



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**March 27, 2007**

**Ordinance 15705**

**Proposed No.** 2007-0091.2

**Sponsors** von Reichbauer

1 AN ORDINANCE authorizing the executive to enter into  
2 an interlocal agreement with the city of Federal Way  
3 relating to the annexation of the East Federal Way Potential  
4 Annexation Area and transferring certain local parks,  
5 surface water facilities and property interests to the city.

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8 **STATEMENT OF FACTS:**

9 1. King County's Annexation Initiative encourages the expedited  
10 annexation of all remaining urban unincorporated areas in order to achieve  
11 both financial stability in the current expense fund, and the regional land  
12 use vision set forth in the countywide planning policies.

13 2. The city of Federal Way has a large Potential Annexation Area  
14 ("PAA"), located to the east of the city with an estimated population of  
15 over twenty thousand three hundred residents.

16 3. The city intends to seek approval of the residents of the East Federal  
17 Way PAA to annex to the city, at an election in 2007 for an effective date,  
18 if approved by the voters, of not later than January 1, 2009.

19 4. To facilitate the transition of local government services delivery in the  
20 East Federal Way PAA and complete the transfer of local parks and local  
21 surface water management facilities and properties located within the East  
22 Federal Way PAA to the city upon annexation of said area, the city and  
23 county wish to enter into an interlocal agreement which addresses transfer  
24 of public records and transfer of ownership of local parks and surface  
25 water management facilities and properties, among other matters.

26 5. Consistent with Council Motion 12018, the agreement proposes the  
27 transfer of Annexation Incentive reserve funds to the city if the annexation  
28 is approved by the voters and accepted by the city, in the amount of  
29 \$2,000,000 from the general fund annexation incentive reserve, \$500,000  
30 in Real Estate Excise Tax Fund II annexation incentive reserve, plus a  
31 commitment to complete road overlay improvements in the PAAs prior to  
32 annexation in an amount of \$1,000,000.

33 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

34 SECTION 1. The county executive is hereby authorized to enter into an interlocal  
35 agreement, substantially in the form of Attachment A to this ordinance, with the city of  
36 Federal Way to provide for the transition of governmental services and property in the  
37 event of annexation, including but not limited to the transfer of \$2,500,000 annexation  
38 incentive funding comprised of \$2,000,000 of general fund annexation incentive reserve

39 and \$500,000 of Real Estate Excise Tax II annexation incentive reserve, the provision of  
40 \$1,000,000 of road overlay improvements in the areas to be annexed, and to transfer the  
41 surface water drainage facilities and park properties as referenced therein. The executive  
42 is further authorized to enter into an interlocal agreement or agreements with Federal  
43 Way for the transfer of park properties substantially in the form of the Form of Parks and

44 Open Space Transfer Agreement that is included as Exhibit D to Attachment A to this  
45 ordinance.  
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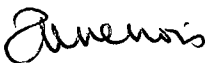
Ordinance 15705 was introduced on 2/12/2007 and passed as amended by the Metropolitan King County Council on 3/26/2007, by the following vote:

Yes: 9 - Mr. Gossett, Ms. Patterson, Ms. Lambert, Mr. von Reichbauer, Mr. Dunn, Mr. Ferguson, Mr. Phillips, Ms. Hague and Mr. Constantine  
No: 0  
Excused: 0

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

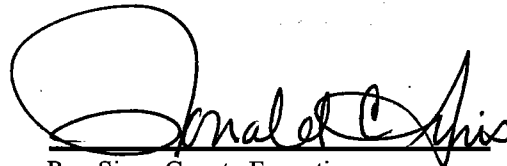
  
Larry Gossett, Chair

ATTEST:

  
Anne Noris, Clerk of the Council

RECEIVED  
2007 APR -5 AM 10:33  
CLERK  
KING COUNTY COUNCIL

APPROVED this 5 day of APRIL, 2007.

