



CITY OF KIRKLAND
Police Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3481
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Cherie Harris, Chief of Police
Darcey Eilers, Assistant City Attorney

Date: February 4, 2021

Subject: INTERLOCAL AGREEMENT FOR A NORTH KING COUNTY REGIONAL
INDEPENDENT FORCE INVESTIGATION TEAM (IFIT-KC)

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to sign an Interlocal Cooperation Agreement (ILA) between north King County regional law enforcement agencies creating the Independent Force Investigation Team – King County (IFIT-KC) to provide independent investigation services for officer-involved uses of deadly force.

BACKGROUND DISCUSSION:

At the January 19, 2021 study session, Staff provided Council a special presentation on the statutory requirement to conduct an independent investigation into all officer-involved uses of deadly force incidents that result in death, substantial bodily harm, or great bodily harm. Specifically, RCW 10.114.011, which is part of the Law Enforcement Training and Community Safety Act (LETSCA), requires a completely independent investigation into an officer-involved deadly use of force that results in death, great bodily harm, or substantial bodily harm to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies.

Even prior to the enactment of LETSCA, the Kirkland Police Department has always recognized the gravity of an officer-involved shooting and has utilized an outside agency to conduct the investigation into a critical incident of this nature in order to maintain independence and objectivity, including investigations through a prior multi-agency team titled KCIRT that dissolved in 2015.

Following the enactment of the LETSCA, the Washington State Criminal Justice Training Commission (WSCJTC) adopted chapter 139-11 WAC, providing specific regulations for regional independent investigation teams to conduct independent investigations. This independent investigation is a criminal investigation into the involved officer(s) actions, separate from an internal Department administrative investigation into policy or procedure violations.

IFIT-KC Member Agencies

To ensure compliance with the LETSCA and the WSCJTC regulations, the Department has worked with other north King County law enforcement agencies to develop a regional team titled the Independent Force Investigation Team – King County (IFIT-KC). This team will be created through an Interlocal Cooperation Agreement (ILA) with the following agencies:

- King County Sheriff's Office
- Kirkland PD
- Bellevue PD
- Redmond PD
- Lake Forest Park PD
- Medina PD
- University of Washington PD
- Washington State Patrol (Bellevue Detachment)
- Issaquah PD
- Mercer Island PD
- Clyde Hill PD
- Snoqualmie/North Bend PD
- Duvall PD

Interlocal Cooperation Agreement (ILA)

A draft version of the ILA creating the IFIT-KC was provided to Council on January 19, 2021. At the January 19 meeting, staff presented an overview of the IFIT-KC, the purpose for the team, and described the process for selecting non-law enforcement community representatives. Since then, only minor changes were made to the ILA, resulting in the final ILA (**Attachment A**), which was reviewed by Assistant City Attorney Darcey Eilers and legal counsel from neighboring agencies to ensure it meets all of the requirements created by the LETSCA.

There is little financial impact to the department as there is no independent IFIT-KC budget or other such startup costs. Instead, each agency is responsible for all costs of its own participation, including compensation and benefits for their employee(s) assigned to IFIT-KC.

Under the ILA, the IFIT-KC will be governed by an executive board comprised of one representative of each participating agency, with the Chief of Police representing Kirkland. The executive board will adopt protocols consistent with chapter 139-12 WAC. The executive board will also appoint qualified and certified team members, except that community representatives will be selected by each agency for their jurisdiction and crime scene and evidence specialists will be selected through a review board. The IFIT-KC command structure will include a commander, two assistant-commanders, an administrative commander, and a number of investigative unit supervisors who will be responsible for directing participating detectives.

The investigators must be experienced detectives who have demonstrated a history of honorable behavior and have received specialized training in the investigation of fatal or otherwise serious injury incidents to include, but not limited to, officer-involved shootings, basic homicide investigation, LETSCA de-escalation, and mental health training. To be assigned to the IFIT-KC, the detectives must receive WSCJTC approval. The Department has identified two Kirkland Detectives with the necessary skills needed to participate as investigators and both recently received their certification as "Lead Investigator" from the WSCJTC.

When a participating agency's officer is involved in a deadly use of force incident, an IFIT-KC team will be activated. Upon activation, an incident commander will be selected to lead the IFIT-KC investigation, and the investigating team will include investigators, crime scene and evidence specialists, and at least two non-law enforcement community representatives, operating completely independent of the involved agency whose officer was involved in the use of force. During the course of an investigation, the IFIT-KC team will provide public updates about the investigation and will provide a family liaison to the family of the person against whom deadly force was used. If a critical incident occurred in Kirkland, the investigation would

occur completely independent of the Department and Kirkland Detectives and other personnel would not be utilized in, or informed about, the ongoing investigation.

