



**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:** January 7, 2021

**Subject:** REGIONAL INDEPENDENT FORCE INVESTIGATION TEAM AND NON-LAW ENFORCEMENT COMMUNITY REPRESENTATIVES SELECTION PROCESS

### **RECOMMENDATION:**

The City Council receives a briefing on the Law Enforcement Training and Community Safety Act (LETCSA) and an anticipated regional Independent Force Investigation Team (IFIT), that will include Non-Law Enforcement Community Representatives.

### **BACKGROUND DISCUSSION:**

The Kirkland Police Department has always recognized the gravity of an officer-involved shooting as a serious use of force incident and the importance of utilizing an outside agency to conduct the investigation into a critical incident of this nature in order to maintain independence and objectivity. Historically, the Department has utilized outside agencies to investigate officer-involved shootings and was previously an active participant in a multi-agency team that was titled "KCIRT" (King County Incident Response Team) through an interlocal agreement, approved by the City Council in 2013. Unfortunately, due to labor issues unrelated to Kirkland, KCIRT dissolved in 2015. Kirkland still utilized outside agencies for investigations even after KCIRT was dissolved.

In November 2018, Initiative-940 was passed by Washington State voters, and, in 2019, the Washington Legislature amended portions of I-940 through SHB 1064, with both now referred to together as the Law Enforcement Training and Community Safety Act (LETSCA). Through stakeholder input, the Washington State Criminal Justice Training Commission (WSCJTC) was tasked with creating and adopting rules for new training requirements for police officers (chapter 139-12 WAC) and rules for Independent Investigative Teams to conduct investigations into officer-involved uses of deadly force (chapter 139-11 WAC). An independent investigation team is created when multiple law enforcement agencies enter into a written agreement to investigate police use of deadly force incidents in their geographical regions.

The Kirkland Police Department is currently collaborating with the following agencies to create a north King County IFIT:

- King County Sheriff's Office
- 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

The IFIT-KC will be formed through an Interlocal Agreement (**Attachment A - DRAFT**) between the agencies, with policies, procedures and team members that would meet LETCSA requirements.

After January 5, 2020, chapter 139-12 of the Washington Administrative Code applies to the investigation of all officer-involved uses of deadly force incidents that result in death, substantial bodily harm or great bodily harm. To summarize the requirements of the state regulations:

- An IFIT is made up of qualified and certified peace officer investigators, crime scene and evidence specialists, and at least two non-law enforcement community representatives, operating completely independent of the involved agency (meaning the agency whose officers were involved in the use of force).
- The IFIT investigation is a criminal investigation into the involved officer(s) actions, separate from a Department administrative investigation into policy or procedure violations.
- Certified IFIT investigators must be able to prove they have attended applicable training and have the appropriate investigative experience.
- The IFIT Commander, public information officer or another member of the IFIT will provide public updates about the investigation at a minimum of once per week.
- The IFIT will provide a family liaison to keep the family of the person against whom deadly force has been used apprised of all significant developments in the independent investigation.
- The Department can assist in securing the scene of a critical incident but may not participate in the investigation.

Team members 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, the Detectives must receive WSCJTC approval.

For IFIT-KC, the Chief of Police will be a member of the executive board of directors, with voting authority over any changes to policy, procedure or protocol. There is little financial impact to the department as there is no independent IFIT 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. The IFIT will have a command structure similar to other multi-agency endeavors to include a commander, assistant-commander and a number of supervisors who will be responsible for directing participating detectives. The Department has identified two Kirkland Detectives with the necessary skills needed to

participate as investigators and has already submitted their applications and resumes to WSCJTC for approval. If a critical incident occurred in Kirkland, the investigation would occur completely independent of the Department and these Kirkland Detectives would not be utilized in, or informed about, the ongoing investigation.

LETSCA provides for the inclusion of Non-Law Enforcement Community Representatives in the IFIT, who are a vital link to the IFIT, the community and specific investigations. To select these community representatives, each IFIT member Chief or Sheriff will solicit names from their communities and create a roster of individuals willing to fill this capacity with the goal of appointing a minimum of two Non-Law Enforcement Community Representatives during each investigation. In summary, the following is a list of responsibilities associated with this role:

- Participates directly in vetting, interviewing and/or selection of IFIT investigators.
- Reviews all press releases and communication to the media prior to release.
- Reviews all Investigator conflict of interest statements.
- Present at briefings by the IFIT to the involved agency.
- Signs a binding confidentiality agreement at the beginning of each police use of deadly force investigation.
- Has access to the investigative file, when it is completed.
- Reviews any necessary use of force equipment by the involved agency
- Must meet criminal background check standards

Similar to the process being conducted in neighboring agencies, the Department will be soliciting eligible applicants who are a current resident, business owner, non-profit director/manager or faith-based leader within the City of Kirkland. While the requirement is to have a minimum of two members from each participating agency, the Department's goal is to select up to ten volunteers to ensure a diverse background of community member participants.

In the event of an incident in Kirkland, the IFIT unit commander will activate a pre-determined number of community representatives to participate in the specific IFIT investigation. The IFIT-KC protocols require that the IFIT unit commander prioritize utilizing community representatives from the jurisdiction where the incident occurred.

The Department will bring the IFIT-KC interlocal agreement to Council for consideration at a Council meeting in the near future. The final ILA will include completed protocols, but the protocols have not been included here with the attached ILA draft as they are currently being finalized between the participating agencies.

Attachments: Attachment A – IFIT KC ILA Draft

**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, 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; and
- Snoqualmie/North Bend PD
- 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”), a current copy is attached hereto as **Attachment A**.

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, independent investigative services for law enforcement-involved deadly uses of force, and 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 shall be effective for one (1) year, 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 as of the latest day and year written below.

**KING COUNTY SHERIFF'S OFFICE**

**INSERT LINES FOR OTHER AGENCIES**

---

**Mitzi Johanknecht**  
**King County Sheriff**

---

XXXXXXXXXX

DRAFT