  
Ron Sims, County Executive

**Attachments** A. Interlocal Agreement Between the City of Federal Way and King County, Relating to the Annexation of the Federal Way Potential Annexation Area, dated March 26, 2007

ATTACHMENT A  
15705

26 March 2007

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF FEDERAL WAY AND  
KING COUNTY, RELATING TO THE ANNEXATION OF THE FEDERAL WAY  
POTENTIAL ANNEXATION AREA**

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2007. The parties ("Parties") to this Agreement are the City of Federal Way, a State of Washington municipal corporation ("City") and King County, a political subdivision of the State of Washington ("County").

WHEREAS, on an election date in 2007, the citizens of the City's Potential Annexation Area generally described in **Exhibit A** hereto (hereinafter the "Annexation Area") will have an opportunity to vote on whether to annex to the City; and

WHEREAS, if approved by the voters, annexation of the Annexation Area to the City will become effective on or before January 1, 2009, pursuant to City ordinance; and

WHEREAS, if annexation is not initially approved by the voters, the City may elect to resubmit the matter to the voters of the Annexation Area at an election in 2008 and if approved the annexation would become effective on or before January 1, 2010, pursuant to City ordinance; and

WHEREAS, as of the date of legal annexation of the Annexation Area, pursuant to state law, the City will own, and have the responsibility for the operation, safety and maintenance of all former County roads, bridges and rights-of-way located within the City limits together with all appurtenances located within such rights-of-way, including but not limited to, drainage facilities, stormwater facilities, environmental mitigation sites and monitoring projects, street lights, traffic signals and traffic signs; and

WHEREAS, the City and the County desire to facilitate an orderly transition of services, including but not limited to police services, court services and public works services associated with the Annexation Area; and

WHEREAS, the City and the County desire to mutually determine the appropriate timing for the transfer of public records; and

WHEREAS, upon annexation of the Annexation Area, the County shall make available to the City a one-time payment of funds from its Annexation Incentive Funds to assist with the cost of transitioning services and in consideration of the City relieving the County of the burden of providing public services to the areas to be annexed; and

WHEREAS, the City and the County want to ensure a smooth transfer of ownership and maintenance of existing local County park facilities and properties in the Annexation Area; and

WHEREAS, the City and the County want to ensure a smooth transfer of ownership and maintenance of existing County surface water facilities and related property interests in the Annexation Area; and

20721

WHEREAS, all local governmental land use authority and jurisdiction with respect to the Annexation Area transfers from the County to the City upon the date of annexation; and

WHEREAS, the County and City agree that having County staff process various Annexation Area building and land use applications on behalf of the City for a transitional period following annexation will assist in an orderly transfer of authority and jurisdiction; and

WHEREAS, it is the parties' intent by virtue of this Agreement that any and all discretionary decisions with respect to land use and permitting from and after the date of annexation shall be made by the City; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by the Interlocal Cooperation Act, codified at Chapter 39.34 RCW, and other Washington law, as amended;

NOW THEREFORE, in consideration of the mutual terms, provisions and obligations contained herein, it is agreed by and between the City and the County as follows:

