hereof as listed in Exhibit 3. As part of the PSERN System design process, the Parties agree to cooperate in the development of PSERN Frequency Plans including agreeing to relicensing frequencies from the sites in which they are currently used to other sites in the PSERN System. Further, the Parties will consent to use of frequencies by the County and the PSERN Contractor under the design standards of the PSERN System.

5.4.2 The Parties will cooperate with the County in fulfilling its role and responsibilities under this Agreement. Without limiting the foregoing, the EPSCA Cities and the ValleyCom Cities shall propose and support measures at the EPSCA and ValleyCom boards, respectively, as necessary to effect the purposes and intent of this Section 5.4.

5.4.3 In the event a Party withdraws or otherwise terminates its participation in this Agreement and the PSERN System, it shall surrender all rights and interests it may have or claim to have in any frequencies determined by the Joint Board to be necessary for the PSERN System. The provisions and obligations of this Section 5.4 shall survive any termination of, or a Party's withdrawal from, this Agreement.

5.4.4 As more fully described in the PSERN Operations ILA, the Parties agree to take all steps necessary to ensure that all spectrum used in the PSERN System is transferred to and licensed in the name of the PSERN Operator to which ownership of the PSERN System is transferred after FSA. Said transfer and relicensing shall be effected within sixty (60) days after ownership of the PSERN System has been transferred to the PSERN Operator.

5.4.5 Any frequencies currently used in KCERCS which are not reused in the PSERN System shall remain in the name of the original licensee under KCERCS and shall not be transferred to the PSERN Operator.

5.4.6 If the PSERN Project is terminated prior to FSA, or if following FSA the PSERN System is abolished in its entirety, the PSERN Operator (or if it has not yet been created, the County) shall take all steps necessary to transfer the frequencies surrendered pursuant to this Section 5.4 back to each of the Parties, EPSCA, and ValleyCom, and/or their successors.

## 5.5 Transition from KCERCS to the PSERN System

5.5.1 The Parties agree to continue to operate and maintain the central switch, sub-systems and other elements of KCERCS to the extent the Parties directly or indirectly control such elements until the issuance of FSA of the PSERN System or such other time as the Joint Board approves. Nothing in this Agreement shall be interpreted to require a Party to undertake any action that would adversely and materially impact a Party's ability to operate KCERCS as necessary for public safety through the Implementation Period.

5.5.2 The Parties shall cooperate with each other in implementing the transition from the KCERCS to the PSERN System including:

a. moving or removing, or causing/permitting such moving or removing, of KCERCS equipment to accommodate the installation of PSERN System equipment;

b. consenting to the use by the County of frequency licenses for use in the PSERN System during the Implementation Period and until the licenses are transferred to the PSERN Operator, by:

(1) executing letters of concurrence allowing the County to be a co-licensee for those frequencies during the Implementation Period; and

(2) unlicensing those frequencies used by PSERN; and

c. timely performance of all applicable tasks and responsibilities specified in the Transition Plan adopted by the Joint Board.

5.5.3 The County will serve as the PSERN System manager and enter into preliminary agreements with Dispatch Centers and User Agencies establishing the terms and conditions for their transition to and use of the PSERN System, as more fully described in Sections 6 and 7.

5.5.4 Through their direct or indirect participation on the KCERCS's Regional Communications Board, the Parties agree to take such actions as are necessary to effect the purposes of this section and any other matter necessary to the transition from the KCERCS to the PSERN System.

## 5.6 Decommissioning of KCERCS

It is expected that through the PSERN Project, all KCERCS equipment will be decommissioned and removed. However, to the extent KCERCS equipment is not decommissioned and removed due to a decision by the Joint Board or a Party, the Parties shall be responsible for decommissioning the elements of the KCERCS that they own or are owned by entities in which they participate.

## 6.0 DISPATCH CENTER EQUIPMENT IMPLEMENTATION

### 6.1 Dispatch Center Equipment

The PSERN Project Budget will fund the purchase of certain PSERN System equipment that will be installed at Dispatch Centers in King County in a like-for-like exchange of existing KCERCS-related equipment in order to enable the Dispatch Centers to access and use the PSERN System. The County shall be the owner of said PSERN System equipment during the Implementation Period and will transfer ownership to the PSERN Operator as provided in Section 9.

### 6.2 Dispatch Center Agreements

Neither the County nor PSERN may deny consoles or console service to any Dispatch Center. As a condition of using said new equipment and the PSERN System, each Dispatch Center shall enter into an agreement (Dispatch User Agreement) with the County or the PSERN Operator. The County and the PSERN operator shall make consoles and console service available to each Dispatch Center on substantially similar terms and conditions. The Dispatch User Agreements, shall include, among other terms, the following:

- a. a grant by the Dispatch Center to the County and its successors and assigns for the space, access rights, power, fiber connections, internet access and other resources necessary for the County and its contractors to deliver, store, install, test, operate and maintain PSERN System equipment;
- b. the quantities and types of equipment that will be funded by the PSERN Project Budget and installed at the Dispatch Center;
- c. the schedule and locations for installation and testing of said equipment and training users;
- d. the provision that the County or PSERN Operator, as appropriate, will provide maintenance, updates, and upgrades to consoles for as long as they shall remain in service and owned by the County or the PSERN Operator;
- e. the process for repairing/replacing/upgrading equipment;
- f. the obligations for the Dispatch Center to pay the user fees and other costs of connecting to the PSERN System during the Operations Period;
- g. the Dispatch Center is responsible for theft, damage or other loss after delivery of equipment to the Dispatch Center's facility; and
- h. a commitment by the Dispatch Center to execute a novation replacing the County with the new PSERN Operator for the Operations Period.

If a Party or entity is both a Dispatch Center and a User Agency, the above provisions may be addressed in a single Dispatch Center/User Agency Agreement.

## **7.0 SUBSCRIBER RADIO EQUIPMENT IMPLEMENTATION**

### **7.1 County Purchase of Initial Order of Subscriber Radios**

Pursuant to an executed User Agency Agreement as provided in Section 7.4, the County will purchase initial orders of Subscriber Radios on behalf of all User Agencies. Ownership of said County-purchased Subscriber Radios will be transferred to the User Agencies following FSA. User Agencies may enter into "piggyback" contracts with the PSERN Contractor for the direct purchase of additional Subscriber Radios.

### **7.2 Project Funding for Certain Subscriber Radios**

The PSERN Project Budget will be used to fund the initial order of certain types of Subscriber Radios and accessories for the User Agencies identified in the List of User Agencies Eligible for Radio Exchanges, which is attached hereto and made a part hereof as Exhibit 5. A User Agency listed in Exhibit 5 shall be eligible to receive a Project-funded Subscriber Radio and a kit of standard accessories in exchange for a trade-in radio used in the KCERCS, provided that each trade-in radio:

- a. was an active radio in the KCERCS zone controller within thirty (30) days prior to the date of the exchange; and
- b. is an operable radio at the time of the exchange.

The new Subscriber Radio funded by the Project Budget shall be the type of radio as listed in Exhibit 5 that is the nearest equivalent to the trade-in radio.

### 7.3 Payments by User Agencies

7.3.1 A User Agency that is listed on Exhibit 5 shall pay the County for the added costs of any Subscriber Radios, features and accessories that are not covered by the Project Budget under Section 7.2.

7.3.2 A User Agency that is not listed in Exhibit 5 shall pay the County for the full cost, including taxes, of any Subscriber Radio purchased by the County on its behalf.

7.3.3 The County shall establish the method and timing of such payments in advance of placing an order with the PSERN Contractor.

### 7.4 User Agency Agreements

No User Agency may register or use a radio or other device on PSERN unless it has entered into a User Agency Agreement with the County or the PSERN Operator. Neither the County nor the PSERN Operator may deny radios or radio service to any agency permitted to be licensed in the 800 MHz Public Safety Radio Spectrum pursuant to 47 C.F.R. Part 90 if that agency enters into and complies with the provisions of a User Agency Agreement. The User Agency Agreements shall include, among other terms, the following:

- a. the quantities and types of Subscriber Radios that will be funded by the PSERN Project Budget and the amounts to be paid by the User Agency;
- b. designation of the User Agency's status (primary or secondary) and priorities at the talkgroup level;
- c. a grant of all space, access rights, power and other resources necessary for the County and its contractors to deliver, store, install, and test Subscriber Radios;
- d. the schedule and locations for installation and testing of Subscriber Radios and user training;

- e. the central management of encryption keys and the template for programming User Agency radios;
- f. the prohibition with applicable timeframes on a User Agency's re-sale or transfer of any Subscriber Radios and the requirements for tracking and reporting all Subscriber Radios to the County;
- g. the terms for use of the System including acceptable equipment models and features, protocols, maintenance standards and other conditions;
- h. the process for repairing/replacing Project-funded Subscriber Radios through the end of the warranty period;
- i. the obligations for the User Agency to pay the user fees and other costs of connecting to the PSERN System during the Operations Period;
- j. the User Agency is responsible for theft, damage or other loss after delivery of equipment to the User Agency's facility; and
- k. a commitment by the User Agency to execute a novation replacing the County with the new PSERN Operator for the Operations Period.

## **8.0 PSERN PROJECT BUDGET FOR IMPLEMENTATION PERIOD**

### **8.1 Funding of Project Budget**

The PSERN Project Budget will be funded by proceeds from a County-wide property tax levy and, as needed, proceeds from bond or other debt instruments issued by the County. The reimbursement and other payments provided under this Section are conditioned upon voter-approval of the funding levy and the County Council's adoption of an appropriation for the PSERN Project Budget. Except as provided in this Agreement or by action of the Joint Board, the City of Seattle, the EPSCA Cities, and ValleyCom Cities shall not be required to reimburse the PSERN Project Budget or the County for costs incurred during the Implementation Period.

### **8.2 Elective Contract Change**

8.2.1 Any Contract Change determined by the Project Director to be elective, must be approved in advance by the Joint Board. The Joint Board may approve the Contract Change either as an Elective Contract Change or if the Joint Board determines the change is not elective, as a Contract Change. At the time the Joint Board approves an Elective Contract Change, it shall also approve a reimbursement allocation for the cost of the Elective Contract Change to be paid by one or more Parties in the event the Project Budget is insufficient to cover some or all of the cost of the Elective Contract Change as described in Section 8.2.2 below.

8.2.2 At the end of the Implementation Period, if the PSERN Project Budget is insufficient to pay the reimbursements and payments provided in this Section 8,

the Parties shall reimburse the PSERN Project Budget for all Elective Contract Changes according to the allocations approved by the Joint Board, up to the amount of the budget shortfall beginning with the first adopted Elective Contract Change and proceeding in chronological order.

### 8.3 Reimbursement of Planning Phase Costs

8.3.1 The County shall use the Project Budget to reimburse itself, the City of Seattle, EPSCA and ValleyCom for the following costs incurred from August 1, 2012, through the start of the Implementation Period:

- a. the costs of staff labor hours expended on planning, analysis, procurement, legal and other PSERN System-related activities; and
- b. the costs of technical, financial, consultant, legal and other contractor services related to the PSERN System.

Reimbursement of labor hours shall be at the applicable hourly, monthly or annual rate that is used in the normal course when the employee's time is charged for other purposes. Reimbursement for contractor services shall be at the reasonable, actual amount paid by the agency seeking reimbursement.

8.3.2 Requests for reimbursement under this Section 8.2 may be submitted to the County after the County Council's adoption of a PSERN Project Budget and appropriation.

8.3.3 Requests shall be submitted on a form prescribed by the County and be accompanied by such documentation as the County may require including time records and invoices.

### 8.4 Administrative, Election and Financing Costs

The Project Budget shall cover the County's costs of providing administrative support to the Joint Board and the election, legal, financing, administration and other costs associated with the levy and the issuance of any bonds or other debt financing.

### 8.5 Reimbursement of Implementation Period Costs

8.5.1 The Project Budget shall cover all of the County's costs incurred during the Implementation Period including:

- a. payments to the PSERN Contractor and other contractors
- b. County labor and internal charges
- c. rents, fees and other costs related to real property access and development activities
- d. insurance
- e. equipment, tools, technology, devices, vehicles and supplies
- f. travel
- g. training
- h. fuel
- i. freight

- j. utilities
- k. security systems and services
- l. road maintenance
- m. cost of claims, litigation and related legal and other expenses.

8.5.2 The County shall use the Project Budget to reimburse the City of Seattle, EPSCA and ValleyCom for the costs of staff labor hours expended during the Implementation Period on the following PSERN System-related activities:

- a. preparation for and participation at Joint Board and technical committee meetings;
- b. witnessing the PSERN Contractor's factory testing, field testing of infrastructure and coverage testing; and
- c. escorting PSERN Contractor personnel to sites at which the City of Seattle, EPSCA or ValleyCom have current KCERCS maintenance responsibilities.

Reimbursement of labor hours shall be at the applicable hourly, monthly or annual rate that is used in the normal course when the employee's time is charged for other purposes. Requests for reimbursement shall be submitted on a calendar quarter basis following the County Council's adoption of an appropriation for the PSERN Project Budget. Failure to submit a request within sixty (60) days after the end of a calendar quarter shall constitute a waiver of any reimbursement for cost incurred in said quarter. Requests shall be submitted on a form prescribed by the County and be accompanied by such documentation as the County may require including time records and invoices.

#### 8.6 Subscriber Radio Purchases

The Project Budget will be used to fund the initial order of certain types of Subscriber Radios and accessories as provided in Section 7.

#### 8.7 PSERN Operator's Start-up Costs

Upon creation of a new PSERN Operator as provided in Section 9.1, the County shall pay to said PSERN Operator the amount specified in the Project Budget for the new PSERN Operator's pre-FSA expenses for start-up activities under Section 9.2 and the Operations Period ILA.

