

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF TUMWATER AND THURSTON COUNTY, RELATED TO THE ANNEXATION
OF COUNTY ISLANDS LOCATED WITHIN THE SURROUNDING JURISDICTION OF THE
CITY**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into pursuant to the authority of Chapter 39.34 RCW in duplicate originals between the City of Tumwater, a State of Washington municipal corporation ("City") and Thurston County, a political subdivision of the State of Washington ("County"); collectively referred to as "Jurisdictions" and individually as "Jurisdiction."

In consideration of the terms, conditions, covenants, and performances contained herein, it is mutually agreed by the Jurisdictions as follows:

WHEREAS, annexations are routinely applied for and put forth by the City; and

WHEREAS, County islands are those unincorporated County areas that are bounded on all sides by the City; and

WHEREAS, provision of services by the County to islands that are surrounded by the City results in an inefficient use of City and County resources; and

WHEREAS, there are currently 12 unincorporated County islands located within the boundaries of the City; and

WHEREAS, the annexation of these 12 County islands will provide greater efficiency of services; and

WHEREAS, the Jurisdictions want to facilitate an orderly transition of services associated with the islands proposed to be annexed, including, but not limited to emergency services, public works, and permit processing; and

WHEREAS, the City and County want to ensure a seamless transition of review of permit applications that were initiated in the County, but then transferred to the City upon annexation; and

WHEREAS, RCW 35A.14.296 authorizes any code city to annex unincorporated areas pursuant to a jointly approved interlocal agreement with the county; and

WHEREAS, the legislative findings in RCW 35A.14.296 state, "The legislature finds that city annexations of unincorporated areas within urban growth areas will be more efficient and effective if the county and city develop a jointly approved interlocal agreement so as not to create illogical boundaries or islands of unincorporated territory"; and

WHEREAS, RCW 35A.14.296 requires that any affected adjacent jurisdictions, such as fire districts, be notified of the intent to annex any areas served by the fire district. Nine of the twelve County islands that the City is proposing to annex are within the service area of the McLane Black Lake Fire Department; and

WHEREAS, RCW 35A.14.296 empowers McLane Black Lake Fire Department to be a party to the Interlocal Agreement by providing written notice within 30 days of the May 20, 2021 letter from the City of Tumwater; and

WHEREAS, the McLane Black Lake Fire Department provided the City with written notice on September 5, 2021, that it does not wish to be a party to this interlocal agreement; and

WHEREAS, the County and City held a duly noticed joint public hearing on this interlocal agreement on January 18, 2022 as required by RCW 35A.14.296(3).

NOW, THEREFORE, it is hereby agreed as follows:

1. Areas to be Annexed.

The Jurisdictions agree that the City shall annex all 12 of the unincorporated County islands as depicted on the maps attached to and incorporated into this agreement in two separate annexation processes. The Jurisdictions agree that the boundaries of the annexation areas shall be as described and depicted in the attached Exhibits:

- A. The County island referred to as the “Trosper Lake Island” shall be annexed on May 17, 2022 separately from the other 11 islands via an ordinance adopted by the City Council. The boundaries of the Trosper Lake Island are described and depicted on the attached Exhibit [See Pages 1 – 4 in Attachment “A” Tumwater Island Annexation ILA Legal Descriptions and Maps].
- B. The remaining 11 islands will be annexed as a group on March 15, 2022 via an ordinance adopted by the City Council. The boundaries of the islands are described and depicted on the attached Exhibits [See Pages 5 – 20 in Attachment “A” Tumwater Island Annexation ILA Legal Descriptions and Maps] and named as follows:
 - a. Rural Road Island – North.
 - b. Rural Road Island – South.
 - c. 2247 Sapp Road Island.
 - d. 1300-1500 Block – Linwood Avenue Island.
 - e. Liberty Street Island.

- f. 984 Liberty Street Island.
- g. Pioneer Street Islands, North.
- h. Pioneer Street Islands, South.
- i. Quince Street Island, North.
- j. Quince Street Island, South.
- k. Dennis Street Island.

2. Compliance with Previous Interlocal Agreements.

The City and County entered into an Interlocal Agreement on January 28, 2008 and amended the Interlocal Agreement on January 7, 2014, to establish the orderly transition of services following an annexation. These Interlocal Agreements address several areas, including land use review, permit processing, records transfer, etc. These Interlocal Agreements will remain in effect and are attached to and incorporated into this Agreement.

3. Public Works Projects.

The County will provide the City a list and project descriptions for any ongoing or pending public works projects within the proposed annexation areas.

4. Open Permits.

The County will compile and transfer to the City a list of ongoing permits within the proposed annexation areas, including but not limited to land use and building permits.

5. Unexpended SEPA Mitigation Fees.

The County will compile a list of projects within the proposed annexation areas with unspent SEPA mitigation fees. Upon annexation, such fees shall be transferred to the City, except for fees collected for other agencies and school district. The City shall assume the responsibility for expending these fees to address the impact or complete the mitigation appropriate to the project for which they were collected. This shall not apply to school mitigation fees or agency fees.

6. Development Bonds.

The County will identify any development bonds that are active within the proposed annexation areas. Upon annexation and when identified for transfer under the terms of the January 28, 2008 Interlocal Agreement as amended on January 7, 2014, these bonds will be transferred to the City for administration in accordance with the terms of the bond.