1. TERM. This Agreement shall be deemed to take effect following the approval of the Agreement by the official action of the governing bodies of each of the Parties and the signing of the Agreement by the duly authorized representative of each of the Parties, and shall continue in force for a period of five (5) years from the effective date of annexation of the Annexation Area; provided, however, that in the event: (1) the City fails to place the annexation measure on the ballot in 2007; or (2) the annexation measure is placed on the ballot but is rejected by voters at election in 2007 and the City thereafter either does not place the matter before the voters again in 2008 or the measure again fails at the polls in 2008, then this Agreement shall terminate on December 31, 2008.
2. ANNEXATION. The City shall take action to ensure placement on the ballot at a regular or special election date in 2007 for the registered voters of the Annexation Area to vote on whether to annex to the City. If approved by the voters in 2007, the City shall take action by ordinance to ensure that the annexation of the Annexation Area will be effective on or before January 1, 2009. If not approved by the voters in 2007, the City shall take action to ensure placement on the ballot at a regular or special election date in 2008 for the registered voters of the Annexation Area to again vote on whether to annex to the City, or this Agreement shall terminate per Section 1 on December 31, 2008. If the matter is placed on the ballot and approved by the voters in 2008, the City shall take action by ordinance to ensure that the annexation of the Annexation Area will be effective on or before January 1, 2010. The term "Annexation Area" means the territory generally described in **Exhibit A** hereto, as it may be modified by decision of the King County Boundary Review Board, and/or subsequent decision on any appeal of such decision.
3. RECORDS TRANSFER. Upon approval of the annexation by voters and acceptance thereof by the City, the County shall work with the City to transfer to the City public records including but not limited to record drawings or construction drawings that are requested by the City related to transferred facilities and properties within the

Annexation Area. The City shall send a written request for records to the director of the County department or division holding such records. Alternately, the City may request in writing that such director schedule a records transfer meeting at which a City representatives shall meet with County department representatives in order to review and identify records to be copied and/or transferred consistent with the terms of this Section 3. The request shall provide sufficient detail to allow the County to identify and locate the requested records. The County shall make its best effort to provide the documents within forty-five (45) days of the request. The County may elect to provide original records or copies of records. The County shall not be required to provide records that are not reasonably available or to create records or compilations that have not already been created. Notwithstanding anything in this section to the contrary, sheriff records transfers will be subject to the provisions of Section 9 and **Exhibit H**.

4. **DEVELOPMENT PERMIT PROCESSING.** Upon the effective date of the annexation of Annexation Area, the terms of this Agreement attached hereto as **Exhibit B** shall go into effect with respect to development permit processing.
5. **ANNEXATION FUND PAYMENT AND ROAD IMPROVEMENTS CONTRIBUTION.** In order to partially offset the City's cost of transitioning and providing services to the Annexation Area, and in consideration of the City relieving the County of the burden of providing local public services (including but not limited to drainage services and operation of local park facilities) in the Annexation Area, the County will provide the City with a payment from the annexation initiative incentive reserve funds, and shall fund certain roadway improvements in advance of annexation.
  - a. The payment of annexation incentive reserve funds shall total \$2,500,000. The payment shall be composed of \$2,000,000 from the Current Expense Fund and \$500,000 from the Real Estate Excise Tax (REET) Number 2 Fund. The City shall expend the REET dollars consistent with the limitations placed on the use of this fund under King County Code Section 4.32.012 as currently adopted or hereafter amended. The payment of annexation incentive reserve funds shall be made in two installments. The first installment shall be made not later than 30 days following adoption by the City of an ordinance timely accepting annexation of the Annexation Area on or before January 1, 2009 (which action shall be taken after receiving certification that the proposition was approved by voters). This installment shall include \$1,000,000 in Current Expense Fund revenue and \$250,000 in REET Number 2 Fund revenue. The second installment will be made not later than 30 days after the effective date of the annexation, and shall be composed of \$1,000,000 in Current Expense Fund revenue, and \$250,000 in REET Number 2 Fund revenue.
  - b. In addition to the annexation incentive fund payment described in paragraph 5.a above, the County shall cause to be completed roadway overlay improvements in the Annexation Area valued by the County at \$1,000,000. The road funding shall

be committed to designated overlay projects by the County after the City Council acts to accept annexation of the Annexation Area following voter approval of annexation. The roadway improvements shall be specifically targeted to roadways with a pavement rating of less than forty percent, and the specific roadway segments to be improved shall be selected by the County Roads Division in consultation with the Director of the City Public Works Department. Such improvements shall to the extent practicable be completed prior to the effective date of the annexation, but in any event as soon thereafter as possible.

