

After Recording Return to

Barbara Sikorski, Asst Clerk  
Snohomish County Council  
3000 Rockefeller, M/S 609  
Everett, WA 98201

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SNOHOMISH COUNTY, WASHINGTON

Agencies Snohomish County and City of Mill Creek  
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Document Title

**INTERLOCAL AGREEMENT  
BETWEEN THE  
CITY OF MILL CREEK AND SNOHOMISH COUNTY  
CONCERNING THE ANNEXATION OF LAND  
KNOWN AS THE NORTHEAST AREA**

**Section 1. Parties**

This Interlocal Agreement (the "Agreement" or "ILA") is made by and between the City of Mill Creek (the "City") and Snohomish County (the "County"), political subdivisions of the State of Washington, pursuant to the Growth Management Act, Chapter 36 70A RCW; the State Environmental Policy Act, Chapter 43 21C RCW, Local Project Review, Chapter 36 70B RCW; Subdivisions, Chapter 58.17 RCW, Excise Taxes, Chapter 82 02 RCW; and the Interlocal Cooperation Act, Chapter 39.34 RCW

NOW, THEREFORE, in consideration of the terms, conditions, and mutual benefits of this Agreement, the County and City agree as follows

**Section 2. Recitals**

2.1 The Snohomish County Boundary Review Board ("BRB") approved the boundaries of the Northeast Area Annexation in their written findings on July 25, 2005.

2.2 The term "Northeast Area" refers to approximately 553.25 acres of property located within Snohomish County and generally bounded by 132<sup>nd</sup> Street SE (SR 96) to the north, Seattle Hill Road to the southeast, the existing City limits to the west, and 144<sup>th</sup> Street SE to the south. Exhibit A identifies the location and boundaries of the Northeast Area.

2.3 The purposes of this Agreement are to (i) facilitate an orderly transition from the County to the City of municipal jurisdiction, services, and governance responsibility for the Northeast Area, (ii) allocate and transfer ownership and related responsibilities for public properties, (iii) reflect agreements of the parties related to

management of annexation-related issues, and (iv) enable the continuing cooperation of the parties before and after the annexation.

2.4 The scope of this Agreement is limited to the Northeast Area annexation and does not apply to any other annexation.

### **Section 3. Pending and Future Development Permits**

3.1 Description. Several sites within the Northeast Area have pending development permit applications, including building, grading and land use permit applications. The parties wish to ensure the orderly transfer of pending permit application review responsibilities and fees for such permits. The pending development permits are categorized in this Section 3 into (i) building and grading permits, (ii) land use permits, and (iii) permits associated with the Graymor Development site as described and defined in Section 3.5.1.

3.2 Permit Applications and Management Except as expressly set forth in this Section 3, after the effective date of the Northeast Area annexation, the County shall have no further responsibility to manage, process and be responsible for pending development permit applications for the Northeast Area. Following the effective date of the Northeast Area annexation, the City shall be responsible for and shall accept, manage, and process all development permit applications for the Northeast Area.

#### **3.3 Building and Grading Permits**

3.3.1 Applicability. This subsection addresses the review of building and grading permits (as defined below) for sites within the Northeast Area except those permits associated with the Graymor Development site, which are discussed in section 3.5 below.

3.3.2 Definitions. For the purposes of this Section 3, the following definitions apply. "Building permits" means printed permission issued by the authorizing jurisdiction that allows for the construction of a structure, and includes grading, and repair, alteration, or addition of or to a structure. "Associated permits" means mechanical, electrical, plumbing, and sign permits for the building being permitted. "Complete" or "completion" means final administrative or quasi-judicial approvals, including final inspection and issuance of an occupancy permit.

3.3.3 Completion of Existing Building and Grading Permits. The County shall complete the review of building and grading permit applications that have been filed with the County prior to the effective date of the Northeast Area annexation. Permits for these projects shall be issued by the County in accordance with the Snohomish County Code, and inspected through completion by County staff.