#### 8.8 System Transition Stabilization Fund

The County shall, within the Project Budget, create a PSERN System Transition Stabilization Fund in the amount of \$ \_\_\_\_\_, the purpose of which shall be to reduce and phase in the impact of increased console and radio rates on PSERN System User Agencies. By March 31 of the year prior to the expected date for FSA as projected by the Project Manager, the Joint Board shall adopt a System Transition Stabilization Fund plan.

### 9.0 TRANSFER OF SYSTEM FOR OPERATIONS PERIOD

### 9.1 Creation of a new PSERN Operator

Not later than one year prior to the expected date for FSA as projected by the Project Manager, the Parties shall create and establish a non-profit corporation as authorized under RCW 39.34.030 to own, operate, maintain, manage and upgrade/replace the PSERN System during the Operations Period.

### 9.2 Start-up of PSERN Operator

As provided in the Operations Period ILA, the Parties shall cause said new PSERN Operator to hire an Executive Director and staff, train staff, establish facilities, contract for goods and services, install systems and undertake all other steps necessary for the PSERN Operator to be able to accept the transfer of the PSERN System from the County and be fully responsible for the Operations Period upon issuance of FSA by the Joint Board.

### 9.3 Transfer and Novation Agreements

The Parties shall cause the PSERN Operator to enter into agreements with the County and third parties that effect the following upon FSA and after the County has determined and notified the Parties that all Implementation Period activities have been completed:

- a. transfer all PSERN System-related equipment (other than subscriber radios as provided in Section 7.0); and
- b. the novation of the contract with the PSERN Contractor, the Dispatch Center and User Agency Agreements and all licenses, leases and other contracts and agreements related to the PSERN System.

The Parties intend and agree that the PSERN Operator shall be deemed to be the successor to the County for all PSERN System purposes and shall assume all of the County's rights, responsibilities and liabilities under said contracts, licenses, leases and agreements.

## **10.0 OPERATIONS AND MAINTENANCE PENDING TRANSFER**

### 10.1 Interim Operations

If the transfer of the PSERN System is not completed as provided in Section 9.0 above and the PSERN Operations Period ILA, then the County may continue to operate and maintain the PSERN System after FSA.

### 10.2 Cost Allocation Model

10.2.1 In the event the transfer to a new PSERN Operator has not occurred and if the County continues to act as the lead for operations and maintenance beyond FSA, the County will be paid monthly user rates by each Dispatch Center and User Agency, based on the Cost Allocation Model, until the transfer occurs and the County has closed out its role and incurs no more costs.

10.2.2 The Cost Allocation Model shall be applied to an annual Operations Budget developed by either the County or the PSERN Operator for each calendar year of Operations after FSA. The Dispatch Center and User Agency rates shall be recalculated annually to reflect cost changes from January 1 through December 31 of each year, and shall be included in the Operations Budget, which shall be subject to approval by the Joint Board.

10.2.3 By May 1 of each year, the County or PSERN Operator shall calculate the share of costs to be billed to the Dispatch Centers and User Agencies in accordance with the Cost Allocation Model and Operations Budget in the coming year and transmit that information to each Dispatch Center and User Agency.

10.3 The County shall collect fees in accordance with the Dispatch Center and User Agency Agreements.

## **11.0 INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION AND RECORDS**

### 11.1 Intellectual Property

The Parties may be provided with products, documents or other deliverables related to the PSERN System that are the subject of copyright, trade secret and other intellectual property rights of, or claims of such rights. Each Party agrees that it will exercise any intellectual property license rights in accordance with the license provisions of the County Contract and any other applicable licenses so long as the Party has prior notice of the license requirements.

### 11.2 Confidential Information

11.2.1 Each Party agrees that it will: (a) limit the distribution of Confidential Information to those employees, contractors or other persons who have a reasonable business need to know such information; and (b) take all reasonable care, and not less than the care the Party applies to its own confidential information, to prevent unauthorized use or disclosure of Confidential Information. Each Party agrees that it will not use, copy, convey or disclose any Confidential Information to any other person or entity unless expressly authorized in writing by the person that provided the Confidential Information or as may be required by law.

11.2.2 Such care shall include: (a) requiring such employees, contractors or other persons to sign a nondisclosure agreement; (b) requiring any contractors to also undertake reasonable protection measures; and (c) promptly enforcing any violations of such agreements.

### 11.3 Records.

11.3.1 Each Party shall keep records as required by state law and in accordance with such policies, procedures and retention schedules as may be established by the Joint Board. To the extent permitted by law, all records,

accounts and documents relating to matters covered by this Agreement shall be subject to inspection, copying, review or audit by the Washington State Auditor or any Party. Upon reasonable notice, during normal working hours, each Party shall provide auditors from the Washington State Auditor or the other Parties with access to its facilities for copying said records at their expense.

11.3.2 Each Party shall be responsible for responding to public disclosure requests addressed to it in accordance with the Washington Public Records Act, Chapter 42.56 RCW, and such procedures as may be established by the Joint Board. If a Party receives a public records request for records related to the PSERN System, the Party receiving the request shall promptly notify the Project Director and the Joint Board. Absent agreement by the Parties on other arrangements, the Party receiving the request shall remain responsible for responding to the requester. In the event a request for records is addressed to the Joint Board but specifies records of a single Party, such Party shall assume responsibility for responding to the request. In the event a request for records is addressed to the Joint Board but does not specify records of a single Party, the County shall assume responsibility for coordinating the Parties' response to the request.

11.3.3 If the requested records include any Confidential Information, the Party receiving the request shall promptly notify the Party or other person or entity that designated the information as Confidential Information. Any Party receiving a public records request that includes Confidential Information shall not disclose the Confidential Information for ten (10) business days in order to give the affected Party or third party the opportunity to take whatever action they deem necessary to protect their interests before disclosure of the Confidential Information. A Party receiving a public disclosure request shall not be required to take any legal action in order to prevent disclosure of Confidential Information, nor shall a Party incur any liability to any other Party for disclosing Confidential Information in response to a public disclosure request so long as the disclosing Party has complied with the provisions of this Section 11.

## **12.0 FORCE MAJEURE**

Acts of nature, acts of civil or military authorities, acts of war, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, strikes and other labor disruptions, and other industrial, civil or public disturbances that are not reasonably within the control of a Party causing the Party's inability to perform an obligation under this Agreement are "Force Majeure Events." If any Party is rendered unable, wholly or in part, by a Force Majeure Event, to perform or comply with any obligation or condition of this Agreement, such obligation or condition shall be suspended for the time and to the extent reasonably necessary to allow for performance and compliance and restoration of normal operations.

## **13.0 TERMINATION OF AGREEMENT; WITHDRAWAL AND REMOVAL OF A PARTY**

### 13.1 Termination of Agreement by Joint Board.

The Joint Board may terminate this Agreement in its entirety by the unanimous affirmative vote of all voting Representatives.

### 13.2 Withdrawal of a Party.

13.2.1 In the event that a Party desires to withdraw from this Agreement, it shall give written notice to the Joint Board including its reasons therefor, a description of the probable impacts on the other Parties, a description of the probable impacts to the scope, schedule and budget of the PSERN Project and a proposed withdrawal work plan that will identify all necessary actions which need to be undertaken to effect the withdrawal.

13.2.2 Upon receipt of the above-described notice and information, the Joint Board will consider the request for withdrawal. The Joint Board may in its sole discretion approve a Party's request to withdraw from this Agreement and establish any terms and conditions for approval. Approval requires a unanimous vote of all voting Representatives on the Joint Board.

13.2.3 A Party that is permitted to withdraw shall remain responsible for any obligations that arose prior to the effective date of the withdrawal and for any that are specified under Section 15.14 as surviving a withdrawal. A withdrawing Party shall be solely liable for any actual costs to the other Parties arising out of or resulting from the withdrawal. Any such costs or other amounts owed under this Agreement by a withdrawing Party shall be paid prior to the effective date of the withdrawal or, if such amounts are not yet established, then within thirty (30) days after the amount is established.

## 14.0 LEGAL RELATIONS

### 14.1 Independent Contractors and No Third Party Beneficiaries

14.1.1 Each party to this Agreement is an independent contractor with respect to the subject matter herein. No joint venture or partnership is formed as a result of this Agreement.

14.1.2 Nothing in this Agreement shall make any employee of one Party an employee of another party for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded by virtue of their employment. No Party assumes any responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of any other Party's employees. No employees or agents of one Party shall be deemed, or represent themselves to be, employees of another Party.

14.1.3 It is understood and agreed that this Agreement is solely for the benefit of the Parties, ValleyCom and EPSCA and gives no right to any other person or entity.

#### 14.2 Claims Arising from the Joint Board's Acts or Omissions

The Parties agree to share the cost, including the costs of defense, in the event of any claim, lawsuit, demand, judgment, award or liability of any kind against the Joint Board, any Party, ValleyCom or EPSCA and their respective officials and employees ("Claim(s)") arising out of, or in any way resulting from: (a) a Joint Board action or failure to act; or (b) the County's acts or omissions arising from a Joint Board action or failure to act. The Parties agree to share the costs arising from such a Claim(s), including the costs of defense in the following percentages:

- a. King County shall be liable for 25%;
- b. City of Seattle shall be liable for 25%;
- c. the EPSCA Cities shall be jointly and severally liable for 25%; and
- d. the ValleyCom Cities shall be jointly and severally liable for 25%

The Parties agree to cooperate with each other as necessary in responding to and defending against all such Claims, which may include developing a joint defense plan.

#### 14.3 Other Claims

Except for a Claim covered by Section 14.2, each Party to this Agreement shall protect, defend, indemnify, and save harmless the other Parties and their respective officials and employees, from any and all Claims, arising out of, or in any way resulting from, the indemnifying Party's negligent acts or omissions. No Party will be required to indemnify, defend, or save harmless any other Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of another Party. Where such claims, suits, or actions result from concurrent negligence of two or more Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence. Each of the Parties agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to each of the other Parties only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

#### 14.4 Waiver of Consequential and Certain Other Damages

ALTHOUGH EACH PARTY ACKNOWLEDGES THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, EACH PARTY AGREES TO WAIVE ALL CLAIMS AGAINST EPSCA, VALLEYCOM, THE OTHER PARTIES, AND THEIR RESPECTIVE OFFICIALS AND EMPLOYEES FOR ANY: COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, PROVIDED THAT THIS SECTION SHALL ONLY APPLY TO CLAIMS BETWEEN AND AMONG THE PARTIES, EPSCA AND VALLEYCOM, AND SHALL NOT BE INTERPRETED TO LIMIT ANY CLAIMS BROUGHT PURSUANT TO SECTION 14.3.

14.5 In the event that any of the Parties or combination of the Parties incurs any judgment, award, and/or cost arising therefrom, including attorney fees, to enforce the provisions of this Section 14, all such fees, expenses, and costs shall be recoverable from the responsible Party or combination of the Parties to the extent of that Party's/those Parties' culpability.

14.6 The provisions of this Section 14 shall survive the expiration or termination of this Agreement.

## **15.0 GENERAL**

### **15.1 Filing of Agreement**

Pursuant to RCW 39.34.040, prior to its entry into force, this Agreement shall be filed with the King County Recorder's Office or, alternatively, listed by subject on a Party's web site or other electronically retrievable public source.

### **15.2 Time of the Essence**

The Parties recognize that time is of the essence in the performance of the provisions of this Agreement.

### **15.3 Specific Performance**

In the event a Party fails to perform an obligation under this Agreement, the other Parties or any one of them shall have the right to bring an action for specific performance, damages and any other remedies available under this Agreement, at law or in equity.

### **15.4 No Waiver**

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the Party or Parties claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all Parties.

### **15.5 Parties Not Relieved of Statutory Obligations**

Pursuant to RCW 39.34.030(5), this Agreement shall not relieve any Party of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by the Joint Board, the performance may be offered in satisfaction of the obligation or responsibility.

### **15.6 Nondiscrimination**

The Parties shall comply with the nondiscrimination requirements of applicable federal, state and local statutes and regulations.

#### 15.7 No Assignment

No Party shall transfer or assign a portion or all of its responsibilities or rights under this Agreement, except with the prior authorization of the Joint Board.

#### 15.8 Dispute Resolution

If one or more Parties believes another Party has failed to comply with the terms of this Agreement, the affected Parties shall attempt to resolve the matter informally. If the Parties are unable to resolve the matter informally, any Party may submit the matter to mediation in accordance with the process provided in Section 4.5. If the Parties submit the matter to mediation and the matter is not resolved, then the aggrieved Party shall be entitled to pursue any legal remedy available.

#### 15.9 Entire Agreement

The Parties agree that this Agreement, including any attached exhibits, constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties. No other agreement, written or oral, expressed or implied, exists between the Parties with respect to the subject matter of this Agreement, and the Parties declare and represent that no promise, inducement, or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

#### 15.10 Amendment Only In Writing

This Agreement may be amended by action of the Joint Board in accordance with Section 4.4.1.

#### 15.11 Notices

15.11.1 Any notice under this Agreement shall be in writing and shall be addressed to the Chair of the Joint Board, the Project Director and to each Party's Representative. Any notice may be given by certified mail, overnight delivery, facsimile telegram, or personal delivery. Notice is deemed given when delivered. Email may be used for notice that does not allege a breach or dispute under this Agreement.

15.11.2 The names and contact information set forth in Contact Information, attached hereto and made a part hereof as Exhibit 6, shall apply until amended in writing by a Party providing new contact information to each other Party.

#### 15.12 Choice of Law; Venue

This Agreement and any rights, remedies, and/or obligations provided for in this Agreement shall be governed, construed, and enforced in accordance with the substantive and procedural laws of the State of Washington. The Parties agree that the

Superior Court of King County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

#### 15.13 Severability

The provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated by a court of competent jurisdiction to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Agreement and the remaining provisions shall remain in full force and effect.