- c. In addition to the annexation incentive fund payment described above, the County agrees to pay one-half the charge to the City from the County Elections Division for conducting the initial election in the Annexation Area (whether in two separate ballot measure on the same election date, or one ballot measure). No such payment by the County shall be applicable to a second or other later annexation election.
- d. Notwithstanding anything in the foregoing subparagraphs a through c, in the event the annexation effective date is after January 1, 2009, but on or before January 1, 2010, then the County shall still pay annexation incentive reserve fund payment to the City, and in consideration of the extended time period during which the County will incur the expense of providing services to the Annexation Area, the annexation incentive reserve fund payment to the City shall be 75% of the originally offered amount, specifically, the payment shall include \$1,500,000 in Current Expense Fund revenue, \$375,000 in REET Fund Number 2 revenue, and completion by the County of \$750,000 in road overlays or other road infrastructure improvements. Upon request of the City said payment of Current Expense and REET revenue shall be made in part prior to the effective date of annexation but after the City Council acts to accept annexation of the Annexation Area following voter approval of annexation, with up to half of the funds transferred in advance and the balance transferred upon the effective date of annexation.
- e. In the event the City determines to place the annexation matter before the voters on two separate ballots, one for the northern portion of the City's Annexation Area, and on for the southern portion of the Annexation Area, and only one of the ballot measures is approved by the voters, then the annexation incentive reserve fund payment to the City shall be made in accordance with the preceding paragraphs adjusted as follows: for the northern portion of the Annexation Area, 60% of the funds otherwise allocable shall be paid; for the southern portion of the Annexation Area, 40% of the funds otherwise allocable shall be paid.
- f. No annexation incentive reserve funds shall be payable for any annexation of any portion or all of the Annexation Area with an effective date later than January 1, 2010, or in the event the City does not assume ownership of all Parks Properties, Drainage Facilities, and Drainage Facility Property Interests upon annexation as contemplated by Sections 6 and 7 of this Agreement.



## 6. PARK AND OPEN SPACE FACILITIES AND PROPERTIES

The County shall transfer to the City, and the City shall accept, the park, open space, and greenbelt properties listed in **Exhibit C** attached hereto and incorporated herein (collectively, the “Parks Properties”), which park, open space and greenbelt properties are more generally known as:

- Bingamon Pond Natural Area
- Camelot Park
- Five Mile Lake Park
- Lake Geneva
- South County Ballfields/Athletic Complex
- Greenbelt Properties

These transfers shall be accomplished through the execution by the County Executive and City Manager of Federal Way of an intergovernmental transfer agreement in substantially the form as **Exhibit D**, attached hereto and incorporated herein, which execution shall occur within thirty days of the City Council acting to accept the annexation of areas within which the Parks Properties are included, all following voter approval. It is the intent of the parties that the transfer of the Parks Properties to the City shall occur as nearly as possible on or immediately after the effective date of the annexation.

## 7. SURFACE WATER MANAGEMENT

### a. Transfer of Drainage Facilities and Drainage Facility Property Interests.

- i. Upon the effective date of annexation for the area in which the “Drainage Facilities” identified in **Exhibit E**, attached hereto and incorporated herein by reference, are located, those Drainage Facilities which are held by the County as specifically identified in **Tables A and C** of **Exhibit E** shall automatically be transferred from the County to the City, and the City shall assume ownership and full and complete responsibility for the operation, maintenance, repairs, and any subsequent improvements to said Drainage Facilities. The Drainage Facilities identified in **Table B** of **Exhibit E** shall not be transferred but shall remain in private ownership. The City shall have the right but not the obligation to inspect the facilities identified in **Table B** from and after the effective date of annexation.