3.3.4 Appeals of Building and Grading Permits The County shall be responsible for defending, at no cost to the City, all administrative, quasi-judicial, or judicial appeals of building permits and associated permits issued by the County in the Northeast Area.

3.3.5 Transfer at Request of Permit Applicant The City may at any time ask the County to transfer pending building permit applications if requested in writing by the permit applicant. The City will contact applicants for pending permit applications to provide advance notification of the transfer date.

3.3.6 Permit Fees for Transferred Permits. The County and City shall proportionately share the permit application fees for any transferred permit applications. The County shall transfer to the City a proportionate share of the application fee collected, commensurate with the amount of work left to be completed on the permit and/or application. The proportionate share will be based on the County's permitting and review fee schedules.

#### 3.4 Land Use Permits.

3.4.1 Applicability This subsection addresses the review of land use permits (as defined below) for sites within the Northeast Area except those land use permits associated with the Graymor Development site.

3.4.2 Definitions For the purposes of this Section 3, the following definitions apply. "Land use permits" means non-single family and/or duplex building permits for structures greater than 4,000 square feet in size, subdivisions, binding site plans, planned residential developments, short subdivisions, conditional uses, special uses, rezones, shoreline substantial development permits, and variances. "Review stage" is defined for subdivisions and short subdivisions to mean the following elements, which will individually be regarded as a distinct "stage": preliminary plat approval, plat construction/civil plan approval, inspection, and final plat processing. "Review stage" for all other land use permits means preliminary approval, construction/civil plan approval, construction inspections, or final sign-off, but does not include related building and grading permit applications unless applied for in the County prior to the effective date of the annexation.

3.4.3 Completion of Existing Land Use Permits The County shall complete the review of land use permits that have been filed and where a written determination of completeness has been issued by the County prior to the effective date of the Northeast Area annexation, through inspection and full completion of the project.

3.4.4 Land Use Dedications, Deeds, or Conveyances After the effective date of the Northeast Area annexation, and unless otherwise provided by the terms of this Agreement, all previously approved final plats and/or other dedications of public

property, right-of-way or easements within the Northeast Area shall be transmitted to the City for City Council acceptance. Pending dedications, deeds, or conveyances will be made in the name of the City after the effective date of the annexation, even if the County is continuing to process the land use permit application. The County will consult with the City concerning the appropriate language to be used for such dedications, deeds and conveyances.

3.4.5 Appeals of Land Use Permits. The County shall be responsible for defending, at no cost to the City, all administrative, quasi-judicial or judicial appeals of land use permits issued by the County in the Northeast Area.

3.4.6 Permit Renewal or Extension. After the effective date of the Northeast Area annexation, all requests to renew or extend a land use permit issued by the County shall be made to and administered by the City.

3.4.7 Land Use Code Enforcement Cases. Any land use code enforcement cases in the Northeast Area annexation, where the County has filed a notice and order prior to the effective date of the annexation, will be administered through completion, including any appeals, by the County. Any further action in those cases will be the responsibility of City and at the City's discretion. The County agrees to make its employees available as witnesses at no cost to the City if necessary to prosecute transferred cases. However, nothing in this section shall preclude the County, at the County's discretion, from seeing to conclusion any action commenced in superior court to enforce a Notice and Order or Decision of the Hearing Examiner on a code enforcement violation within the annexation area.

3.4.8 Transfer of Bonds. All performance, maintenance, and other bonds held by the County to guarantee performance, maintenance, or completion of work associated with the issuance of any land use permit in the Northeast Area shall be transferred to the City, along with responsibility for enforcement of conditions tied to said bonds at the time the Northeast Area annexation becomes official. The County shall transfer such bonds to the City (i) within sixty (60) days of the effective date of the Northeast Area Annexation.