#### 15.14 Survival Provisions

The following provisions shall survive and remain applicable to each of the Parties notwithstanding any termination or expiration of this Agreement and notwithstanding a Party's withdrawal from this Agreement.

Section 11 Intellectual Property, Confidential Information and Records

Section 14 Legal Relations

Section 15.12 Choice of Law; Venue

Additionally, unless otherwise determined by the Joint Board, Sections 5.3 and 5.4 shall survive a Party's withdrawal from this Agreement.

#### 15.15 Counterparts

This Agreement shall be executed in counterparts, any one of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, authorized representatives of the Parties have signed their names in the spaces provided below.

[signature blocks to be added]



## CITY OF KIRKLAND

### Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.kirklandwa.gov

## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** David Godfrey, P.E., Transportation Engineering Manager  
Kathy Brown, Public Works Director

**Date:** November 6, 2014

**Subject:** TRANSPORTATION MASTER PLAN UPDATE: IMPACT FEES

### RECOMMENDATION:

It is recommended that City Council receives a briefing and provides direction on the Transportation Master Plan (TMP). Specifically, staff is seeking comment on initial information concerning updating Transportation Impact Fees.

### BACKGROUND DISCUSSION:

#### Introduction

Kirkland's TMP will serve two major purposes (Figure 1). Its goals and policies will be the basis of the Transportation Element in the revised Comprehensive Plan. Action items, priorities and other information will also be provided to complete the TMP and form a fuller picture of how the goals and policies are to be implemented. Development of the plan is being guided by the Transportation Commission, as well as extensive public input through the City's overall Comprehensive Plan public involvement process.

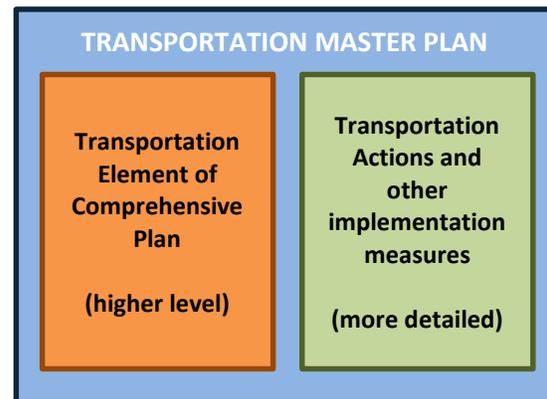


Figure 1 The Transportation Master Plan has two major components.

#### Impact Fees

This discussion of impact fees is intended to give Council an update on initial findings and raise some questions Council may wish to consider. As the 20 year project list and land use forecasts are finalized, work on impact fees can be advanced. Coordination between Transportation Impact Fees and Park Impact Fees is also underway, and a revised impact fee ordinance will be coming to Council in 2015.

Transportation impact fees are designed to collect a fair share of transportation improvement costs from new development. The Growth Management Act allows impact fees to be charged for system improvements that reasonably relate to the impacts of new development and specifies that fees are not to exceed a proportionate share of the costs of improvements.

Impact fees are part of a development's transportation mitigation requirements. Developments also must undergo a concurrency evaluation, which determines whether there is sufficient transportation infrastructure to support the new development. Assuming that

concurrency is achieved, development pays an impact fee to cover its share of the transportation system costs.

During the process of preparing the Transportation Master Plan for the City over the last few months, city staff and the consultant have proposed a network of roadway, biking, walking and transit projects that are substantially different than the projects that are the focus of the City's current impact fees. Historically, Kirkland has narrowly defined the projects eligible for funding with impact fees, notably those that we have identified in our "concurrency network." Given the move to a multimodal concurrency program, the breadth of transportation projects that could be considered for impact fees is expanded.

At the same time, the growth forecasts for the City over the next 20 years are higher than they were back in the 1990's and early 2000's when the current impact fee program was developed. If the growth materializes, there is a larger base over which to spread the impact fee costs. We are working to refine a reasonable expectation for growth that would occur over the 20 year period.

Based on our analysis to date, we expect that the total cost of the impact fee project list will be roughly comparable to the current list, while the amount of growth will increase. Because impact fee rates are proportional to the cost of the projects divided by the number of trips, this could result in impact fee rates that are similar to or less than current rates. The ultimate size of the fee will depend on the extent to which we are successful at including non-motorized and transit projects within the impact fee list.

City staff are also examining possible revisions to the 'change of use' code provisions to make it easier to change land uses within activity centers such as downtown and Totem Lake.

### *Methodology*

The flow of steps involved in the Kirkland impact fee process is shown in Figure 2. The key steps include:

- Establishing travel forecasts and trip patterns (based on land use data and the future transportation network);
- Identifying growth-related transportation projects and costs; and,
- Preparing the fee schedule.

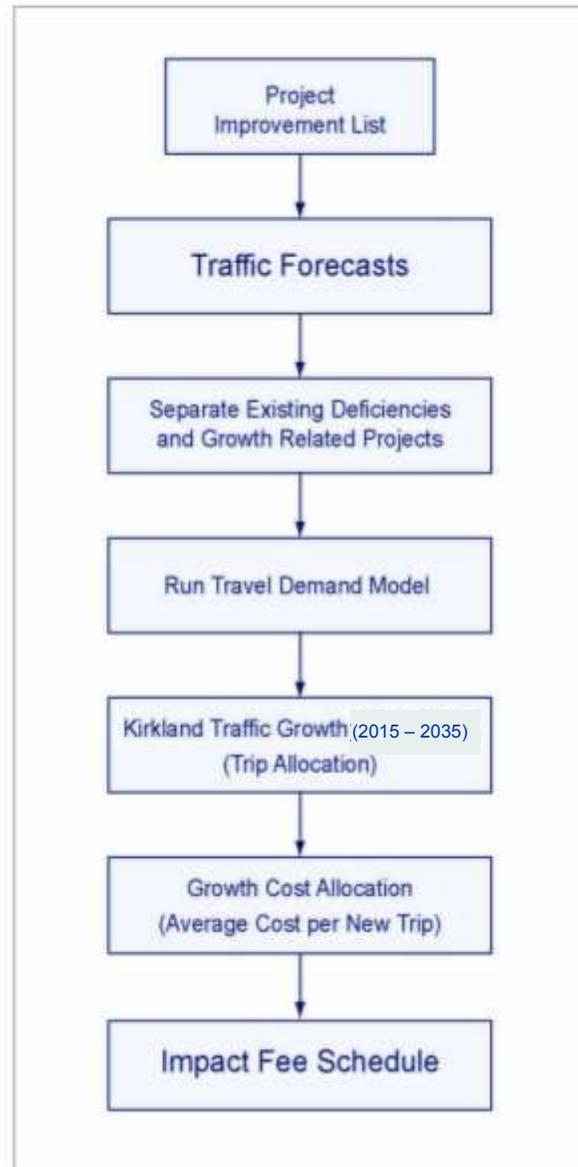


Figure 2- Impact Fee Methodology

#### Project List

To begin the process, the City compiled the existing impact fee project list and selected other eligible projects from the Capital Improvement Plan (CIP) and the proposed Transportation Master Plan (TMP). As described earlier in this memo, the City is developing a multimodal project list that goes beyond the traditional roadway and intersection capacity projects. Notably, it is the intent to include a portion of the Cross Kirkland Corridor (CKC) costs, since the CKC will provide a vital north-south transportation link within the city. To facilitate calculation of the CKC component and other non-motorized portions of the fee, we are focusing on person movement rather than traffic volumes as the base for both the impact fee and concurrency programs.

#### Allocating the Costs to Impact Fees

A key step in the process involves allocating the project costs to impact fees. As shown in Figure 3, we first remove the 'non capacity' portion of the costs relating to safety or operations and maintenance. The 'capacity projects' are analyzed to determine whether there are

existing deficiencies that do not meet the city's level of service standards. The costs to fix existing deficiencies cannot be charged to new development. The remaining 'growth' portions of the projects are then analyzed to determine who uses the facilities. Trips that pass through Kirkland, but do not have any origins or destinations internal to Kirkland, are not allocated to Kirkland growth. That is, development in Kirkland would not be charged for impacts by growth in trips passing "through" the City. The remaining growth trips that are generated within Kirkland are subject to the impact fee.

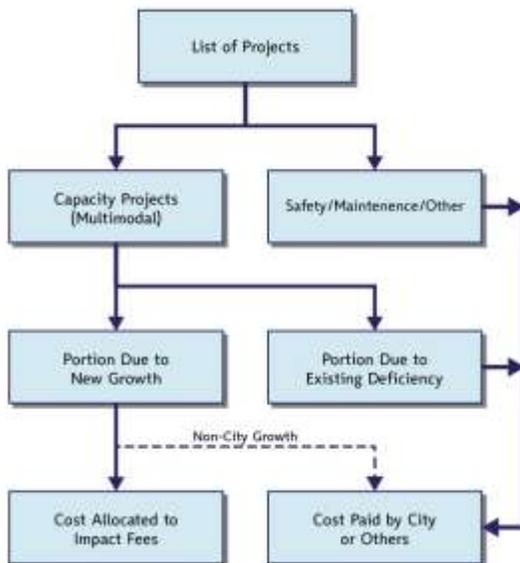
### Travel Growth

The analysis considers the growth forecasts for the city over the next 20 years. The new growth forecasts are higher than they were back in the 1990's and early 2000's when the current impact fee program was developed. If the growth materializes, there is a larger base to spread the impact fee costs. We are working to refine a reasonable expectation for growth that would occur over the 20 year period.

### Impact Fee Rate

The impact fee eligible costs are divided by the travel growth to produce a "cost per trip." In the final step the "cost per trip" is converted into an impact fee schedule that showed fees as dollars per unit of development for different land use categories.

Figure 3- Impact Fee Cost Allocation Concept



### *Change of Use*

The City Code (27.04.035) has a temporary suspension of transportation impact fees relating to change in use. At their October 21, 2014 meeting, Council voted to extend the suspension through December 31, 2015. The affected changes in use are those that result in higher trip generation than the previous land use on the property, and where the building structure is not increased, replaced, or substantially redeveloped.

This change of use provision primarily affects retail development where one use (e.g. a florist) is replaced by another use (e.g. a restaurant). These changes occur frequently within shopping districts such as downtown.

In the future, the City may want to consider developing a new impact fee land use category called "activity center retail." Uses within this category would function similarly to a shopping center, which by its nature has a mixture of land uses that change over time. Using this designation in certain parts of the City would remove the need to calculate a change of use impact fee when building tenants change. Change of use impact fees would still apply when a building is replaced, enlarged, or substantially redeveloped.

### *Impact Fee Questions*

As the impact fee program is being updated, there are several questions that Council may wish to consider:

- It does not currently appear likely, but given it could be supported technically, would an increase to the current impact fee rates be reasonable to consider?
- What reaction does Council have to the concept of an 'activity center retail' land use category?

### **Next Steps**

Implementation of transportation impact fees will be coordinated with the implementation of park impact fees and will be finalized in 2015 in connection with the Comprehensive Plan Update. In order to complete work on impact fees, a 20 year project list will have to be completed and levels of service will have to be established.

The Transportation Commission will continue to provide direction for Plan development on behalf of the Council. Staff will also work closely with the Planning Commission as part of the Comprehensive Plan update.



**CITY OF KIRKLAND**  
**City Manager's Office**  
123 Fifth Avenue, Kirkland, WA 98033 425.587.3001  
www.kirklandwa.gov

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## MEMORANDUM

**To:** Kurt Triplett, City Manager  
**From:** Lorrie McKay, Intergovernmental Relations Manager  
**Date:** November 10, 2014  
**Subject:** SCA OPEN SEATS AND APPOINTMENTS TO REGIONAL BOARDS & COMMITTEES - 2015

### **RECOMMENDATION:**

It is recommended that Council discusses the various open seats and strategically identifies which members are interested in continuing with their SCA committee appointments, and identify their desired new or additional appointments.

Nominations for 2015 appointments are due to the SCA no later than November 20, 2014. All interested members (including those currently serving on boards and committees) must complete the nomination form (Attachment A) and submit it along with a statement of interest detailing relevant background and experience in order to be considered for appointment.

### **BACKGROUND DISCUSSION:**

SCA is anticipating some turnover on SCA appointed Boards and Committees in 2014. While the SCA appoints members to some 28 Regional Boards and Committees, there will be open seats on 21 Regional Boards and Committees due to member retirements and term limited positions. No Kirkland members will reach the 6 year term limit this year. (Term limits do not apply during service as an alternate)

#### Open Seats Resulting from Term Limits

Of the available seats for next year's SCA appointments, only a few are openings because the incumbent has reached a term limit, and Kirkland currently has seats on two of those committees.

- **Emergency Management Advisory Committee (EMAC)**  
Councilmember Harris of Shoreline - is term limited. Deputy Mayor Sweet currently serves on that committee already.
- **Regional Transit Committee (RTC)**  
Councilmember Palmer of Renton - is term limited. Councilmember Asher currently serves as an Alternate on that committee.
- **Solid Waste Advisory Council (SWAC)**  
Mayor Baker of Kenmore - is term limited. There is an opportunity here.

Other Appointment Opportunities

- **Board of Health (BoH)**  
Mayor Winstead of Shoreline will not be reapplying - creating a vacancy on the BoH. The SCA has two appointed members and only 1 alternate to the BoH, and it strives to rotate the distribution of those seats between the north and the south. Currently the SCA has 2 north and 1 south. Therefore, it is likely that the next member on this committee would be appointed from the south caucus.
- **Regional Water Quality Committee (RWQC)**  
There may be an opportunity for a new member here. However, Deputy Mayor Sweet currently serves as an Alternate on this committee
- **Regional Policy Committee (RPC)**  
There may be an opportunity for a new member here. However, Mayor Walen currently serves on this committee.
- **Growth Management Planning Board (GMPB)**  
There is at least one vacancy on the PSRC's GMPB.
- **Flood Control District Advisory Committee (KCFCDAC)**  
This committee may also provide opportunities, but this was not confirmed as of the writing of this memo.