Public Records

IFIT-KC investigative records will be released pursuant to RCW Chapter 42.56 which governs public records. IFIT-KC as an entity will not be an agency with responsibility for responding to public records requests. The IFIT-KC team protocols include guidance to involved agencies on making notifications and filling public records requests in an expeditious fashion within the public records statutory requirement(s) and notifying the requestor of an anticipated release date.

Attachments: Attachment A – Resolution
 Attachment B – ILA for IFIT-KC

RESOLUTION R-5465

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AN INTERLOCAL AGREEMENT FOR THE CREATION OF THE INDEPENDENT FORCE INVESTIGATION TEAM-KING COUNTY (IFIT-KC) BETWEEN THE WASHINGTON STATE PATROL, THE KING COUNTY SHERIFF'S OFFICE, THE UNIVERSITY OF WASHINGTON, AND THE CITIES OF BELLEVUE, CLYDE HILL, DUVALL, ISSAQUAH, KIRKLAND, LAKE FOREST PARK, MEDINA, MERCER ISLAND, REDMOND, AND SNOQUALMIE.

1 WHEREAS, the Law Enforcement Training and Community
2 Safety Act, which is a result of Initiative 940 and subsequent
3 legislative modifications, requires independent investigations into
4 officer-involved uses of deadly force, as expressed in RCW
5 10.114.011; and

6
7 WHEREAS, the Washington State Criminal Justice Training
8 Commission (WSCJTC) adopted chapter 139-11 WAC, providing
9 rules for regional independent investigation teams to conduct
10 such investigations; and

11
12 WHEREAS, the WSCJTC's independent investigation
13 requirements focus on enhancing public trust in the integrity of
14 independent investigations involving police use of deadly force by
15 focusing on independence, transparency, communication, credible
16 process, and credible investigators; and

17
18 WHEREAS, the Washington State Patrol, the King County
19 Sheriff, the University of Washington, and the cities of Bellevue,
20 Black Diamond, Bothell, Issaquah, Kirkland, Mercer Island,
21 Redmond, and Snoqualmie developed a team referred to as the
22 Independent Force Investigation Team – King County (IFIT-KC)
23 to provide independent investigations with regard to officer-
24 involved uses of deadly force in north King County, as several of
25 the participating agencies also provide law enforcement services
26 to other north King County cities; and

27
28 WHEREAS, the participating agencies are all public
29 agencies as defined by chapter 39.34 RCW and chapter 10.93
30 RCW and are authorized to enter into interlocal agreements to
31 provide for joint or cooperative actions to provide services; and

32
33 WHEREAS, the Kirkland City Council desires to formalize
34 the City's participation in the IFIT-KC by entering into an Interlocal
35 Agreement between the participating agencies.

36
37 NOW, THEREFORE, be it resolved by the City Council of the
38 City of Kirkland as follows:

39
40 Section 1. The City Manager is hereby authorized and
41 directed to execute on behalf of the City of Kirkland an interlocal
42 agreement for the creation of the Independent Force Investigation

43 Team–King County (IFIT-KC) substantially similar to that attached
44 as Exhibit A.

45
46 Passed by majority vote of the Kirkland City Council in open
47 meeting this _____ day of _____, 2001.

48
49 Signed in authentication thereof this _____ day of
50 _____, 2021.

Penny Sweet, Mayor

Attest:

Kathi Anderson, City Clerk

INTERLOCAL COOPERATIVE AGREEMENT TO PROVIDE LAW ENFORCEMENT MUTUAL AID BETWEEN THE WASHINGTON STATE PATROL, KING COUNTY SHERIFF'S OFFICE, UNIVERSITY OF WASHINGTON, AND THE CITIES OF BELLEVUE, CLYDE HILL, DUVALL, KIRKLAND, ISSAQUAH, LAKE FOREST PARK, MEDINA, MERCER ISLAND, REDMOND, AND SNOQUALMIE/NORTH BEND FOR THE CREATION OF THE INDEPENDENT FORCE INVESTIGATION TEAM – KING COUNTY (IFIT-KC)

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into by and between the undersigned municipal corporations or towns organized or created under the laws of the State of Washington, the Washington State Patrol, University of Washington, and King County, collectively referred hereinafter as the "Parties" to provide law enforcement mutual aid and mobilization between the Parties. The "member agencies" of this Agreement are the following Law Enforcement Agencies:

- Washington State Patrol;
- King County Sheriff's Office;
- Bellevue PD;
- Duvall PD;
- Kirkland PD;
- Clyde Hill PD;
- Issaquah PD;
- Lake Forest Park PD;
- Medina PD;
- Mercer Island PD;
- Redmond PD;
- Snoqualmie/North Bend PD; and
- University of Washington Police Department.

