

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF KENT AND KING COUNTY,
RELATING TO THE PANTHER LAKE ANNEXATION AREA AND THE TRANSFER
OF REAL PROPERTY**

THIS AGREEMENT is made and entered by and between the City of Kent, a State of Washington municipal corporation ("City"), and King County, a political subdivision of the State of Washington ("County"). Together, the City and the County are referred to as the "Parties" to this Agreement.

WHEREAS, the City has identified the Panther Lake Potential Annexation Area ("PAA") in its comprehensive plan, consistent with the requirements of the state Growth Management Act ("GMA") and the Countywide Planning Policies adopted consistent with GMA, Area which PAA is further described in **Exhibit A** hereto and is hereinafter referred to as the "Annexation Area;" and

WHEREAS, on an election date in November 2009, the citizens of the Annexation Area had an opportunity to vote on whether to annex to the City, and the voters approved annexation of the Annexation Area; and

WHEREAS, annexation of the Annexation Area to the City will become effective on or before July 1, 2010; 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, storm water facilities, street lights, traffic signals and traffic signs; and

WHEREAS, the City and the County desire to facilitate an orderly transition of 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, the City and the County want to ensure a smooth transfer of ownership and maintenance of existing County related property interests in the Annexation Area; and

WHEREAS, all local governmental land use authority and jurisdiction with respect to the Annexation Area transfers from the County to the City upon the effective date of annexation; 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 Areas.
2. RECORDS TRANSFER. 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 areas so annexed. The City shall send a written request for records to the director of the County division holding such records. Alternately, the City may request in writing that such director schedule a records transfer meeting at which 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 2. 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. The County shall provide the City free of charge one set of records meeting the requirements of this section.
3. TITLE REPORTS. This Agreement includes the terms by which the County will transfer to the City ownership of real property described as Road-Related Properties (Section 4.), Greenbelts (Section 5), and Parks and Open Space (Exhibit E.). For each of these properties, the County shall provide the City, at the County's expense, a recent title report identifying the rights, conditions, covenants, obligations, limitations and reservations of record.
4. TRANSFER OF ROADS-RELATED PROPERTIES TO CITY:

- a. Transfer of Road-Related Properties.

Upon the effective date of annexation, the County shall convey to the City by quitclaim deed, substantially in the form of **Exhibit B** attached hereto and incorporated herein by reference, the Road-Related Properties located in the Annexation Area and identified in **Exhibit C** attached hereto and incorporated herein by reference, subject to all rights, conditions, covenants, obligations, limitations and reservations of record; and the City shall accept the same. The City agrees to abide by and enforce all rights, conditions, covenants, obligations, limitations and reservations for the Road Related Properties. The City covenants that the properties described in Exhibit C shall continue to be used and maintained in perpetuity for road-related purposes unless other equivalent lands within the City are received in exchange therefore; or if the Property is sold or traded for land not for an equivalent use, the City shall pay the County the tax assessed value of the property as of the date the property is transferred to the City under this Agreement.

b. Condition of and Responsibility for Operations, Maintenance, Repairs, and Improvements of Road-Related Properties.

- i. The City will have the opportunity to inspect the Road-Related Properties before accepting ownership. However, regardless of such inspection, the City has the duty to accept all facilities as specified in this Agreement. The City's inspection shall not, however, constitute a waiver of any indemnification required by the County for negligent acts or omissions of the County, its officers, agents, and employees, or any of them, during the period of County ownership. The County will make its records concerning the Road-Related Properties available to the City, and the County personnel most knowledgeable about the Road-Related Properties will be available to jointly inspect the property with City personnel and to provide the City the status of maintenance of such facilities, and to point out known conditions, including any defects or problems, if any, with the Road-Related Properties. The City agrees to accept the Road-Related Properties in AS IS condition, and to assume full and complete responsibility for all operations, maintenance, repairs, and improvements of the Related Properties during the period of City ownership.
- 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 Road-Related Properties, and no official, employee, representative, or agent of King County is authorized otherwise.

c. Environmental Liability related to the Road-Related Properties.

- 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 Road-Related Properties 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 Road-Related Properties.
- 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 notify the County in writing within ninety (90) days of discovery. 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 and liability related to Road-Related Properties.

(i) 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, during the County's period of ownership. 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 or public law is involved. 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.

(ii) 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, during the City's period of ownership. 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 or public law is involved. 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.

e. Survival

The provisions of this Section 4 shall survive the expiration or earlier termination of this Agreement.

5. GREENBELTS; PARK AND OPEN SPACE FACILITIES AND PROPERTIES.

a. Greenbelt Properties.

Upon the effective date of annexation, the County shall convey to the City, by quitclaim deed, the Greenbelt Properties located in the Annexation Area and identified in **Exhibit D** attached hereto and incorporated herein by reference, subject to all rights, conditions, covenants, obligations, limitations and reservations of record; and the City shall accept the same. The City agrees to abide by and enforce all rights, conditions, covenants, obligations, limitations and reservations for the Greenbelt Properties

b. Condition of and Responsibility for Operations, Maintenance, Repairs, and Improvements of Greenbelt Properties.