City of Kirkland Seats on Regional Boards or Committees

With the annexation of the northern neighborhoods in 2011, the City of Kirkland's population increased from 49,000 to over 81,000 making it eligible for its own seat on some boards or committees. The City has its own seat on the Puget Sound Regional Council's Executive Board and the Emergency Medical Services (EMS) Advisory Task Force. Because Kirkland has its own seats on these bodies, a Kirkland Councilmember would not be eligible for an SCA seat on either of these committees.

Benchmarks for 2015 Board and Committee Appointments:

- Deadline for nominations to 2014 boards and committees – November 20, 2014
- PIC Nominating Committee forwards recommended slate of appointees to PIC – December 3, 2014
- PIC makes a recommendation on the slate of appointees to the Board of Directors – December 10, 2014
- SCA Board of Directors finalizes 2015 board and committee appointments – December 17, 2014
- Board and Committee Appointee Orientation – January 28, 2015

**SUMMARY**

Councilmembers should determine their interest in continuing with their current SCA committee appointments and who wants to seek new opportunities. Nominations for 2015 board and committee appointments are due November 20, 2014.

Attachments: A. 2015 Boards and Committees Nomination Form



## 2015 CALL FOR NOMINATIONS

### Appointments to Regional Boards and Committees

Sound Cities Association (SCA) makes appointments or recommends for appointment to 28 regional boards and committees. For 2015, there will be open seats on 21 boards and committees.

For detailed information about each committee, please refer to:

<http://soundcities.org/wp-content/uploads/pdf/2014-appointments-booklet.pdf>

This guide contains helpful information about each committee, including: the roles and responsibilities of each committee; the dates, times, and location of committee meetings; the SCA staff person responsible for each committee; the 2014 representatives to each committee; and the term expiration date for each appointment.

Nominations for 2015 board and committee appointments are due **November 20, 2014**. All interested members (including those currently serving on boards and committees) must submit a nomination form in order to be considered for appointment.

Applications for boards and committees are reviewed by the PIC Nominating Committee, which is comprised of one representative from each SCA Caucus (South, North, South Valley, and Snoqualmie Valley). The PIC Nominating Committee considers a variety of factors in making appointments. Some boards and committees have specific requirements for appointments. The committee also strives to maintain balanced geographic distribution, and a balance of membership from large and small cities. The background and interest level of applicants is considered, as is the applicant's past service on boards and committees. The committee also looks to balance the need for institutional knowledge and expertise with a desire to obtain fresh perspectives and new voices. SCA values diversity, and strives to create an inclusive environment. All SCA members are encouraged to apply for boards and committees. The Nominating Committee recommends a slate of appointments to the SCA Public Issues Committee (PIC), which in turn submits recommendations for appointments to the SCA Board of Directors for approval.

Deadline for nominations to 2015 boards and committees	<b>November 20, 2014</b>
PIC Nominating Committee forwards recommended slate of appointees to PIC	<b>December 3, 2014</b>
PIC makes a recommendation on the slate of appointees to the SCA Board of Directors	<b>December 10, 2014</b>
SCA Board of Directors finalizes 2015 board and committee appointments	<b>December 17, 2014</b>
Board and Committee Appointee Orientation	<b>January 28, 2015</b>

**To apply, please fill out this form, and submit a statement of interest detailing your relevant background and experience for each position via email to [sca@soundcities.org](mailto:sca@soundcities.org).**

<b>Board/Committee Name</b>	<b># of Seats</b> M = Member A = Alternate	<b>Nominee's Name</b>	<b>City</b>	<b>Preference</b> 1 = first choice, 2 = second choice, etc.
Board of Health (BoH)	2M / 1A			
Committee to End Homelessness (CEH) Governing Board *	1M			
Domestic Violence Initiative (DVI)	4M / 4M			
Economic Development Council (EDC) (formerly enterpriseSeattle) – City must be EDC Investor	8M			
Emergency Management Advisory Committee (EMAC) (elected or staff) *	1M / 1A			
Growth Management Planning Council (GMPC)	6M / 4A			
Interagency Advisory Council to End Homelessness in King County (IAC) (staff) *	1M			
King Conservation District (KCD) Advisory Committee	3M / 3A			
King County Consortium Joint Recommendations Committee (JRC) for CDBG	4M			
Law Enforcement Officers' and Fire Fighters' Plan 1 (LEOFF1) Disability Retirement Board	1M			
Local Hazardous Waste Management Program Coordinating Committee (LHWMP)	1M			
PSRC Executive Board	3M / 3A			
PSRC Growth Management Policy Board (GMPB)	3M / 3A			
PSRC Operations Committee	1M / 1A			
PSRC Transportation Policy Board (TPB)	3M / 3A			
Regional Law, Safety, and Justice Committee (RLSJ)	6M			
Regional Policy Committee (RPC)	4M / 2A			
Regional Transit Committee (RTC)	8M / 4A			
Regional Water Quality Committee (RWQC)	4M / 2A			
Solid Waste Advisory Committee (SWAC) *	2M			
South Central Action Area Caucus Group (SCAACG)	2M			

\* Indicates that this appointment is for a multi-year term. Two-year terms: LEOFF1, CEH and MIDD. Three-year terms: EMAC, SWAC and IAC.



**CITY OF KIRKLAND**  
Department of Parks & Community Services  
505 Market Street, Suite A, Kirkland, WA 98033 425.587.3300  
www.kirklandwa.gov

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## **MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Jennifer Schroder, Director

**Date:** November 7, 2014

**Subject:** Agreement between Seattle Tilth and the City of Kirkland to provide education and agricultural resources to the public and an urban agriculture center at McAuliffe Park

### **Recommendation:**

That the City Council authorizes the City Manager to sign the attached Agreement with Seattle Tilth for Use of McAuliffe Park to operate an urban agriculture and education center.

### **Background:**

McAuliffe Park is an extraordinary landscape that has evolved from Kirkland's pioneer days to the present under the stewardship of the Langdon/Johnson & McAuliffe families, and now the City of Kirkland Parks and Community Services Department.

The City first purchased a small portion of the property in the 1990's, and the remainder in 2001, for a total of 11.6 acres. In 2005, the City retained Barker Landscape Architects to help master plan the park. The intent of the master plan (the Plan) is to preserve and enhance the heritage farmstead, gardens and overall unique character of the property. Development of the site is envisioned to support programming such as community gardening and education, forest restoration (native plant nursery), sustainability and other related activities. The Plan also focuses on enterprise opportunities, such as weddings, events and business meetings as a means of generating revenue to offset operating costs.

The site is currently used by the public primarily for informal picnicking and walking. Operationally, the site is used to store park maintenance equipment and supplies as well as support a neighborhood pea-patch program and a native plant nursery for plant stock used in natural area restoration projects within the Kirkland park system. In addition, the department's recreation division offers a limited number of classes on site.

A Request for Proposal (RFP) was advertised on December 20, 2013 for overall development, renovation, management and operation of McAuliffe Park as a public resource and urban agriculture center. Seattle Tilth was the only respondent but provided a detailed and exciting plan for an educational and agricultural center at McAuliffe entitled the Urban Farm Project.

In the introduction to their plan, Seattle Tilth provided the following description:

*"Seattle Tilth's vision for McAuliffe Park includes a vibrant, accessible and multi-faceted urban agriculture and learning center that engages and involves the community in a broad range of gardening and nutrition education programs, as well as expanded opportunities to grow, harvest and access healthy, fresh produce. This vision is built upon a commitment to develop and manage the site using organic and sustainable practices throughout, and where possible, to incorporate a social enterprise business model in order to operate successful programs.*

*Central to our vision is our commitment to working closely with the City of Kirkland and to foster effective partnerships with community groups and residents and to establish a spirit of openness, inclusion and capacity building."*

The complete 43 page response may be viewed by this link to [Seattle Tilth's proposal](#). Staff, along with Park Board Members, reviewed the proposal and conducted an interview with Seattle Tilth Executive Director Andrea Dwyer. The Parks, Public Works and Human Services Committee received an overview of the proposal on July 2, 2014.

### **Seattle Tilth**

The mission of Seattle Tilth is "to inspire and educate people to safeguard our natural resources while building an equitable and sustainable local food system."

Since 1977, Seattle Tilth has been a trusted source for organic gardening education in the region and has taught thousands of adults and children in hands-on educational programs. They have substantial experience in community garden projects, examples include developing and operating the Rainier Beach Urban Farm and Wetland Project, a City of Seattle partnership, as well as the Pickering Garden, a City of Issaquah partnership.

### **The Agreement**

The term of the agreement is for 10 years with option for two additional consecutive terms of 10 years.

Seattle Tilth submitted a proposal in response to the City's RFP. It outlines a long term strategy to develop and fund McAuliffe Park as a vibrant, accessible and multi-faceted urban agriculture and learning center that engages and involves the community in a broad range of gardening and nutrition education programs, as well as expand opportunities to grow, harvest and access healthy, fresh produce. The initial scope of work is summarized here:

- Establishing Master Recycler Composter Eastside trainings and outreach programs
- Introducing adult education organic gardening courses
- Introducing cooking and nutrition programming
- Community outreach to establish programming interest with Edible Kirkland, Kirkland Nourishing Networks, local schools, gardening groups, churches and other stakeholders
- Continue role as the convener and facilitator of Edible Kirkland Nourishing Network monthly meetings. Current Edible Kirkland projects under consideration include creating GIS mapping tool of potential private and public land for production of fruits and vegetables, Explore integrating edible landscapes into Kirkland Parks and Open Spaces and a project to revitalize a Historic Orchard in Kirkland.

### **Tier One Improvements**

The scope of work would be accomplished through the following "Tier One" improvements within the first one-to-three years of operation. According to the proposal, making these Tier One improvements relies upon considerable in-kind contributions and volunteer labor.

*Community Learning and Demonstration Garden*—This would be a small garden site, built in proximity to the P-patch garden. This space would include various garden elements including garden beds, organic vegetables, rain garden, compost area, edible perennials, cistern, native ornamentals and fruit trees. The community garden would also include irrigation, fencing, signage, pathways and potentially a greenhouse and other amenities.

*Children's Learning Garden*—Modeled after Seattle Tilth's Children's Gardens at Good Shepherd Center, this would be an engaging, fun and interactive garden area and could include annual and perennial vegetables, a sensory garden, an animal trail and wildlife tunnel, giant kiwi vines, fruit trees, a container garden demonstration, worm bins, compost area and a gathering area/play area. The initial plan would be to build the children's garden in the West play area, but Seattle Tilth would work closely with parks staff and community groups in determining the best location for this garden.

*Production Farm*—Seattle Tilth's site improvement plan includes a one- to two-acre production farm directly west of the P-patch in the large meadow area. The farm space would include fencing and irrigation as well as pathways for vehicle access.

*Wash/Pack Station*—Seattle Tilth would seek to create a modest outdoor station for preparing produce for distribution and sales at local farmers markets. The plan is to locate the station in proximity to the production farm as well as the P-patch and community learning garden areas.

*Market Stand*—The Tier One site plan would include a modest market stand for on-site produce sales. Tilth initially believes the garage area could be a good location for the market stand but would work with parks officials and other community members in determining the most advantageous placement.

*Garage Area Tenant Improvements*—Seattle Tilth's site improvement plan is to make modest tenant improvements to the garage area, thereby making it possible to convene garden classes during inclement weather. Tilth also proposes to utilize the garage structure for office space for the on-site staff and would make the additional tenant improvements necessary for this space to accommodate these functional purposes.

*Arboretum*—The Tier One plan contains many of the enhancements to the arboretum as outlined in the McAuliffe Park Master Plan including tree labeling, planting new trees and walking paths.

*Other Farm and Garden Improvements*—Seattle Tilth would plan to maintain flexibility and openness to hear from, and respond to, ideas and input from community members regarding additional site improvements that relate to food production, garden education, natural habitat and enhanced community participation and stewardship.

Seattle Tilth offices and certain programming will be located in the lower level of the building referred to as the office/car storage building. Currently, the upper floor is used for meetings

and City of Kirkland recreation and education classes for youth. City programs will continue to be offered and staff will coordinate use of the upper section of the building with Seattle Tilth.

Utilities and tenant improvements specific to the needs of Seattle Tilth will be at its sole expense, unless otherwise mutually agreed to by the City.

**Attachments:**

- Request for Proposal
- Resolution
- Agreement between Seattle Tilth and City of Kirkland

# **REQUEST FOR PROPOSAL (RFP)**

## **McAULIFFE PARK URBAN FARM DEVELOPMENT AND OPERATION**

Job Number 06-14-PK

Proposal Due Date –February 14, 2014, no later than 3:00 pm PST



PARKS AND COMMUNITY SERVICES DEPARTMENT  
**JENNIFER SCHRODER, DIRECTOR**

**MAILING ADDRESS AND CONTACT INFORMATION:**

KIRKLAND PARKS AND COMMUNITY SERVICES  
505 MARKET STREET SUITE A  
KIRKLAND, WA 98033  
PHONE: (425) 587-3301 EMAIL: *JSchroder@Kirklandwa.gov*

## DESCRIPTION OF PROJECT, RFP INSTRUCTIONS & EXPECTATIONS

### A. BACKGROUND

McAuliffe Park is an extraordinary landscape that has evolved from Kirkland's pioneer days to the present under the stewardship of the Langdon/Johnson & McAuliffe families, and now the City of Kirkland Parks & Community Services Department.