I. RECITALS

WHEREAS, the authority of the cooperating agencies entering into this Agreement is that authority provided by Washington law including, and subject to, the general powers of the Parties, the Washington Interlocal Cooperation Act as codified in Chapter 39.34 RCW, and the Washington Mutual Peace Officers Powers Act as codified in Chapter 10.93 RCW; and

WHEREAS, RCW 10.114.011 requires that if deadly force by a peace officer results in death, great bodily harm, or substantial bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies; and

WHEREAS, RCW 10.114.011 requires that such investigation be carried out completely independent of the agency whose officer was involved in the use of deadly force; and

WHEREAS, the Washington State Criminal Justice Training Commission (CJTC) adopted and established criteria to determine what qualifies as an independent investigation (WAC Chapter 139-12, the Law Enforcement Training and Community Safety Act – Independent Investigations Criteria).

NOW THEREFORE, in consideration of the terms and provisions herein, it is agreed between the Parties as follows:

II. AGREEMENT

1. **PURPOSE OF THE AGREEMENT.** The Parties signing below recognize the need to establish a regional independent investigative team in King County and a protocol for satisfying the independent investigation requirements of state law. The Parties seek to form a regional independent force investigation team, available for the purpose of conducting the criminal investigation into an officer involved shooting or use of deadly force by an officer or officers of an agency that is a member of the Independent Force Investigation Team of King County (IFIT-KC).
2. **DEFINITIONS.** For the purposes of this Agreement, the terms “deadly force,” “great bodily harm,” and “substantial bodily harm” are given the same meaning as defined in RCW 9A.16.010 and RCW 9A.04.110.

3. **ADMINISTRATION.**

The IFIT-KC governing body is the “Executive Board.” The Executive Board is comprised of the member agency Police Chiefs and Sheriff, with each agency providing one Board member on behalf of its organization. The Executive Board elects their Board Chair. The IFIT-KC Executive Board is authorized to draft, implement and amend policies and procedures consistent with the purposes of this Agreement and Chapter 139-12 WAC. Such policies and procedures will be known as the “Independent Force Investigations Team – King County Protocol and Guidelines” (“IFIT-KC Protocol”).

4. **MUTUAL AID AND LAW ENFORCEMENT SERVICES.** Each party will, to the best of its ability and as resources allow, furnish employees to work as part of IFIT-KC. The Parties agree to the following:
 - a. Consistent with RCW 10.114.011, when a member agency engages in conduct resulting in the use of deadly force by a peace officer resulting in death, substantial bodily harm, or great bodily harm, it shall contact the IFIT-KC to seek an independent investigation to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies.
 - b. IFIT-KC will provide independent investigative services to any member agency that requests assistance under this Agreement. IFIT-KC shall render those independent investigative services consistent with the IFIT-KC Protocol, purposes of this Agreement, and Chapter 139-12 WAC.
 - c. In order to maintain independence, no person employed by the agency which used deadly force (“Involved Agency”) may participate in the investigation of the use of deadly force, except as where allowed by the independent investigation protocols laid out in Chapter 139-12 WAC and the IFIT-KC Protocol.
 - d. Member agencies acknowledge that some member agencies may be required to provide some level of access at the scene to an independent oversight agency/committee. Member agencies with an oversight agency/committee shall prepare a list of practices and protocols, which will be made available to the commander of IFIT-KC as soon as practical.

- e. The Parties expressly recognize that compelled statements by involved officers implicate certain legal rights under *Garrity v. New Jersey*, 385 U.S. 493 (1967). The parties agree that a statement by an involved officer may only be compelled by the officer's employing agency pursuant to that agency's policies and procedures. At no point during the investigation will a compelled statement, or information flowing directly therefrom, be disclosed to the IFIT-KC independent investigators or otherwise to the IFIT-KC. The Parties further recognize that the rights against self-incrimination established under *Garrity* do not extend to the observations of officers who witnessed, but were not involved in, a use of force incident. Accordingly, the restrictions set forth above do not extend to officers other than those using force.

5. INDEPENDENT CONTRACTOR; EMPLOYEE RESPONSIBILITY; PAYMENT.

Investigators provided by Parties shall meet the criterion established by the IFIT-KC Protocol and in compliance with WAC 139-12-030. Each member's employees shall be considered employees of their employing agency while participating in the investigation into the use of force. The member agencies shall be solely and exclusively responsible for the compensation and benefits for their employee(s) assigned to IFIT-KC. Each member agency shall generally be responsible for all costs of its participation, including overtime and/or back-fill requirements. All rights, duties, and obligations of the employer and employee shall remain with the party for which the employee works. Each member agency agrees to provide sufficient equipment needed by its participating employees to conduct a thorough investigation. Each party shall be responsible for ensuring compliance with all applicable laws with regard to its employees and with provisions of any applicable collective bargaining agreements and civil service regulations.