1. The City and the County acknowledge and agree that the Residential Drainage Facility Property Parcel number 3874010940 (Kingco Estates 3, 28409 37th Ave S) (herein the “Kingco Property”) is currently subject to special use permit number S-197-05 granted to King County Natural Resources Water & Land Resources Division for the purpose of constructing and maintaining a trail / footbridge

facilitating access to Bingamon Pond Park. Effective as of the date the Kingco Property is conveyed to the City, the County hereby assigns, transfers and conveys to the City all of the County's rights, privileges and obligations in the Permit, and the City hereby accepts and assumes all of the County's rights, privileges and obligations in the Permit.

- ii. The County shall upon the effective date of annexation for the area in which the "Drainage Facility Property Interests" (which property interests are currently held by the County) identified in **Exhibit F**, attached hereto and incorporated herein by reference, are located, convey by quit claim deed in substantially the form in **Exhibit G**, attached hereto and incorporated by reference, to the City, and the City shall accept, the Drainage Facility Property Interests, subject to all rights, conditions, covenants, obligations, limitations and reservations of record for such property interests. The City agrees to abide by and enforce all rights, conditions, covenants, obligations, limitations and reservations for the Drainage Facility Property Interests.
  - iii. The County is willing to provide surface water management services and maintenance for the Annexation Area via separate written agreement between the Parties.
  - iv. Both parties will make staff available to identify and review any additional County-owned local drainage facilities, easements, and other property interests within the Annexation Area that should appropriately be conveyed to the City. Such facilities and other property interests include those for which the County's facility acceptance process has not yet been completed, including both projects being constructed by the County as well as projects subject to County approval that are constructed by third parties. Any such additional County-owned drainage properties or other property interests shall be transferred to the City pursuant to this Agreement and upon County approval, including if necessary the adoption of an ordinance authorizing the transfer of King County owned drainage properties and property interests. The transfer of responsibility for drainage facilities shall be documented in writing, including specific facilities transferred and the date of transfer and such documentation signed by the appropriate City representative and the Director of the King County Water and Land Resources Division.
- b. Condition of and Responsibility for Operations, Maintenance, Repairs, and Improvements of Drainage Facilities and Drainage Facility Property Interests.
- i. The City agrees to accept the Drainage Facilities and Drainage Facility Property Interests in AS IS condition, and to assume full and complete responsibility for all operations, maintenance, repairs, and improvements of the Drainage Facilities and Drainage Facility Property Interests.
  - ii. King County does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness

for a particular purpose, with respect to the Drainage Facilities and Drainage Facility Property Interests, and no official, employee, representative or agent of King County is authorized otherwise.

- iii. The City acknowledges and agrees that except as indicated in paragraph 7(c)(ii), the County shall have no liability for, and that the City shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Drainage Facilities and Drainage Facility Property Interests without regard to whether such defect or deficiency was known or discoverable by the City or the County.

c. Environmental Liability related to the Drainage Facilities and Drainage Facility Property Interests

- i. "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
- ii. Nothing in this agreement shall be deemed to waive any statutory claim for contribution that the City might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Drainage Facilities or Drainage Facility Property Interests by the County during the County's period of ownership. The City may not, however, assert such a claim to the extent that the City creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the City performing construction activities on, changing the configuration of, or changing the use of the Drainage Facilities or Drainage Facility Property Interests.
- iii. If the City discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall immediately notify the County in writing. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.
- iv. In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

d. Indemnification related to Drainage Facilities and Drainage Facility Property Interests.

- i. King County shall indemnify and hold harmless the City and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and

damages of any nature whatsoever, arising from those occurrences related to the Drainage Facilities and Drainage Facility Property Interests that occurred prior to the effective date of annexation, except to the extent that indemnifying or holding the City harmless would be limited by Section 7(c) of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the City or the City and King County, King County shall defend the same at its sole cost and expense and, if final judgment be rendered against the City and its elected officials, officers, agents and employees or jointly against the City and King County and their respective elected officials, officers, agents and employees, King County shall satisfy the same.