The City first purchased a small portion of the property in the 1990's and the remainder in 2001 for a total of 11.6 acres. In 2005, the City retained Barker Landscape Architects to help master plan the park. The intent of the master plan (the Plan) is to preserve and enhance the heritage farmstead, gardens and overall unique character of the property. Development of the site is envisioned to support programming such as community gardening and education, forest restoration (native plant nursery), sustainability and other related activities. The plan also focused on enterprise opportunities, such as weddings, events and business meetings as a means of generating revenue to offset operating costs. The McAuliffe Park Master Plan is available on the City of Kirkland website: [http://www.kirklandwa.gov/depart/parks/Park\\_Planning/Park\\_Planning\\_Development/McAuliffe\\_Park\\_Master\\_Plan.htm](http://www.kirklandwa.gov/depart/parks/Park_Planning/Park_Planning_Development/McAuliffe_Park_Master_Plan.htm)

The site is currently used by the public primarily for informal picnicking and walking. Operationally, the site is used to store Park Maintenance equipment and supplies as well as supporting a pea-patch program and a native plant nursery. Nursery stock is used in natural area restoration projects within the Kirkland Park system. In addition, Kirkland Recreation offers a limited number of classes on site.

### B. DESCRIPTION OF PROJECT

The City of Kirkland Parks and Community Services Department (the Department) is seeking Proposals for overall development, renovation, management and operation of McAuliffe Park as a public resource and urban agriculture center.

#### 1. Site Description

The property, encompassing 13 separate parcels, is located primarily on the northeast corner of NE 116<sup>th</sup> Street and 108<sup>th</sup> Avenue NE in Kirkland's South Juanita neighborhood.

McAuliffe Park contains the following important elements within its nearly 12 acres:

- A large forested area/native conifer grove dominated by maturing second growth Douglas fir trees with a range of deciduous tree species. A network of trails leads through this dense forest canopy on the northern portion of the site.
- Community garden containing 36 individual plots
- Native plant nursery managed by volunteers within the Green Kirkland Program.
- Well-groomed lawn areas are interspersed with trees and shrubs of remarkable quality and variety.

- Several residences and outbuildings, including:
  - Residences (Exhibit A)
    - Former McAuliffe Residence - Daylight rambler, about 4,290 sq. ft., constructed in 1969 (currently functioning as a home rental).
    - The Johnson Homestead, which includes a 1,490 sq. ft. rambler built in 1905 (currently functioning as a home rental), a detached 400 sq. ft. garage, and an historic barn (about 800 sq. ft.), built in the early 1900's.
    - The "Carriage House", a 1,660 sq. ft. brick house built in 1928 (currently functioning as a home rental).
    - The "Blair House", a 1,120 sq. ft. house built in 1955 (currently functioning as a home rental).
    - A 2-story combination Office/Car Storage Building, about 2,300 sq. ft. **(currently used for meetings and recreation/education classes for youth with a focus on cooking – Exhibit B)**
    - Expansive Carport Storage Structure, about 1,800 sq. ft., (currently used to store park maintenance equipment and materials)
    - Plus several other smaller outbuildings, storage sheds, and garden structures.

## 2. Urban Agriculture

The site currently supports a 36 plot community garden and a small native plant nursery. Mature apple trees of the past provide a reminder of the property's history. The site can be used for growing plants, harvesting food or ornamental crops. These agricultural outputs can be either donated or sold on or off the Site. Elements of Urban Agriculture shall be established in the long-term development and operation of the Site.

## 3. Public Benefit

Interested parties are asked to provide a written proposal for the development and operation of this site. In addition, the proposal must specify how the community at-large will benefit from the proposed development and operation. This may include free and reduced-price activities, existing facilities that are made accessible to the public, new facilities and programs that are created for general public benefit. Programming shall be consistent with the agreed upon use, and only after consultation between the Department and the Operator. In addition, it is expected that the Operator will accommodate the Department's programs at times when the Operator does not have programs scheduled.

Current programming is described in Exhibit B

## B. DEFINITIONS

**AGREEMENT** – As defined, includes the RFP, the Operator’s written submittals and the Contract(s) entered into with the City.

**CITY** - Means The City of Kirkland, a municipal corporation.

**DEPARTMENT** - shall mean the City of Kirkland Parks and Community Services Department.

**EFFECTIVE DATE** - Shall mean the date the Agreement is executed by both parties.

**OPERATOR** – The term “Operator” shall be the person(s), firm(s) or organization(s) selected by the RFP process to develop and operate the proposed site.

**PUBLIC BENEFIT** – The positive aspects available to the general public resulting from a site, project, program or other use.

**QUALIFICATIONS** – Shall mean demonstrated experience and success as a developer and/or Operator in the critical areas as identified which includes, but is not limited to: client references, business references, a demonstrable successful history of Urban Agriculture, natural area restoration and/or other related programs and property operation experience, the ability to insure operations and bond performance and other criteria set forth in the RFP.

**RFP** – Means the City of Kirkland Parks and Community Services Request For Proposals.

**SITE** – Also referred to as “Property” and or “Premises” shall mean the real property upon which the buildings are located and the property to be used by the Operator.

**URBAN AGRICULTURE** – Shall mean an area in the City that is used to grow plants, harvest food or ornamental crops either for donation or sale or for use by those cultivating the land and their households, or sold at the lot where they are grown or off-site, or both, and in which no other items are sold. Examples may include flower and vegetable raising, orchards and vineyards.

## C. CAPITAL IMPROVEMENTS

To implement the potential uses approved by the City in the Plan, the City seeks to enter into an Agreement with a qualified Operator(s) who can help meet the community’s needs for Urban Agriculture and wetland enhancement by planning, constructing and operating the Site. The successful Operator will demonstrate experience in planning, design, permitting, construction, and operation and maintenance.

The proposed facilities should enhance programming opportunities and may include other accessory/related activities that ensure creation of a self-sustaining business model and enhances the use of the Site. The City expects the Site to be developed at the Operator’s sole cost and expense from the current condition to fully operational as described in the

Operator's Proposal. Notwithstanding, the City may elect to partner for certain improvements to expand or add a public benefit. Improvements to the property by the City would be coordinated with the operator.

The proposal should clearly show the Operator's schedule for completing the Site and facility improvements for the proposed range of Urban Agriculture and wetland preservation and enhancement.

Planned capital improvements by the City are described in the Master Plan.

#### D. THE PROPOSAL GUIDELINES

Proposals submitted shall follow these guidelines:

1. Program and Operations Plan shall include the Operator's vision for the Site, including Urban Agriculture related programming. The Program and Operations Plan shall address the detailed Public Benefit, site programming, public outreach and engagement, and public access. All planning shall be consistent with the Plan.
2. Design, Planning & Construction Management Capability shall include the capital improvements plan which shall take into account the Plan.
3. Financial Plan shall include the detailed financial feasibility and business model to accomplish the Operator's vision. In addition, an operations and maintenance plan for the Site shall be presented to be consistent with the Operator's vision.
4. Corporate Organization shall include information about the Operator's organization, including subsequent partnerships. The proposal shall include the outline of how the Operator will be organized to operate and manage the Site.

All pieces of the proposal shall identify experience and organization of the Operator.

#### E. FINANCIAL SUBMITTAL INSTRUCTIONS AND EXPECTATIONS

Explain the funding for (1) the development and (2) subsequent operations. Clearly explain the timing and contingencies of your funding plan. The identity of any third party that will provide financing for the project and the nature and timing of their commitment should be clear. The City has no funds currently available for development or expanded operation of the facilities. Proposals that generate revenue to the City will be favored.

#### F. OPERATIONS EXPECTATIONS

The City expects that the Operator might, (1) coordinate marketing, (2) recruit, select and train personnel, (3) install point of sales, ticketing, and accounting systems, (4) complete and implement a system of operating policies and procedures and (5) test and certify the safety of all equipment and customer accessible fixtures. The Operator shall operate the Site (a) in a financially self-sustaining manner without subsidy from the City, (b) shall

operate the Site consistent with the Contract between the City and the developer and (c) shall operate the facilities for the benefit of the community and users of the Site. The primary purpose of the Site is to provide Public Benefit; the primary purpose is not to advance the business of the Operator at the expense of the City and users of the Site.

## G. PROPOSAL SUBMITTAL STANDARDS AND PROCESS

### 1. Submittal Format:

#### **Preferred:**

Proposals titled "**Proposal McAuliffe Park Urban Farm Project**" should be submitted as an e-mail attachment in PDF or MS Word format to:

[purchasing@kirklandwa.gov](mailto:purchasing@kirklandwa.gov).

#### **Or:**

One (1) unbound original and two (2) digital storage devices (CD or USB Flash Drive) in PDF or MS Word format mailed or delivered to:

City of Kirkland  
Attn: Barry Scott, Purchasing Agent  
Job # 06-14-PK  
123 5th Avenue, Kirkland, WA 98033

*Note that faxed proposals or electronic proposals submitted as compressed files will not be accepted.*

#### **Submittal Deadline: February 14, 2014, by no later than 3:00 p.m. Pacific Standard Time.**

Those who intend to submit proposals are encouraged to provide contact information to Barry Scott, Purchasing Agent, by email to [bscott@kirklandwa.gov](mailto:bscott@kirklandwa.gov). Those who provide contact information will be automatically notified of any issued addenda or the cancellation of the RFP. It is the sole responsibility of those who do not submit contact information to monitor the City's "Doing Business with the City" webpage for any addenda or a notice of cancellation.

2. In order for the City to accept and evaluate a Proposal, the submittal must be signed by an individual legally empowered to bind the Operator and must have been fully completed, along with any other attachments or supporting documentation required. Late or incomplete Proposals will not be considered.

3. The Operator shall rely on only this Request for Proposals document and any written supplement issued by the City for guidance on preparation of the qualification submittal. Operators shall not rely on any other written or any oral statements of the City or its officers, directors, employees or agents regarding the overall project or the Proposal in preparing and submitting the Proposal.

4. Any questions must be submitted in writing by **5:00 pm on February 5<sup>th</sup>**. Questions are to be directed to Jennifer Schroder, Kirkland Parks and Community Services Director via email at [JSchroder@Kirklandwa.gov](mailto:JSchroder@Kirklandwa.gov).
5. Each Operator should be aware the City must comply with the provisions of the Washington State Public Records Act, RCW 42.56, which applies to the release of public information. The information which an Operator submits to the City shall be available for public disclosure.
6. Operators will be responsible for all costs associated with development of their proposal, whether selected or not.
7. The City reserves the right to reject any and all submittals at any time with no penalty, or to waive immaterial defects and minor irregularities in any submittal.
8. All material submitted in response to this RFP shall become the property of the City upon delivery to the City's Purchasing Agent and will not be returned.

H. RFP ANTICIPATED SCHEDULE:

December 20, 2013	Advertisement begins
January 14, 2014	On-site tour of park (10:30 am)
February 5, 2014	Written questions submitted by 5:00 pm
February 7, 2014	Q&A document posted
February 14, 2014	Proposals due by 3:00 pm
February 21, 2014	RFP Evaluation
February 28, 2014	Operator Selection
March 28, 2014	Finalize Agreement Scope
April 9, 2014	Park Board Recommendation to Council
April 15, 2014	City Council Approval

-- END RFP --

RESOLUTION R-5084

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE, USE AND OCCUPANCY AGREEMENT WITH SEATTLE TILTH FOR PROPERTY COMMONLY KNOWN AS McAULIFFE PARK LOCATED AT 10824 NE 116<sup>th</sup> STREET, KIRKLAND, WASHINGTON.

WHEREAS, the City of Kirkland ("City") owns property commonly known as McAuliffe Park located at 10824 NE 116<sup>th</sup> Street, Kirkland, Washington ("Property"); and

WHEREAS, the City and Seattle Tilth cooperated in a request for qualifications and evaluation of qualifications process to operate portions of the Property; and

WHEREAS, the parties agree that Seattle Tilth's use of the Property will provide an essential venue for positive and life-enriching programs and activities for the community, and thereby fulfill an important public purpose.

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

Section 1. The City Manager is authorized and directed to execute on behalf of the City of Kirkland an Agreement substantially similar to that attached as Exhibit "A", which is entitled "Agreement Between City of Kirkland and Seattle Tilth Regarding the Lease, Use and Occupancy of McAuliffe Park."

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2014.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

**AGREEMENT  
BETWEEN  
THE CITY OF KIRKLAND  
AND  
SEATTLE TILTH  
REGARDING THE  
LEASE, USE AND OCCUPANCY OF  
McAuliffe Park**

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**AGREEMENT  
BETWEEN  
CITY OF KIRKLAND  
AND  
SEATTLE TILTH  
REGARDING THE  
LEASE, USE AND OCCUPANCY  
OF McAULIFFE PARK**

THIS LEASE, USE AND OCCUPANCY AGREEMENT (“**Agreement**”) is dated as of \_\_\_\_\_, 2014 (the “**Effective Date**”), and entered into by and between CITY OF KIRKLAND (hereinafter referred to as “**City**”), a Washington municipal corporation, and SEATTLE TILTH ASSOCIATION (hereinafter referred to as “SEATTLE TILTH”), a Washington non-profit corporation.

**RECITALS:**

- A. City is interested in the health and welfare of its residents;
- B. Seattle Tilth is organized for purposes which include educating and inspiring people to garden organically, conserve natural resources and support local food systems in order to cultivate a healthy urban environment and community.
- C. The McAuliffe Park site is owned by City, is located at 10824 NE 116<sup>th</sup> Street, Kirkland, Washington 98033, and is situated upon its real property in King County, Washington, legally described in Exhibit A to this Agreement (the “**Facility**”);
- D. City and SEATTLE TILTH cooperated in a request for qualifications and evaluation of qualifications process to operate portions of the Facility;
- E. Both parties agree that the SEATTLE TILTH’s use of the Facility will provide an essential venue for positive and life-enriching programs and activities for the community, and thereby fulfill an important public purpose;
- F. Both parties agree that it would be in the best interests of City, as Landlord, and SEATTLE TILTH as Tenant, for SEATTLE TILTH to lease and have exclusive operational control of certain areas within the Facility, and subject to the terms of this Agreement, reserving the right of City to use the Facility;
- G. Both parties intend that SEATTLE TILTH operate the Facility in a manner consistent with the important public purpose of providing positive and healthful programs for the community; and
- H. The parties hereto desire to document the terms and conditions they have agreed upon with respect to the lease, use and occupancy of portions of the Facility by SEATTLE TILTH;

NOW, THEREFORE, in consideration of the mutual undertakings and promises

contained herein, and as a direct benefit to City, the parties agree as follows:

**1. DEFINITIONS.**

All words in this Agreement bearing initial capitals, other than proper nouns, section headings or words required to be capitalized for proper usage, are defined terms and shall have the meanings specifically assigned to them in the Agreement as set forth below. Unless otherwise expressly provided, use of the singular includes the plural and vice versa.