### 3.5 Graymor Development Site.

3.5.1 Definition. Graymor Development LLC is seeking development approval for a new retail store located east of 35<sup>th</sup> Avenue SE on 132<sup>nd</sup> Street, which property is legally described in Exhibit B ("Graymor Development site"). The review of said application is being handled under Snohomish County file No. 02-107030.

3.5.2 Threshold Determination. Under the authority of Chapter 43.21C RCW, the County will prepare and issue a threshold determination for the future retail store proposed at the Graymor Development site. The threshold determination will



incorporate a voluntary condition requiring construction of the store to conform with certain City development regulations. Said actions are the subject of a separate agreement between the City and Graymor Development, the terms of which are incorporated herein so far as necessary to implement said agreement

3.5.3 PCB/Binding Site Plan. The County shall continue processing the PCB Zone Official Site Plan application submitted for the Graymor Development site and shall retain its authority to collect applicable review fees for the PCB Zone Official Site Plan. Traffic mitigation fees related thereto shall be handled as described in Section 4.6

3.5.4 Grading Permits. The County shall review, collect review fees for, and issue the grading permit(s) for the Graymor Development site. The County's review shall include all permits related to the grading permit such as excavation, fill, shoring, and retaining walls, whether or not encompassed within the original grading permit issued for the site.

3.5.5 Other Land Use Permits. After the effective date of the Northeast Area annexation and except as otherwise provided for in 3.5.3 and 3.5.4, all land use permit applications related to the Graymor Development site shall be submitted to, processed and reviewed by the City. The City shall impose and collect its applicable review fees for all such applications.

3.5.6 Building and Associated Permits. After the effective date of the Northeast Area Annexation, and except as otherwise provided for in 3.5.3 and 3.5.4, Graymor Development LLC or other agent/developer will submit all building permit and associated permit applications to the City for the Graymor Development site. The City shall review, process, collect review fees for, and issue all building and associated permits for the Graymor Development site under applicable City regulations, including design review, landscaping plan review, and other related review.

#### **Section 4. Roads and Transportation Mitigation**

4.1 Description. The Northeast Area annexation encompasses several major roadways, including (i) 35<sup>th</sup> Avenue SE, which runs north-south through the center of the Northeast Area, and (ii) 132<sup>nd</sup> Street, which runs along the northern boundary of the Northeast Area

4.2 Existing Traffic Mitigation Interlocal Agreement. The City and County have previously entered into a separate, longstanding interlocal agreement concerning interjurisdictional traffic mitigation ("Traffic Mitigation ILA"). The parties wish to retain and continue using the Traffic Mitigation ILA for such purposes, except as may be expressly modified in this Section 4

4.3 35<sup>th</sup> Avenue SE Upon the effective date of the Northeast Area annexation, that portion of 35<sup>th</sup> Avenue SE lying within the Northeast Area (see **Exhibit A**) shall become the responsibility of the City. The City and the County shall coordinate maintenance and repair of 35th Ave. The City and the County shall contribute proportionally to the maintenance and improvement of the associated wetland mitigation and stream enhancement facilities within the annexation area. The parties proportions shall take into account at least the following elements: ownership; original impact area in relationship to 35<sup>th</sup> Avenue SE road project mitigation (120<sup>th</sup> Place SE to Seattle Hill Road), and ongoing monitoring, permit and maintenance responsibilities. The parties shall promptly enter into a separate agreement to address this subsection.

4.4 Seattle Hill Road. The northwesterly right-of-way line of Seattle Hill Road forms the southeastern boundary of the Northeast Area annexation. Seattle Hill Road is not included within the Northeast Area. The County shall continue to own, maintain and be responsible for Seattle Hill Road.

4.5 132<sup>nd</sup> Street. Upon the effective date of the Northeast Area annexation, that portion of 132<sup>nd</sup> Street lying within the Northeast Area (see **Exhibit A**) shall become the responsibility of the City.