- ii. The City shall indemnify and hold harmless King County and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, arising from those occurrences related to the Drainage Facilities and Drainage Facility Property Interests that occur on or after the effective date of annexation, except to the extent that indemnifying or holding the County harmless would be limited by Section 7(c) of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County or King County and the City, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its officers, agents and employees or jointly against King County and the City and their respective officers, agents and employees, the City shall satisfy the same.
  - iii. For a period of three years following transfer, each party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to the Drainage Facilities and Drainage Facility Property Interests.
  - iv. Each Party to this Agreement agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each Party to this Agreement, 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, but only to the extent necessary to indemnify the other party.
- e. The provisions of this Section 7 shall survive the expiration or termination of this Agreement.

8. JAIL SERVICES. On and after the date of annexation, the Annexation Area is subject to the existing Interlocal Agreement between King County and the City of Federal Way for Jail Services. All misdemeanor crimes that occur in the Annexation Area prior to the date of annexation will be considered crimes within the jurisdiction of King County for the purposes of determining financial responsibility under said Interlocal Agreement for Jail Services. All misdemeanor crimes that occur in the Annexation Area on or after the date of annexation will be considered crimes within the jurisdiction of the City for purposes of determining financial responsibility under the Interlocal Agreement for Jail Services.
  
9. POLICE SERVICES. On the effective date of the annexation, police service responsibility within the Annexation Area will be transferred to the City. Criminal cases and investigations pending with the County Sheriff prior to the effective date of the annexation remain the responsibility of the County. The parties shall implement the police transition plan attached hereto at **Exhibit H**. In addition to the provisions of that transition plan, the parties further agree as follows:
  - a. Sharing of community information: The County agrees to provide community contact lists that the County may have regarding the Annexation Area to the City within 90 days of the City so requesting such information. These lists may include, but are not limited to: members of block watch programs, community groups, and/or homeowner's associations.
  - b. Annexation of Emergency Response (911) Services: The City and County agree to coordinate transfer of emergency response (911) services in the Annexation Area.
  
10. DISTRICT COURT SERVICES TRANSITION. The County will be responsible for the prosecution of and payment of any fees or assessments associated with misdemeanor criminal cases where the alleged violation occurred prior to the effective date of annexation. The City will be responsible for the prosecution of and payment of court filing fees and other fees associated with misdemeanor criminal cases where the alleged violation occurred on or after the effective date of annexation.
  
11. ANNEXATION AREA BOUNDARIES TO INCLUDE ROADWAYS BOUNDING AGRICULTURAL PRODUCTION DISTRICTS. The parties agree that, subject to approval by the Boundary Review Board, any and all county roadways located on the edge of the Annexation Area adjacent to or abutting the Green River Agricultural Production District(s), shall be included within the Annexation Area.
  - a. The parties agree to work collaboratively to resolve issues relating to policing authority and road maintenance responsibility within the Green River Agricultural Production District, including considering the option of transitioning those responsibilities from the County to the City and/or the Cities of Kent and Auburn. The parties agree to seek to include the Cities of Kent and Auburn in such discussions.

12. STATUS OF COUNTY EMPLOYEES. Subject to City civil service rules and state law, the City agrees to consider the hiring of County employees whose employment status is affected by the change in governance of the Annexation Area, provided that the City's consideration of hiring affected sheriff department employees shall be governed by the provisions set forth in RCW 35.13.360 et seq. The County shall in a timely manner provide the City with a list of those affected employees.

13. ADMINISTRATION AND CONTACT PERSONS. The Parties stipulate that the following persons shall be the administrators of this Agreement and shall be the contact person for their respective jurisdiction.