1.1 “**Agreement**” means this Lease, Use and Occupancy Agreement, as from time to time amended in accordance with the terms hereof.

1.2 “**Approval**” means the prior written consent of a party hereto or designated representatives thereof.

1.3 “**City**” means City of Kirkland.

1.4 “**City Manager**” means the City Manager of City of Kirkland, or his or her designee.

1.5 “**Facility**” means the buildings and areas within the park, located at 10824 NE 116<sup>th</sup> Street Kirkland, Washington, pursuant to this Agreement and described in Exhibit B.

1.6 “**Tenant Improvements**” means all property installed by SEATTLE TILTH (such as equipment, fixtures and furnishings, whether the property is physically affixed to the Facility or not) which is used in the programming, operations, rentals, and administration of the Facility. Tenant Improvements does not mean the structure and core of the buildings on the Facility; HVAC, plumbing, electrical and mechanical systems.

**2. LEASE DESCRIPTION.**

City, as Landlord, hereby leases to SEATTLE TILTH, and SEATTLE TILTH, as Tenant, hereby leases from City the Facility, subject to the terms and conditions of this Agreement.

**3. TERM OF AGREEMENT.**

3.1 Commencement Date of Lease. The commencement date of SEATTLE TILTH leasehold interest shall be December 1, 2014 (the “**Commencement Date**”).

3.2 Term. The Term of this Agreement shall expire ten (10) years after the Commencement Date, unless terminated earlier pursuant to the provisions hereof.

3.3 Option for Extension of Term. SEATTLE TILTH may extend the term of this Agreement for two (2) additional consecutive terms of ten (10) years each; provided that, for the five-year periods starting December 1, 2019, December 1, 2024, December 1,

2029, and December 1, 2034, the parties have the option to renegotiate the terms and conditions of this Agreement and to thereby seek to amend this Agreement. If the parties fail to agree on the terms and conditions of the amendment of this Agreement, the parties agree to engage in non-binding mediation to resolve their differences. If the parties fail to agree on the terms and conditions of the amendment of this Agreement, City may terminate this Agreement after the failure to agree upon 90 days' prior written notice.

Not later than January 1, 2019, January 1, 2024, January 1, 2029 and January 1, 2034 before the expiration of this Agreement, City shall notify SEATTLE TILTH of City's exercise of its option to renegotiate the terms and conditions of this Agreement.

Not later than one (1) year before the expiration of this Agreement, SEATTLE TILTH shall notify City of SEATTLE TILTH's election to exercise its option to extend the initial term of this Agreement and any extension term. Notwithstanding any other provision of this Agreement, the option to extend the term of this Agreement shall not be assignable or exercisable by any person or entity other than SEATTLE TILTH.

3.4 Termination of Agreement. Upon the occurrence of any event of default described in this Agreement, the non-defaulting party may terminate this Agreement provided it has delivered to the defaulting party a notice of default providing at least a 60-day cure period thereafter and the default has not been cured within such period. Upon no less than one (1) year's written notice to City, SEATTLE TILTH may terminate this Agreement without cause. Upon no less than one (1) year's written notice to SEATTLE TILTH, City may terminate this Agreement without cause. In the event that this Agreement is terminated, SEATTLE TILTH shall surrender the Facility to City.

#### **4. AUTHORIZED USE OF FACILITY.**

4.1. SEATTLE TILTH shall have exclusive possession and operational control of the portions of the Facility under its control, subject to the terms of this Agreement and reserving the right of City to use the Facility after prior consultation with SEATTLE TILTH. Initially, SEATTLE TILTH will occupy the lower floor of the Atrium, the address of which is 11718 108<sup>th</sup> Ave NE ("Atrium"). The City will continue to use the upper floor of the Atrium.

4.2. The City and SEATTLE TILTH acknowledge that SEATTLE TILTH'S use of the Facility will expand over time, as generally described in Exhibit B, Proposal: McAuliffe Park Urban Farm Project, which is incorporated into this Agreement. The first year of SEATTLE TILTH's use of the Facility shall be governed by the Year One Scope of Work, a copy of which is attached hereto as Exhibit C and incorporated into this Agreement. The long-term use of the Facility by SEATTLE TILTH shall be governed by the Long Term Use Plan set forth in Exhibit B and incorporated into this Agreement. SEATTLE TILTH and the City shall coordinate any proposed expansion of SEATTLE TILTH's use of the Facilities.

4.3. SEATTLE TILTH shall use the portions of the Facility under its control for the provision of services, programs, and activities as described in Exhibits B and C, as well

as for meetings of SEATTLE TILTH Board members, staff, and other personnel directly associated with SEATTLE TILTH, other SEATTLE educational programs, presentations, SEATTLE TILTH fund-raising endeavors, SEATTLE TILTH offices, and such other activities as are related to or incidental to the foregoing. SEATTLE TILTH may use the Facility for community meetings and activities; provided that, such meetings and activities shall not unduly interfere with the primary use of the Facility as described in this Agreement. SEATTLE TILTH may use the Facility to engage in concession and catering activities only as provided in this Agreement. SEATTLE TILTH may use the Facility for additional purposes with the prior written approval of the City Manager, which shall not be unreasonably withheld, conditioned or delayed.

## **5. CITY USE.**

5.1 City reserves the right to use the public program areas of the Facility for various programs on a space available basis. Scheduling and use procedures shall be coordinated by the respective facility managers of City and SEATTLE TILTH. In any event, Facility space for SEATTLE TILTH programs will be the first priority where scheduling of City's programs and SEATTLE TILTH's programs conflict.

5.2 City shall be allowed to use the Facility without rental charge, but shall pay operational expenses arising from its use of the Facility including extra staffing and janitorial services and expenses to repair any damage to the Facility or the Tenant Improvements caused by the City's use.

## **6. RENT.**

In consideration of the value and public benefit of SEATTLE TILTH's contribution to development of the Facility, the value of SEATTLE TILTH's tenant improvements to the Facility, the value of SEATTLE TILTH's maintenance and operation of the Facility, and subject to the terms and conditions of this Agreement, SEATTLE TILTH hereby covenants to and shall pay no monetary rent for the Facility during the initial term of this Agreement. The amount of the annual rent during additional terms shall be established in accordance with Section 3.3 of this Agreement.

## **7. RECORD KEEPING AND REPORTING.**

7.1 City shall appoint a liaison between City and SEATTLE TILTH who will ensure compliance with all record keeping and reporting requirements set forth in this Section 7.

7.2 SEATTLE TILTH shall maintain books, records, documents and other accounting procedures and practices in accordance with Generally Accepted Accounting Principles ("**GAAP**") consistently applied (e.g., a unitary, internally consistent system of accounts and records) that sufficiently and properly reflect all receipts and direct and indirect costs of any nature associated with the exercise of rights and the performance of obligations by SEATTLE TILTH under this Agreement.

7.3 SEATTLE TILTH shall provide monthly reports in the first twelve (12) months of operation and quarterly reports thereafter, on a schedule and in a form acceptable to both parties. The reports shall include, at a minimum, program assessment reports, which will include the number of programs offered and the number of unduplicated participants insofar as practical involved in drop-in activities and programs. Reports shall include measurement of progress towards meeting or exceeding mutually agreed upon program outcomes, established on an annual basis and included herewith in Exhibit C for the first year of operation. SEATTLE TILTH will draft statements of such outcomes and approval by City will not be unreasonably withheld.

## **8. IMPROVEMENTS, ALTERATIONS AND ADDITIONS TO THE FACILITY**

Improvements, Alterations and Additions. SEATTLE TILTH shall not alter any structural features of the Facility without City approval. SEATTLE TILTH, at its sole expense, may redecorate any interior surface of walls, ceilings, windows and doors of the Atrium. SEATTLE TILTH may install its own furnishings and equipment on or about the Facility without City's consent, provided SEATTLE TILTH shall not install trade fixtures or other items which are physically attached to the Facility without City's consent, which shall not be unreasonably withheld, conditioned or delayed. Any improvements will be made in accordance with all licenses, permits, and/or other authorizations required by law.

## **9. ACCEPTANCE OF FACILITY.**

Prior to entering into and occupying the Facility, SEATTLE TILTH shall have an opportunity to inspect the Facility to confirm the general maintenance and upkeep of the Facility. Thereafter, by entering into and occupying the Facility, or any portion thereof, SEATTLE TILTH accepts the same in their condition as of the Commencement Date. SEATTLE TILTH covenants that no representation, statement or warranty, express or implied, has been made by or on behalf of City with respect to the condition of the Facility or the use that may be made of the Facility, except as may be contained in this Agreement.

## **10. QUIET ENJOYMENT.**

City covenants that it holds legal title to the Facility, free and clear of all liens and encumbrances, excepting only the lien for current taxes not yet due, if any, such mortgage or mortgages as are permitted by the terms of this Agreement, zoning ordinances and other building and fire ordinances and government regulations relating to the use of such property, and easements, restrictions and other conditions of record. City represents and warrants that it has full right and authority to enter into this Agreement, that the contemplated use of the Facility is permitted under applicable law, and that SEATTLE TILTH, upon performing its other covenants and agreements set forth in this Agreement and all extensions thereof, shall peaceably and quietly have, hold and enjoy the agreed-upon portions of the Facility for the term of this Agreement, including, but not limited to, the scheduling of SEATTLE TILTH activities and events, management of operations, or selection of employees and agents without hindrance or interference from City, subject to

the terms and provisions of this Agreement.

## 11. **HAZARDOUS SUBSTANCES.**

SEATTLE TILTH shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as defined below) on, under, in, above, to, or from the Facility, the building, or the common areas, other than in strict compliance with all applicable federal, state and local laws, regulations and orders. The term "**Hazardous Materials**" refers to any substances, materials, and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state or federal law, regulation or order. SEATTLE TILTH shall indemnify, defend and hold City harmless from and against (a) any loss, cost, expense (including attorneys' fees and court costs), claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work or remedial work required by, or incurred by City or any nongovernmental entity or person in reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any Hazardous Materials on, under, in, above, to, or from the Facility that occurred or originated during the term of this Agreement. City shall indemnify, defend and hold SEATTLE TILTH harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work ("**remedial work**") required by, or incurred by SEATTLE TILTH or any nongovernmental entity or person in a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release, continuing release or discharge of any Hazardous Materials on, under, in, above, to, or from the Facility that occurred or originated during a time other than the term of this Agreement. If any remedial work is so required under any applicable federal, state or local law during the term of this Agreement, City shall perform or cause to be performed the remedial work in compliance with such law, regulation or order. All remedial work shall be performed by one or more contractors under the supervision of a consulting engineer, each selected by City and approved in advance in writing by SEATTLE TILTH. If City does not commence the remedial work in a timely fashion or does not diligently prosecute the remedial work to completion, SEATTLE TILTH may, but shall not be required to, cause the remedial work to be performed, subject fully to the indemnification of this paragraph. The foregoing indemnification obligation shall survive termination of this Agreement.

## 12. **MAINTENANCE; CLEANING; REPAIR; AND UTILITIES.**

12.1 City. City is responsible for maintenance and repair of the structural components of the Atrium which shall include the roof, the exterior walls, the foundation, and the HVAC system. City is also responsible for maintenance which is necessary for the structural integrity of the Atrium, including maintenance of load-bearing members, and of main lines of mechanical, electrical, and plumbing systems to the point of entry. City is responsible for the portions of the Facility that are currently being rented to others. City

is responsible for and will pay for landscaping and landscape maintenance that meet City standards; provided that, if SEATTLE TILTH wants special plantings or landscaping and landscape maintenance that exceed City standards, SEATTLE TILTH will be responsible for and will pay for and maintain such plantings or features. SEATTLE TILTH shall be responsible for maintenance and repair of any areas that are under its control, such as gardens and pea-patches. City is responsible for and will pay for maintenance of the parking lot and all exterior lighting that meets City standards. City will maintain and provide confidence testing of the fire alarm and sprinkler systems. Before entering the Facility to undertake maintenance and repair work, City shall give SEATTLE TILTH at least twenty-four (24) hours notice; provided that, such maintenance and repair work shall not unduly interfere with the use of the Facility for any programming. In the event of an emergency, however, no such notice shall be required. City shall timely pay the charges for the following services to the Facility: city water, storm sewer, sewer and garbage; provided, however, that SEATTLE TILTH shall reimburse the City for water utility charges significantly above the base charges attributable to SEATTLE TILTH activities. For the purposes of this Agreement, the base water utility charges are the amounts paid by the City for water at the Facility during the 2014 calendar year. In the event the City determines that SEATTLE TILTH's water consumption is significantly above the base charges, it will notify SEATTLE TILTH and the parties will negotiate a fair and equitable method for allocating water charges, taking into account all of the water usage at the Facility. As SEATTLE TILTH's use of the Facility expands, SEATTLE TILTH and the City will explore the option of obtaining separate meters for utilities. City shall not pay for any other services or utilities for the Facility.