4.6 Graymor Development Site. Development of the Graymor Development site is vested and ongoing in the County. Transportation mitigation fees for that development have been determined as part of the County's PCB Zone Official Site Plan process using the Traffic Mitigation ILA. Transportation mitigation fees payable in connection with the development of the Graymor Development site shall be based on the County's determination under the Traffic Mitigation ILA regardless of the effective date of the Northeast Area annexation. Said transportation mitigation fees shall be payable to the County prior to issuance of building permits for the project. The County shall allocate said payment in accordance with the determination made under the Traffic Mitigation ILA.

4.7 Meadows Mitigation Parcel. The County is the owner in fee simple of the real estate and single family residence located at 13309 29<sup>th</sup> Avenue SE (Abbreviated Legal Evergreen Glade, BLK 000, D-00-Lot 6). The parcel was deeded to the County in conjunction with the approval of The Meadows Official Site Plan, County File No. 03-108845. The County shall continue to own, maintain, and be responsible for this parcel following the effective date of the Northeast Area annexation.

## **Section 5. Surface Water Management**

5.1 Description. The Northeast Area contains (i) a County-owned surface water management pond, (ii) a State-owned surface water management tract, and (iii) various privately-owned surface water management facilities.



5.2 County Surface Water Management Pond. The County owns and maintains a surface water management pond at the southwest corner of Seattle Hill Road and 132<sup>nd</sup> Street. The County shall continue to own, maintain and be responsible for this tract following the Northeast Area annexation.

5.3 State Surface Water Management Tract. The State owns a surface water management tract located at the southeast corner of 132<sup>nd</sup> Street and 35<sup>th</sup> Avenue SE. The state is not a party to, and said tract is not within the scope of this Agreement.

5.4 Private Surface Water Facilities. Private surface water management facilities shall continue to be owned and operated by the property owners. Upon request by the City, the County shall provide any available information identifying the location and entities responsible for such private surface water facilities, and a copy of any plat, subdivision, real property or other record describing the County's responsibility toward or interest in such facilities. Following the effective date of the Northeast Area annexation, the City shall assume the County's responsibilities, if any. Where easements have been given to the County for access and maintenance of these facilities, these easements shall be conveyed to the City by quit claim deed from the County.

5.5 Taxes, Fees, Rates, Charges, and Other Monetary Adjustments. The City recognizes that fees are collected by the County for unincorporated areas within designated Watershed Management Areas and/or the Clean Water District. Watershed management fees are collected at the beginning of each year through real property tax statements. Upon the effective date of the annexation, the City hereby agrees that the County will continue to collect and, pursuant to Chapter 25.20 SCC and to the extent permitted by law, to apply the fees collected during the calendar year in which the annexation occurs to the provision of watershed management services designated in that year's budget. These services will be provided through the year in which the annexation becomes effective and will be of the same general level and quality as those provided to other fee payers in the County.

## **Section 6. Park Facilities**

6.1 Description. There are two existing park facilities within the Northeast Area: an approximate 3-acre tract privately owned by the Heatherwood West homeowners' association and one County-owned park located at 13613 28<sup>th</sup> Drive SE and known as Silver Crest Pocket Park ("Silver Crest").

6.2 Transfer of Ownership. The County shall transfer ownership of Silver Crest to the City within ninety (90) days of the effective date of the Northeast Area annexation. The method of transfer shall be by deed reflecting the same nature, degree, and quality of ownership as obtained and held by the County. Upon recording of said deed, the City shall assume ownership and maintenance of Silver Crest.

6.3 Estimate of Maintenance Expenses. The County shall provide to the City a written estimate of annual maintenance expenses for Silver Crest within sixty (60) days of the effective date of this Agreement

## **Section 7. Fire Marshal Services**

7.1 County to complete annual fire inspections. The County agrees to process and complete fire inspections in an annexed area that were scheduled before the effective date of annexation unless the parties agree otherwise.

7.2 Fire code enforcement cases. The County will complete any pending fire code enforcement cases within the annexation area until final disposition of the case. Any further action in those cases will be at the discretion of the City.