City of Federal Way:

King County:

City Manager  
City of Federal Way  
33325 8<sup>th</sup> Avenue S.  
Federal Way, WA 98003-6210

Director, Office of Management and Budget  
King County  
701 5<sup>th</sup> Avenue  
Suite 3200  
Seattle, WA 98104

14. COMPLIANCE WITH LAWS. Each Party accepts responsibility for compliance with federal, state, and local laws and regulations. Specifically, in meeting the commitments encompassed in this Agreement, all parties will comply with, among other laws and regulations, the requirements of the Open Meetings Act, Public Records Act, Growth Management Act, State Environmental Policy Act, and Annexation Statutes. The Parties retain the ultimate authority for land use and development decisions within their respective jurisdictions as provided herein. By executing this Agreement, the Parties do not purport to abrogate the decision-making responsibility vested in them by law.

15. INDEMNIFICATION.

The following indemnification provisions shall apply to the entirety of this Agreement except for: (1) Section 7 concerning Drainage Facilities and Drainage Facility Property Interests, which Section shall be controlled exclusively by the provisions therein; (2) **Exhibit B** relating to Development Permit Processing which Exhibit contains separate indemnification provisions; and (3) **Exhibit D** relating to the transfer of park and open space properties which also contains separate indemnification provisions.

a. The County shall indemnify and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the County, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the City, the County shall defend the same at its sole cost and expense, provided that the City retains the right to participate in said suit if any

principal of governmental authority is involved, and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

- b. The City shall indemnify and hold harmless the County and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the City, its officers, agents, and employees, or any of them, in performing obligations pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the county, the City shall defend the same at its sole cost and expense, provided that the County retains the right to participate in said suit if any principal of governmental authority is involved; and if final judgment be rendered against the County and its officers, agents, employees, or any of them, or jointly against the City and County and their respective officers, agents, and employees or any of them, the City shall satisfy the same.
- c. The City and the County acknowledge and agree that if such claims, actions, suits, liability, loss, costs, expenses and damages are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers and the County, its agents, employees, and/or officers, this section shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.
- d. The provisions of this Indemnification Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

#### 16. GENERAL PROVISIONS.

- a. Entire Agreement. This Agreement together with all Exhibits hereto contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.
- b. Filing. A copy of this Agreement shall be filed with the Federal Way City Clerk and recorded with the King County Auditor.
- c. Records. Until December 31, 2013, any of either party's records related to any matters covered by this Intergovernmental Agreement not otherwise privileged shall be subject to inspection, review, and/or audit by either party at the requesting party's sole expense. Such records shall be made available for inspection during regular business hours within a reasonable time of the request. Other provisions of this section notwithstanding, police/sheriff records shall be retained according to the state records retention schedule as provided in RCW Title 42 and related Washington Administrative Code provisions.

- d. Amendments. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties.
- e. Severability. If one or more of the clauses of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal, or contrary to public policy.
- f. Assignment. Neither the City nor the County shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.
- g. Successors in Interest. Subject to the foregoing subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs, and assigns.
- h. Remedies. In addition to any other remedies provided at law, the Parties agree that in the event of a breach of this Agreement, the aggrieved party may seek specific performance.
- i. Dispute Resolution. The Parties should attempt if appropriate to use a formal dispute resolution process such as mediation, through an agreed-upon mediator and process, if agreement cannot be reached regarding interpretation or implementation of any provision of this Agreement. All costs for mediation services would be divided equally between the Parties. Each jurisdiction would be responsible for the costs of their own legal representation.
- j. Attorneys' fees. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses.
- k. No waiver. Failure of either the County or the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.
- l. Applicable Law. Washington law shall govern the interpretation of this Agreement. King County shall be the venue of any arbitration or lawsuit arising out of this Agreement.
- m. Authority. Each individual executing this Agreement on behalf of the City and the County represents and warrants that such individuals are duly authorized to execute and deliver the Agreement on behalf of the City or the County.



- n. Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth above in Section 13. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the addresses set forth above in Section 13. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.
- o. Performance. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.
- p. Equal Opportunity to Draft. The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.
- q. Third Party Beneficiaries. This agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right of action or interest in this Agreement based on any provision set forth herein.

IN WITNESS THEREOF, the Parties have executed this Agreement.