12.2 SEATTLE TILTH. SEATTLE TILTH is responsible for maintenance and repair of the interior of the portions of the Atrium under its control, which shall include Tenant Improvements and any of SEATTLE TILTH's property. SEATTLE TILTH's responsibility for tenant improvements and its property extends through fixture drain and trap down to the junction with the line into wall or floor, and includes attempting to clear clogs by means of plunger and toilet auger. SEATTLE TILTH's janitorial and routine maintenance responsibilities include, but are not limited to: timely repair or replacement of light fixtures or bulbs, electrical switches or controls; cleaning of seating, curtains, carpets, flooring, and faucets; cleaning of interior and exterior windows; cleaning of the kitchen and restroom facilities and drinking fountain; and cleaning of external patio, entryways, and external back door area. Except as otherwise specified, SEATTLE TILTH shall timely pay all charges for utilities and other services for which it is responsible to the Facility. Utility charges to be paid by SEATTLE TILTH, include, but are not limited to, electricity, telephone, internet, security alarm monitoring, permits, and false alarm charges.

### 13. INDEMNIFICATION.

SEATTLE TILTH shall defend, indemnify, and hold harmless the City, its officers, officials, employees and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of SEATTLE TILTH's negligent acts or omissions in the performance of this agreement. The City shall defend, indemnify and hold harmless SEATTLE TILTH, its officers,

officials, employees and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages, arising out of the City's negligent acts or omissions in the performance of this agreement. Each Party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, 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. This indemnification shall survive the termination of this Agreement.

#### **14. INSURANCE.**

14.1 City shall maintain all risk property insurance covering the Facility in an amount equal to its replacement cost, insuring against the perils of Fire, Lightning, Extended Coverage, Vandalism and Malicious Mischief, extended by Special Extended Coverage Endorsement to insure against all other Risks of Direct Physical Loss, such coverage and endorsements to be as defined, provided and limited in the standard bureau forms prescribed by the insurance regulatory authority for the State of Washington for use by insurance companies admitted in such state for the writing of such insurance on risks located within such state or such coverage as provided to the City through the Washington Cities Insurance Authority. Subject to the terms of this Agreement, such insurance shall be for the benefit of City and under its sole control.

14.2 City shall notify SEATTLE TILTH immediately after a casualty occurs to the Facility if the City determines that (1) the Facility is totally destroyed by fire or other casualty, (2) the casualty is not insured, (3) the cost of restoration would exceed the total City's Insurance proceeds and SEATTLE TILTH's available funds, or (4) rebuilding or repairs cannot in City's estimation be completed within three hundred sixty-five (365) days after the date upon which City has notified SEATTLE TILTH of such damage. In such event, this Agreement shall terminate effective upon the date of the occurrence of such damage. City shall give notice to SEATTLE TILTH in writing of its determination within ninety (90) days following the date of the occurrence of such damage.

14.3 If the Facility is damaged by any peril covered by the City's Insurance to be provided by City, but only to such extent that rebuilding or repairs can in City's estimation be completed within three hundred sixty-five (365) days after the date upon which SEATTLE TILTH is notified by City of such damage and within the amount covered and paid by the City's insurance, this Agreement shall not terminate, and City shall at its sole cost and expense thereupon proceed with reasonable diligence to rebuild and repair such building to substantially the condition in which it existed prior to such damage, except that City shall not be required to rebuild, repair or replace any part of the partition, fixtures, additions and other improvements which may have been placed in, or about the Facility by SEATTLE TILTH and which is owned by SEATTLE TILTH. If the building is subsequently damaged while City is rebuilding and repairing the building, City shall estimate whether rebuilding or repairs can be completed within three hundred sixty-five (365) days after the date upon which City is notified by SEATTLE TILTH of such subsequent damage. If the Facility is untenable in whole or in part following such

damage, the rent payable during the period in which it is untenable shall be reduced to such extent as may be fair and reasonable under all of the circumstances. If City does not complete such repairs and rebuilding within three hundred sixty-five (365) days after the date upon which SEATTLE TILTH is notified by City of such damage or such subsequent damage, as appropriate, SEATTLE TILTH may at its option terminate this Agreement by delivering written notice of termination to City within three hundred ninety-five (395) days after the date of the notice of the damage or the subsequent damage, as appropriate, as SEATTLE TILTH's exclusive remedy, whereupon all rights and obligations hereunder shall cease and terminate.

14.4 Notwithstanding anything in this Agreement to the contrary, if the holder of any indebtedness secured by a mortgage or deed of trust covering the Facility requires that the City's Insurance proceeds be applied to such indebtedness, then City shall have the right to terminate this Agreement by delivering written notice of termination to SEATTLE TILTH within fifteen (15) days after such requirement is made by such holder, whereupon all rights and obligations under this Agreement shall cease and terminate.

14.5 SEATTLE TILTH shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with SEATTLE TILTH's operation and use of the Facility.

14.6 Waiver of Subrogation. SEATTLE TILTH and the City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by insurance on or in connection with the Facility. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

14.7 No Limitation. SEATTLE TILTH's maintenance of insurance as required by the agreement shall not be construed to limit the liability of SEATTLE TILTH to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy available at law or in equity.

14.8 Minimum Scope of Insurance.

SEATTLE TILTH shall obtain insurance of the types described below:

14.8.1 Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover Facility and contractual liability. City shall be named as an insured on SEATTLE TILTH's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Facility Form CG 20 11 or a substitute endorsement providing equivalent coverage.

14.8.2 Property insurance shall be written on an all risk basis.

14.9 Minimum Amounts of Insurance.

SEATTLE TILTH shall maintain the following insurance limits:

14.9.1 Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$5,000,000 general aggregate.

14.9.2 Property insurance shall be written covering the full value of SEATTLE TILTH's property and improvements with no coinsurance provisions.

14.10 Other Insurance Provisions.

The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

14.10.1 SEATTLE TILTH's Commercial General Liability insurance coverage shall be primary insurance as to the City, provided that the City's Insurance shall be primary as to SEATTLE TILTH in regard to damage to the Facility structure and areas for which The City is responsible under this Agreement and not caused by SEATTLE TILTH. Any Insurance maintained by the City shall be excess of SEATTLE TILTH's insurance and shall not contribute with it.

14.10.2 SEATTLE TILTH's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to City.

14.11 Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

14.12 Verification of Coverage.

SEATTLE TILTH shall furnish City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of SEATTLE TILTH.

**15. SIGNS.**

SEATTLE TILTH may install signs on the exterior of the Facility, identifying the building as the offices of SEATTLE TILTH or other mutually agreed upon name, and containing other information related to SEATTLE TILTH, including without limitation, program information, fundraising information and special SEATTLE TILTH announcements. The design, installation and location of said signs shall comply with applicable provisions of the Kirkland Municipal Code, including but not limited to zoning provisions and building regulations, and shall be subject to the written approval of the City Manager, which approval shall not be unreasonably withheld.

**16. ASSIGNMENT, SUBLEASE OR TRANSFER.**

Obligations or rights of SEATTLE TILTH under this Agreement may not be assigned, subleased, or otherwise transferred by SEATTLE TILTH, without the prior written consent of City, which consent may be withheld at the sole discretion of City. The assignment, sublease, or transfer of this Agreement without such consent shall constitute an Event of Default. Any such assignment, sublease, or transfer shall be specifically subject to all the terms and conditions of this Agreement. In the event of any proposed assignment, sublease, or transfer of this Agreement, SEATTLE TILTH shall cause to be delivered to City simultaneously with such proposed assignment, sublease, or transfer, an instrument in writing, executed by the assignee, in which the assignee shall assume and agree to accept all the terms and conditions of this Agreement.

## **17. CONCESSIONS AND CATERING ACTIVITY.**

17.1 Definitions. As used in this section, unless the context clearly requires a different meaning,

17.1.1 **“Concession and catering activity”** means and includes the preparation, service, free distribution, or sale of food or any beverage, or the free distribution or sale of any concession merchandise or service; and

17.1.2 **“Concession merchandise or services”** means and includes inedible goods and services such as souvenirs, novelties and tickets to events at other venues.

17.2 Grant of Right. City grants to SEATTLE TILTH the exclusive right to engage in concession and catering activity and to enter into agreements authorizing one or more concessionaires to engage in such activity for and on the behalf of, or under the auspices of, SEATTLE TILTH, at the Facility, subject to the terms of this Agreement. If SEATTLE TILTH decides to retain any such concessionaire(s), SEATTLE TILTH shall select such concessionaire(s). If SEATTLE TILTH enters into any such agreement(s), SEATTLE TILTH shall remain ultimately responsible for compliance with terms and conditions, and performance of obligations under this Agreement. Any such agreement shall incorporate terms and conditions related to concessions and catering activity under this Agreement.

17.3 Food Service Establishment Permit Required. SEATTLE TILTH, or any such concessionaire(s), shall ensure that all food offered for sale on or from the Facility has been prepared, transported, served and otherwise provided only by a person or entity issued a current valid Food Service Establishment permit by the Seattle King County Department of Public Health or its successor.

17.4 Licenses and Permits Required; Contingent Expiration of Right. SEATTLE TILTH, or any such concessionaire(s), shall be responsible for obtaining and maintaining, at no cost to City, all licenses, permits and other authorization required in order to legally conduct the concession and catering activity contemplated herein. City shall have no obligation to issue such licenses, permits, or other authorization. City shall issue such licenses, permits, or other authorization in accordance with applicable City rules and regulations. The inability of SEATTLE TILTH, or any such concessionaire(s), to secure

or to maintain any such license, permit or other authorization shall not invalidate the concession and catering right granted herein, provided that SEATTLE TILTH shall not engage in concession and catering activity until the necessary license, permit or authorization has been obtained.

## **18. COMPLIANCE WITH LAW.**

18.1 Lawful Use. SEATTLE TILTH and City each agree to abide by, conform and comply with all applicable federal, state and local laws, and obtain all required licenses, permits, and authorizations. Whenever either party or its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committed by it, it shall immediately desist from such violation. The final judgment of any court or administrative body of competent jurisdiction or the admission by a party in any action against it, whether the other party is a party thereto or otherwise, that it or its invitees has violated any law, ordinance, rule, or regulation shall be conclusive of that fact as between City and SEATTLE TILTH.

18.2 Licenses and Similar Authorizations. SEATTLE TILTH, at no expense to City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits and similar legal authorizations, and comply with all requirements thereof. City shall have no obligation to issue such licenses, permits, or authorizations. City shall issue such licenses, permits, or authorizations in accordance with applicable City rules and regulations.

18.3 Taxes. SEATTLE TILTH shall pay, before delinquency, all taxes, levies, and assessments of whatever kind or nature are imposed or become due during the term of this Agreement and arise from any activity on or use and occupancy of the Facility pursuant to this Agreement, including but not limited to taxes arising out of the activity or business conducted on the Facility; taxes levied on SEATTLE TILTH property, equipment, and improvements on the Facility; taxes on SEATTLE TILTH's interest in this Agreement and any leasehold interest created thereby under RCW 82.29A, if applicable; and any assessment levied for any local improvement, utility local improvement, or any similar undertaking. In the event the State of Washington makes any demand upon City for payment of any tax resulting from SEATTLE TILTH's use or occupancy of the Facility or the conduct of any activity subject to tax, or the State withholds funds due to City to enforce collection of leasehold excise or any other tax, SEATTLE TILTH, at its sole expense, shall contest such action and indemnify City for all sums expended by or withheld by the State from City in connection with such taxation; provided, that SEATTLE TILTH may pay any such tax in lieu of contesting it or indemnifying City. City shall pay and shall indemnify and hold SEATTLE TILTH harmless for all taxes imposed, that relate to City sponsored events at the Facility (except for taxes imposed on concession sales by SEATTLE TILTH or for SEATTLE TILTH's benefit), and for all taxes that may be imposed on SEATTLE TILTH or SEATTLE TILTH's use of the Facility resulting from any City use under this Agreement.

18.4 Attendance and Safety Standards. The Kirkland Fire Chief or his/her designee shall have the authority to determine, in the reasonable exercise of his/her

discretion, the number of persons that may be admitted to, and safely and freely move about in the Facility. SEATTLE TILTH shall not sell or issue tickets or credentials for admission to the Facility in an aggregate number that exceeds the Kirkland Fire Chief's determined number. SEATTLE TILTH shall not admit to the Facility more people than the number so determined by the Kirkland Fire Chief. SEATTLE TILTH shall not permit any chair or movable seat or other obstruction to be erected or placed in any passageway or fire exit. Sidewalks, grounds, entries, passages, vestibules, halls, elevators, abutting streets and all ways of access to the Facility shall not be obstructed by SEATTLE TILTH or used for any purpose other than for ingress and egress to the Facility for persons or property. City shall be responsible for assuring compliance with each of the foregoing requirements during periods of City use of the Facility under this Agreement.

18.5 Nondiscrimination. SEATTLE TILTH shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

18.6 Americans with Disabilities Act. SEATTLE TILTH shall comply with all governmental laws, ordinances and regulations applicable to the use of the Facility, including without limitation Title III of the Americans with Disabilities Act.

18.7 Applicable Law and Venue. This Agreement shall be construed under the laws of the State of Washington. The venue for any litigation relating to this Agreement shall be in the Superior Court of the State of Washington for King County.

## 19. ROYALTIES, LICENSE FEES, AND SIMILAR PAYMENTS.

SEATTLE TILTH shall pay, before delinquency, all royalties, license fees, and other charges due and payable to any person or entity as the consequence of any public performance(s) or display(s) of copyrighted work(s) during its use of the Facility. City shall be responsible for all similar royalties, license fees and other charges in connection with City's use of the Facility.

## 20. LIENS AND ENCUMBRANCES.

SEATTLE TILTH shall keep the Facility, SEATTLE TILTH's interest in this Agreement, and the Tenant Improvements free and clear of any liens and encumbrances caused by the actions of SEATTLE TILTH, its employees, agents or contractors.