III. GENERAL PROVISIONS

1. INDEMNITY AND HOLD HARMLESS.

- a. Subject to Paragraph b below, each party to this Agreement agrees to indemnify and hold harmless the other member agencies and their elected officials, officers, employees, from any loss, claim, judgment, settlement of liability, including costs and attorneys' fees, arising out of and to the extent caused by the negligent acts or omissions of the indemnifying party. By mutual negotiation, each party hereby waives, as respects to IFIT-KC and all other non-indemnifying parties only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event a non-indemnifying member incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this Section, all such fees. Expenses and costs shall be recoverable from the indemnifying party.
- b. Nothing herein shall require or be interpreted to cover or require indemnification or payment of any judgment against any individual or member agency/Party for intentionally wrongful conduct of any individual or for any judgment for punitive damages against any individual or member agency/Party. Payment of punitive damage awards shall be the sole responsibility of the individual who said judgment is rendered and/or his or her employer, should that employer elect to make said payment voluntarily and consistent with the requirements of Washington law.

- c. Each member agency shall be responsible for selecting and retaining legal counsel for itself and or any employee of that agency which is named in a lawsuit alleging liability arising out of the operations of IFIT-KC. Each agency retaining counsel shall be responsible for payment of attorney's fees and costs incurred by that counsel. Should there be an agreement to share the costs of legal counsel, in lieu of the provisions above, such agreement shall be in writing.
2. **COUNTERPARTS.** This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated agreement.
3. **MERGER AND ENTIRE AGREEMENT.** This Agreement merges and supersedes all prior negotiations, representations, and/or agreements between the Parties relating to the subject matter of this Agreement and to independent investigative services for law enforcement-involved deadly uses of force, and it constitutes the entire contract between the Parties.
4. **NO THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any person or entity that is not a party hereto.
5. **SEVERABILITY.** If any part, paragraph, section, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, such adjudication shall not affect the validity of any remaining section, part, or provision of this Agreement.
6. **TERM OF AGREEMENT AND TERMINATION.** This Agreement shall be effective on the date it is signed by two or more members and it shall become effective for a subsequently signing member on the date it is signed by the member. It shall remain effective until December 31, 2021, regardless of the date of execution, and shall be automatically renewed on the last day of December of each successive year for an additional one (1) year period. Additionally, any party may withdraw from this Agreement for any reason by providing written notice to each member agency of such withdrawal specifying the effective date thereof at least thirty (30) days prior to such date. The withdrawal of any party does not result in the dissolution of IFIT-KC, but rather the withdrawing party shall, after the effective date of the withdrawal, no longer be considered a party under this Agreement. This Agreement may be terminated, and the IFIT-KC dissolved at any time by unanimous agreement of the Executive Board.
7. **MODIFICATIONS.** The provisions of this Agreement may only be modified, amended, or supplemented by written agreement executed by all the Parties hereto.
8. **AGENCY CONTACTS**

Contact between the Parties regarding Agreement administration will be between the representatives of each Party or their designee at the time of this Agreement. Updates to the IFIT-KC Agency Contact list shall be maintained by the Executive Board after execution of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement through their duly authorized officers as of the day and year written below for each.

CITY OF BELLEVUE

Name:

Title:

Date:

Attest:
City Clerk

Approved as to Form:

City Attorney

CITY OF KIRKLAND

Name:

Title:

Date:

Attest:
City Clerk

Approved as to Form:

City Attorney

CITY OF MEDINA

Name:

Title:

Date:

Attest:
City Clerk

Approved as to Form:

City Attorney

CITY OF DUVALL

Name:

Title:

Date:

Attest:
City Clerk

Approved as to Form:

City Attorney

CITY OF CLYDE HILL

Name:

Title:

Date:

Attest:
City Clerk

Approved as to Form:

City Attorney

CITY OF MERCER ISLAND

Name:

Title:

Date:

Attest:
City Clerk

Approved as to Form:

City Attorney

CITY OF REDMOND

Name:

Title:

Date:

Attest:
City Clerk

Approved as to Form:

City Attorney

WASHINGTON STATE PATROL

Name:

Title:

Date:

Attest:
Clerk

Approved as to Form:

Attorney

UNIVERSITY OF WASHINGTON

Name:

Title:

Date:

Attest:
Clerk

Approved as to Form:

Attorney

CITY OF SNOQUALMIE

Name:

Title:

Date:

Attest:
City Clerk

Approved as to Form:

City Attorney

KING COUNTY SHERIFF'S OFFICE

Name:

Title:

Date:

Attest:
Clerk

Approved as to Form:

Attorney

CITY OF ISSAQUAH

Name:

Title:

Date:

Attest:
City Clerk

Approved as to Form:

City Attorney

CITY OF LAKE FOREST PARK

Name:

Title:

Date:

Attest:
City Clerk

Approved as to Form:

City Attorney