CITY OF FEDERAL WAY:

KING COUNTY:

\_\_\_\_\_  
Neal Beets, City Manager

\_\_\_\_\_  
Ron Sims, Executive

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

ATTEST:

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

\_\_\_\_\_

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

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

\_\_\_\_\_  
Sr. Deputy Prosecuting Attorney

## Exhibit A

### Description of Annexation Area

*(Note: The legal description is subject to amendment by action of the King County Boundary Review Board)*

#### City of Federal Way East Proposed Annexation Area Legal Description

Those portions of Sections 3, 4, 9, 10, 14, 15, 21, 22, 23, 26, 27, 28, 33, and 34, Township 21 North, Range 4 East, and Sections 33, 34, and 35, Township 22 North, Range 4 East, Willamette Meridian in King County, Washington described as follows:

Commencing at a point 580 feet, more or less, westerly of and 50 feet southerly of the Northeast corner of the Northeast quarter of said Section 33, said point also being on the City of Kent City Limits, as annexed under Kent City Ordinance No. 3351, said point also identified as the southern right-of-way margin of South 272nd Street and easterly Limited Access Line of SR-5;

Thence in an easterly direction along said southern right-of-way margin of South 272nd Street to an intersection with the southerly right-of-way margin of South 272nd Way;

Thence in a southeasterly direction along said southerly margin of South 272nd Way to an intersection with the northerly extension of the east right-of-way margin of 55th Avenue South (aka Harry A. Abel Road, County Road #2515);

Thence in a southerly and southwesterly direction along said east margin of 55th Avenue South to an intersection with the east line of the west half of the west half of said Section 35;

Thence in a southerly direction along said east line to an intersection with the north line of the south half of the southwest quarter of the southwest quarter Section 35, Township 22 North, Range 4 East;

Thence in a westerly direction along said north line to the west right-of-way margin of 55th Avenue South;

Thence in a southerly direction along said west margin of 55th Avenue South to an intersection with the north right-of-way margin of South 288th Street;

Thence in a westerly direction along said north margin to an intersection with the

northerly extension of the westerly right-of-way margin of 51st Avenue South;

Thence in a southerly direction along said northerly extension, the west margin of said 51st Avenue South, and the southerly extension thereof to an intersection with the south right-of-way margin of South 304<sup>th</sup> Street;

Thence in an easterly direction, 12.00 feet, more or less, along said south margin of South 304<sup>th</sup> Street to the west right-of-way margin of 51st Avenue South;

Thence in a southerly direction along said west margin of 51st Avenue South a distance of 250 feet;

Thence in an easterly direction perpendicular to said west margin of 51st Avenue South to the east right-of-way margin of 51st Avenue South;

Thence in a southerly direction along said east margin of 51st Avenue South to an intersection with the southeasterly right-of-way margin of South 321st Street;

Thence in a southwesterly and westerly direction along the southeasterly and the south margin of said South 321st Street to an intersection with the easterly right-of-way margin of South Peasley Canyon Road;

Thence in a southeasterly direction along said easterly margin to an intersection with the northerly right-of-way margin of State Route 18 (P.S.H.No. 2);

Thence in an easterly direction along said northerly margin to an intersection with the east line of said Section 15;

Thence in a southerly direction along said east line to the southerly right-of-way margin of relocated Peasley Canyon Road as described in Governor's Deed as Parcel II, recorded under King County Recording Number 7308300450;

Thence in an easterly direction along said southerly margin to an intersection with the east line of the west half of the west half of said Section 14;

Thence in a southerly direction along said east line to an intersection with the north right-of-way margin of South 336th Street;

Thence in an easterly direction along said north margin to an intersection with the City Limits of Auburn as annexed under Auburn City Ordinance No. 2543;

Thence in a southerly and easterly direction along said City Limits to an intersection with the City Limits of Algona as annexed under Algona City Ordinance No. 630;

Thence in a southerly direction along said City Limits to an intersection with the