## 21. DEFAULT.

21.1 Default. The following events shall constitute a default and material breach of this Agreement:

21.1.1 The failure to comply with any of the terms of this Agreement regarding insurance;

21.1.2 The material violation of any law, ordinance, rule, or regulation which, after notice and reasonable time to cure, remains uncured;

21.1.3 The abandonment or vacating of the Facility for a period of thirty (30) days or more;

21.1.4 The absence of any SEATTLE TILTH-scheduled program for a period of ninety (90) days or more, when not due to repair problems or maintenance work for which City is responsible;

21.1.5 The dissolution of SEATTLE TILTH or the merger of SEATTLE TILTH with another entity without the prior written approval of City;

21.1.6 The assignment or transfer of this Agreement without the prior written consent of City as described in Section 16 of this Agreement; and The failure to perform any other condition or covenant of this Agreement where such failure in performance is not remedied within the time allowed by this Agreement, or such other period for remedial action as is expressly otherwise provided for in this Agreement, or agreed upon by both parties.

21.2 Extension of Period to Remedy Default. Neither City nor SEATTLE TILTH shall be in default unless such party fails to perform an obligation required of it within a minimum of thirty (30) days after written notice from the aggrieved party has been sent by the other, specifying the particular obligation that the other has failed to perform; provided, that if the nature of the other party's obligation is such that more than thirty (30) days are reasonably required for performance, then the other party shall not be in default if it commences performance within such thirty (30) day period, and thereafter diligently prosecutes the same to completion within one hundred eighty (180) days.

## **22. REMEDIES UPON DEFAULT AND MATERIAL BREACH.**

Upon the occurrence of any Event of Default by SEATTLE TILTH, City shall have the option to pursue any one or more of the following remedies without notice or demand.

22.1 Terminate this Agreement, in which event SEATTLE TILTH shall immediately surrender the Facility to City, and if SEATTLE TILTH fails to do so, City may enter upon and take possession of the Facility and expel or remove SEATTLE TILTH and any other person who may be occupying such Facility or any part thereof, and SEATTLE TILTH agrees to pay to City on demand the amount of all loss and damage City may suffer by reason of such termination, whether through inability to relet the Facility on satisfactory terms or otherwise.

22.2 Enter upon and take possession of the Facility and expel or remove SEATTLE TILTH and any other person who may be occupying such Facility or any part thereof, and relet the Facility for such terms ending before, on or after the expiration date

of the term of this Agreement, at such rentals and upon such other conditions (including concessions and prior occupancy periods) as City in its sole discretion may determine.

22.3 Enter upon the Facility, and do whatever SEATTLE TILTH is obligated to do under the terms of this Agreement. SEATTLE TILTH agrees to reimburse City on demand for any expenses which City may incur in thus effecting compliance with SEATTLE TILTH's obligations under this Agreement, and SEATTLE TILTH further agrees that City shall not be liable for any damages resulting to SEATTLE TILTH from such action, whether caused by the negligence of City or otherwise.

22.4 Pursuit of one remedy shall not preclude pursuit of any other remedies, such remedies being cumulative and non-exclusive, nor shall pursuit of any remedy constitute a forfeiture or waiver of any rent due City or of any damages accruing to City by reason of SEATTLE TILTH's breach of this Agreement. No act or thing done by City or its agents during the term of this Agreement shall be deemed a termination of this Agreement or an acceptance of the surrender of the Facility. No agreement to terminate this Agreement or accept a surrender of said Facility shall be valid unless in writing signed by City. No waiver by City of any violation or breach of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms of this Agreement. City's acceptance of the payment of rental or other payments after the occurrence of an event of default shall not be deemed or construed as a waiver of such default, or as an accord and satisfaction. Forbearance by City to enforce one or more of the remedies upon an event of default shall not be deemed or construed to constitute a waiver of such default or of City's right to enforce any remedies with respect to such default or any subsequent default.

22.5 If either party employs the services of an attorney in connection with an event of default by the other party under this Agreement, or if either party brings an action or proceeding against the other party arising out of or concerning performance or interpretation of this Agreement, the prevailing party shall be entitled to recover from the other party its attorney's fees and costs.

### **23. SURRENDER OF FACILITY AND REMOVAL OF PROPERTY.**

23.1 Surrender of Facility. Upon termination or expiration of this Agreement, SEATTLE TILTH shall surrender the Facility and all keys thereof to City.

23.2 Conditions of Facility upon Surrender. The Facility to be surrendered to City shall be surrendered in as good a condition as on the date of their acceptance by SEATTLE TILTH, except for: the effects of improvements, additions, alterations, and repairs made with the approval of City; property damage by fire and other perils insured in contracts or policies of fire, extended coverage, and vandalism; reasonable wear and tear; and acts of God.

23.3 Removal of Property. Prior to the expiration of this Agreement, or within sixty (60) days after termination in the event of an earlier termination of this Agreement, SEATTLE TILTH shall remove from the Facility, at no cost or expense to City, all personal

or agency property owned and placed in or on the Facility by SEATTLE TILTH, its agents, invitees, employees, contractors or successors. In removing such personal property, SEATTLE TILTH shall take due care to not damage or injure the Facility, and any such damage or injury shall be immediately repaired by SEATTLE TILTH to the City's reasonable satisfaction, at SEATTLE TILTH's sole cost and expense. Structural alterations, additions, and Tenant Improvements shall not be removed. In no event shall either party make any claim or demand upon the other, nor shall either party be liable for any inconvenience, annoyance, disturbance, or loss of business arising out of such removal operation during such sixty (60) day period, so long as SEATTLE TILTH uses reasonable diligence in removing its personal property from the Facility.

**24. NO WAIVERS.**

No action other than a written document by the City Manager or SEATTLE TILTH Executive Director specifically so stating shall constitute a waiver by a party of any particular breach or default by the other. No such document shall waive a failure to fully comply with any term or condition of this Agreement not specifically referenced therein, irrespective of any knowledge any officer or employee of a party may have of such breach, default, or noncompliance. A party's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

**25. REMEDIES CUMULATIVE.**

The rights under this Agreement are cumulative; the failure to exercise promptly any right recognized hereunder shall not operate to forfeit any such right. The use of one remedy shall not be taken to exclude or waive the right to use another.

**26. OBLIGATION OF SEATTLE TILTH LIMITED TO CORPORATION.**

Any and all obligations of SEATTLE TILTH under this Agreement are enforceable only against SEATTLE TILTH, a nonprofit corporation, and are not enforceable against nor do they impose any liability upon SEATTLE TILTH's officers, directors, trustees, members, employees, or agents.

**27. ADDRESSES.**

Unless otherwise directed in writing, all notices and reports shall be in writing, and together with any payments, shall be delivered to City at the following address:

Linda Murphy, Recreation Manager  
Kirkland Parks and Community Services  
City of Kirkland  
505 Market Street  
Kirkland, Washington 98033-6189

And to SEATTLE TILTH at the following address:

Andrea Platt Dwyer, Executive Director  
SEATTLE TILTH  
4649 Sunnyside Ave N., Suite 100  
Seattle, Washington 98103

Either party may change its address for receipt of reports, notices or payments without the formal amendment of this Agreement by giving the other party written notice of such change not less than fifteen (15) days prior to the effective date thereof.

**28. TITLES OF SECTIONS.**

The titles of sections and subsections set forth herein are for convenience only, and do not in any way define, limit or construe the contents of any section.

**29. AMENDMENTS.**

No change, alteration, modification, or addition to this Agreement shall be effective unless it is in writing and properly signed by both parties hereto.

**30. DISPUTE RESOLUTION.**

In the event a dispute arises as to whether the parties are complying with the terms of this Agreement, the parties agree to use the following dispute resolution procedure before pursuing any other remedy. First, either party may give notice to the other of the dispute and the City Manager and SEATTLE TILTH President or their designees will meet within three (3) City business days to attempt to resolve the dispute. If the dispute continues, either party may give written notice to the other and a Resolution Panel will be formed consisting of one member selected by the City Manager, one member selected by SEATTLE TILTH President, and a third member selected by the first two. City shall pay any costs or fees associated with the member it selects. SEATTLE TILTH shall pay any costs or fees associated with the member it selects. City and SEATTLE TILTH shall each pay one-half of any costs or fees required for the third member. The parties agree to present the dispute to the Resolution Panel within twenty (20) calendar days after the written notice for an advisory opinion. The opinion of the Resolution Panel will be announced within ten (10) City business days and it will advise the parties as to whether or not the complained of commission or omission, if continued, would constitute breach of the terms of this Agreement. Nothing herein shall restrict either party from commencing litigation to resolve a dispute following receipt of the Resolution Panel's advisory opinion.

**31. MEMORANDUM OF LEASE.**





## EXHIBITS

Exhibit A	Legal Description: McAuliffe Park
Exhibit B	Proposal: McAuliffe Park Urban Farm Project
Exhibit C	Year One Scope of Work

**EXHIBIT A**

**Legal Description: McAuliffe Park**

PARCEL 1:

The east half of Tract 3, Harris' Juanita Acres, according to the plat thereof recorded in Volume 20 of Plats, page 59, in King County, Washington.

PARCEL 2:

Beginning 884.64 feet north of the southwest corner of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington;  
Thence south 89°11'50" east 160 feet to the TRUE POINT OF BEGINNING;  
Thence continuing south 89°11'50" east 38 feet;  
Thence south 01°35'30" west 160 feet;  
Thence north 89°11'50" west 38 feet;  
Thence north to the TRUE POINT OF BEGINNING.

PARCEL 3:

The north 100 feet of the south 724.64 feet of the west 198 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington.

PARCEL 4:

The north 134.64 feet of the south 624.64 feet of the west 198 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington.

PARCEL 5:

The north 162.5 feet of the south 490 feet of the west 198 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington.

PARCEL 6:

The north 112.5 feet of the south 327.5 feet of the west 198 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 7 East, W.M., in King County, Washington.

PARCEL 7:

The south 215 feet of the west 198 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington; EXCEPT the south 30 feet thereof, for road.

PARCEL 8:

The east 247.11 feet of the west 445.11 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington;  
EXCEPT the north 390 feet thereof;  
AND EXCEPT the south 30 feet thereof for road;  
AND EXCEPT the south 280 feet of the east 115 feet.

PARCEL 9:

The north 280 feet of the south 310 feet of the east 115 feet of the west 445.11 feet of the southwest quarter of the southeast quarter of Section 29, Township 26 North, Range 5 East, W.M., in King County, Washington.

**EXHIBIT B**

**McAuliffe Park Urban Farm Project [Proposal](#)**

**EXHIBIT C****Year One Scope of Work****1. Deliverables**

SEATTLE TILTH will provide the following:

**Year One scope of work**

McAuliffe Park is a unique location that is an excellent area to provide and expand further education and opportunity around growing, cooking, composting, and environmental programming. The existing physical attributes, such as a pea patch community garden and several outdoor, indoor, and semi-covered classroom areas, lend itself well in introducing Seattle Tilth programming. There are several areas that can potentially be developed into future farm and demonstration gardens. Initial scope of services for year one include:

- 1. Establishing Master Recycler Composter (MRC) Eastside trainings and outreach programs**, targeting existing pea patch gardeners to educate about resource conservation and composting and expand the pea patch composting systems.
  - a. Kirkland Parks staff responsible for pea patches indicated this is an area that all pea patch gardeners could benefit from immediately. Some pea patches have struggled with creating successful compost systems.
  - b. MRC Eastside trainings could also extend to members of the public, where McAuliffe Park would be used as the training site.
  - c. Existing composting space in the pea patch area would be used, along with possible development of additional composting systems.
- 2. Introducing adult education organic gardening courses**
  - a. Pea patch gardeners and community members could be surveyed to learn what topics would be most successful.
  - b. Seattle Tilth would ideally need a demonstration garden area in which to use for classes and passive signage that highlight organic gardening techniques.
    - i. Seattle Tilth staff observed potential areas in the pea patch that appeared to be unused, which could be used for a demonstration garden.
    - ii. Another possible edible demonstration garden could be developed along the split rail fence adjacent to the pea patch. The installation could be done as a hands-on class/teaching project. The edible demonstration garden area could be used by Seattle Tilth and others to teach and encourage residents to dedicate some of their lawn space into native or edible growing areas. It could feature perennial edibles and herbs for use by Seattle Tilth programs and pea patch gardeners with educational signage.

**3. Introducing Cooking and Nutrition programming**

- a. Conduct outreach to community partners and residents about what their interest is in learning about cooking and nutrition with a Farm to Table focus.
  - b. From feedback collected, determine which cooking and nutrition programs best fit this audience: family cooking classes, after school cooking directed towards high school students, monthly community dinners, workshops including specific Farm to Table principles like herbs, leafy greens, root vegetables.
  - c. Provide Community Kitchen Leader trainings for interested community leaders to begin new community kitchen sites on the Eastside.
4. Prior to implementing any programming, Seattle Tilth will work conduct outreach with the following groups to assess interest areas:
- a. McAuliffe Park staff and Kirkland Parks and Recreation Staff
  - b. Pea patch gardeners at:
    - i. McAuliffe Park – 35 plots
    - ii. Ohde pea patch gardeners – 33 plots
    - iii. Tot Lot pea patch gardeners – 20 plots
  - c. Edible Kirkland
  - d. Kirkland Nourishing Network
  - e. Community stakeholders
    - i. Community centers
    - ii. Local schools
      1. Alexander Graham Bell Elementary School
      2. Eastside Preparatory School
    - iii. Local gardening groups
      1. Unofficial pea patch gardens around Kirkland
    - iv. Local churches
      1. Trinity Lutheran
      2. Holy Spirit Lutheran
  - f. Local retail outlets
    - i. PCC
    - ii. Metropolitan Market
    - iii. Local nurseries and garden stores