7. Notification of Potentially Affected Jurisdictions.

Consistent with the requirements of RCW 35A.14.296, the City transmitted this Agreement to any potentially affected adjacent jurisdiction, including the appropriate fire district, to allow for a 30-day comment period on [date].

8. Maintenance of Residential Zoning.

Consistent with the requirements of RCW 35A.14.296, the City agrees that for a period of five years, any parcel zoned for residential development within the annexed areas shall:

- A. Maintain a zoning designation that provides for residential development; and
- B. Not have its minimum gross residential density reduced below the density allowed for by the zoning designation for that parcel prior to annexation.

9. Public Outreach.

The City shall assume responsibility for completing all required public notifications pursuant to RCW 35A.14.296. In addition, the City shall assume responsibility for holding any public meetings, open houses, drafting of Frequently Asked Question flyers and other informational materials, and public hearings. The County shall attend the annexations meetings in support of city staff. The joint County and City public hearing shall be on January 18, 2022.

10. Effective Date of Annexation.

The jurisdictions mutually agree that the effective date of the annexation, as described and agreed to in this agreement, shall be the date of the City's adoption of its annexation ordinance.

11. Term.

The term of this Agreement shall be effective upon the Effective Date and shall expire two years after the Effective Date unless extended by the agreement of the Jurisdictions.

12. Indemnification and Hold Harmless.

- A. To the extent permitted by law, each Jurisdiction agrees to indemnify, defend, and hold harmless the other Jurisdiction, their officers, officials, employees, agents, and volunteers from and against any and all claims, demands, damages, losses, actions, liabilities, expenses, and judgments of any nature whatsoever, including without limitation, court and appeal costs and attorneys' fees, to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, caused by or arising out of any negligent act, errors, or omissions, of that Jurisdiction, its employees, agents, or volunteers or arising out of, in connection with, or incident to that Jurisdiction's performance or failure to perform any aspect of this Agreement.

- B. The Jurisdictions waive their immunity under the Washington State Industrial Insurance Act, Title 51 RCW, to the extent required by this indemnification and hold harmless provision. Provided, however, the foregoing waiver shall not in any way preclude a Jurisdiction from raising such immunity as a defense against any claim brought against a Jurisdiction by any of the Jurisdiction's respective employees. This waiver has been mutually negotiated by the Jurisdictions.
- C. The provisions of this section shall survive the completion or expiration of this Agreement or termination whether termination is by one or all Jurisdictions.
- D. The Jurisdictions agree to support each other in pursuing these purposes and responsibilities and operate in good faith and partnership in carrying them out. Risk and accountability shall be shared to the extent possible by the Jurisdictions.

13. Amendments.

This Agreement may be amended as needed by mutual written agreement of the Jurisdictions as executed by each Jurisdiction's authorized governing authority as provided in Chapter 39.34 RCW.

14. Termination.

This Agreement may be terminated when the terminating Jurisdiction provides written notice to the other Jurisdiction at least 90 days prior to its intended withdrawal from this Agreement. Following a termination, the Jurisdictions are mutually responsible for fulfilling any outstanding obligations under this Agreement incurred prior to the effective date of the amendment or termination.

15. Dispute Resolution.

The Jurisdictions mutually agree 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 Jurisdictions. Each Jurisdiction would be responsible for the costs of their own legal representation. The jurisdictions must first seek a remedy under this section in good faith prior to any legal action in court to enforce the terms of this Agreement.

16. Jurisdiction Representative.

The following are designated as representatives of the respective Jurisdictions. Notice provided for in this Agreement shall be sent to the designated representatives by certified mail to the addresses set forth below. Notice will be deemed received three business days following posting by the U.S. Postmaster.

City of Tumwater, c/o City Administrator, 555 Israel Road SW, Tumwater, WA 98501

Thurston County, c/o County Manager, 2000 Lakeridge Drive SW, Olympia, WA 98502

17. Governing Law and Venue.

This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by the Jurisdictions hereto that this Agreement shall be governed by the laws of the State of Washington both as to its interpretation and performance. Any action of lawsuit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in a court of competent jurisdiction in Thurston County, Washington or in the superior court of either of the two nearest judicial districts pursuant to RCW 36.01.050.

18. 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.

19. Entire Agreement.

The Jurisdictions agree that this Agreement is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded.

20. Non-Waiver of Rights.

The Jurisdictions agree that failure to declare any breach or default immediately upon the occurrence thereof, delay in taking any action in connection with, or the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

21. Equal Opportunity to Draft.

The Jurisdictions have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Jurisdiction upon a claim that that Jurisdiction drafted the ambiguous language.

IN WITNESS WHEREOF, the Jurisdictions hereto have caused this Agreement to be executed by the dates and signature herein under affixed. The persons signing this Agreement on behalf of the Jurisdictions represent that each has authority to execute this Agreement on behalf of the Jurisdiction entering into this Agreement.

Thurston County

City of Tumwater

Carolina Mejia, Chair of the Board of County
Commissioners

Debbie Sullivan, Mayor of City of Tumwater

Date

Date

Approved as to form:
Jon Tunheim, Prosecuting Attorney

Approved as to form:
Karen Kirkpatrick, City Attorney

By: _____
Deputy Prosecuting Attorney

By: _____