- i. The City will have the opportunity to inspect the Greenbelt Properties before accepting ownership. However, regardless of such inspection, the City has the duty to accept all Greenbelt Properties as specified in this Agreement. The City's inspection shall not, however, constitute a waiver of any indemnification required of the County for any negligent action or omission of the County, its officers, agents, and employees, or any of them, in performing actions on the Properties during the County's period of ownership. The County will make its records concerning the Greenbelt Properties available to the City, and the County personnel most knowledgeable about the Greenbelt Properties will be available to jointly inspect the Greenbelt Properties with City personnel and to provide the City the status of maintenance of such properties, point out known conditions, including any defects or problems, if any, with the Greenbelt Properties. The City agrees to accept the Greenbelt Properties in AS IS condition, and to assume full and complete responsibility for all operations, maintenance, repairs, and improvements of the Greenbelt Properties during the period of ownership.
- 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 Greenbelt Properties and no official, employee, representative, or agent of King County is authorized otherwise.

c. Environmental Liability Greenbelt.

Section 4.c, concerning environmental liability regarding the Road-related Properties, is hereby incorporated in its entirety by this reference, and applies to the Greenbelt Properties as if fully set forth herein.

d. Indemnification regarding Greenbelt Properties.

- i. 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, during the County's period of ownership. 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 or public law is involved. 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.

ii. 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, during the City's period of ownership. 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 or public law is involved. 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.

e. Park and Open Space Facilities and Properties.

i. County shall transfer to the City, and the City shall accept, the park properties located in the Annexation Area and listed in **Exhibit E-1**--attached hereto and incorporated herein, which park properties are more generally known as Park Orchard Park, Green Tree Park, Green Tree Park Tract A (open space), and North Meridian Park (hereinafter the "Park Properties").

ii. These transfers shall be accomplished through an intergovernmental property transfer agreement substantially in the form of **Exhibit E** attached hereto and incorporated herein. It is the intent of the Parties that transfer of the Park Properties shall occur as nearly as possible on or immediately after the effective date of the annexation of the Annexation Area.

6. 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.

King County:

Dwight Dively
Director, King County Office of
Management and Budget
401 5th Avenue, Suite 810
Seattle, WA 98104

City of Kent:

John Hodgson
Chief Administrative Officer
City of Kent
220 Fourth Ave S.
Kent, WA 98032

7. 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.

8. INDEMNIFICATION.

The following indemnification provisions shall apply to the entirety of this Agreement except for: (1) **Section 4** concerning Road-Related Properties which contains separate indemnification provisions; (2) **Section 5(a)-(d)** concerning Greenbelt Properties which contains separate indemnification provisions; and (3) **Exhibit E** relating to the transfer of Park 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 principle of governmental or public law is involved. 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 principle of governmental or public law is involved; 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, then this Section 8 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 Section 8 shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

9. EXECUTION OF DOCUMENT

This Agreement is contingent on the Parties contemporaneously entering into and fully executing the Interlocal Agreement between the City of Kent and King County relating to the annexation of the Panther Lake Potential Annexation Area. If the Interlocal Agreement between the City of Kent and King County relating to the annexation of the Panther Lake Potential Annexation Area is not entered into and fully executed by the Parties on the same date as this Agreement, then either Party may terminate this Agreement by providing written notice to the other within 10 days of the date of this Agreement, and upon such termination neither Party shall have any further rights or obligations with regard to the other.

10. 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 Kent City Clerk and recorded with the King County Recorder's Office.
- c. Records. Until December 31, 2020, any of either party's records related to any matters covered by this Intergovernmental Agreement, and 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 10 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. Dispute Resolution. The Parties should attempt, if appropriate, to use an alternative dispute resolution ("ADR") 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 ADR services would be divided equally between the Parties. Each Party would be responsible for the costs of their own legal representation.
- i. 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.
- j. 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.
- k. Applicable Law. Washington law shall govern the interpretation of this Agreement. King County shall be the venue of any ADR, arbitration or lawsuit arising out of this Agreement.
- l. 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.
- m. Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth above in Section 6. 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 6. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.
- n. Performance. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.
- o. 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.
- p. 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, privilege, interest, cause of action, duty, or obligation under this Agreement or based on any provision set forth herein.

IN WITNESS THEREOF, the Parties have executed this Agreement.

CITY OF KENT:

KING COUNTY:

Suzette Cooke, Mayor

Dow Constantine, Executive

Date: _____

Date: _____

ATTEST:

ATTEST:

City Clerk

DATED: _____

DATED: _____

Approved as to Form:

Approved as to Form:

City Attorney

Sr. Deputy Prosecuting Attorney

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IN WITNESS THEREOF, the Parties have executed this Agreement.

CITY OF KENT:

KING COUNTY:

Suzette Cooke, Mayor

Dow Constantine, Executive

Date: _____

Date: _____

ATTEST:

ATTEST:

City Clerk

DATED: _____

DATED: _____

Approved as to Form:

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City Attorney

Sr. Deputy Prosecuting Attorney

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