## **Section 8. Records**

Unless otherwise specified in this Agreement, during and after the Northeast Area annexation the County and City shall cooperatively determine (i) the need to transfer permit, land use and other appropriate records, and (ii) the scope and timing of such transfer

## **Section 9. Indemnification and Liability**

9.1 Each party shall be responsible for the acts, omissions and performance of itself and its elected and appointed officials, officers, employees and agents arising out of this Agreement.

9.2 The County shall protect, hold harmless, indemnify, and defend at its own expense, the City, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever arising out of the County's act, omission, or performance of this Agreement, including claims by the County's employees or third parties.

9.3 The City shall protect, hold harmless, indemnify and defend, at its own expense, the County, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever arising out of the City's act, omission, or performance of this Agreement, including claims by the City's employees or third parties

9.4 In the event of liability for damages of any nature whatsoever arising out of the performance of this Agreement by the City and the County, including claims by the City's or the County's own officers, officials, employees, agents, volunteers, or third parties, caused by or resulting from the concurrent negligence of the County and the City, their officers, officials, employees and volunteers, each party's liability shall be only to the extent of that party's negligence as determined by a court of competent jurisdiction.



9.5 No liability shall attach to the City or the County by reason of entering into this Agreement except as expressly provided herein.

### **Section 10. Dispute Resolution**

If the County and City cannot reach agreement regarding the interpretation or implementation of any provision of this Agreement, the County and City agree to use formal dispute resolution through professional mediation. All costs for mediation or other dispute resolution services shall be divided equally between the County and the City, but each jurisdiction would be responsible for its own costs, including legal representation. If mediation is unsuccessful, either party may then take any action it deems necessary in Snohomish County superior court.

### **Section 11. Contacts for Agreement**

The contact persons for the administration of this Agreement are.

Bill Trimm, Comm. Dev. Dir.  
City of Mill Creek  
15728 Main Street  
Mill Creek, WA 98292  
(425) 921-5725

Richard Craig, Senior Planner  
Snohomish County  
Department of Planning and Development  
3000 Rockefeller Avenue  
Everett, WA 98201  
(425) 388-3311

### **Section 12. General Provisions**

12.1 Cooperation The parties shall cooperate with each other in administering this Agreement, and in particular shall jointly draft and execute such documents as may be necessary to effectuate the terms and conditions of this Agreement and/or transfer the land, funds, rights and/or responsibilities allocated in or arising under this Agreement.

12.2 No Third Party Beneficiaries This Agreement is for the benefit of the City and County only and is not intended to benefit any other person or entity. No person or entity not a party to this Agreement shall have or claim any third-party beneficiary or other rights. This Agreement is not intended to and shall not be construed to benefit a particular class of persons or individuals.

12.3 Honoring Existing Agreements, Standards, and Studies Unless otherwise specified in this Agreement, the County and City will honor all existing mitigation agreements and interlocal agreements between them.

12.4 Relationship to Existing Laws and Statutes This Agreement in no way modifies or supersedes existing state laws and statutes. In meeting the commitments encompassed in this Agreement, the parties will comply with the requirements of the

Open Meetings Act, Public Records Act, Growth Management Act, State Environmental Policy Act, annexation statutes, and other applicable state and local laws. The County and City retain the ultimate authority for land use and development decisions within their respective jurisdictions. By executing this Agreement, the County and City do not purport to abrogate the decision-making responsibility or police powers vested in them by law.

12.5. Effective Date This Agreement shall become effective by the official action of the governing bodies of each party and the signing of the Agreement by each party's authorized representative

12.6. Termination This Agreement shall terminate three (3) years after the effective date of the Northeast Area annexation or upon the resolution of any disputes arising under this Agreement, whichever occurs later

12.7. Severability If any provision of this Agreement or its application to any person or circumstance is held invalid, the remainder of the provisions and/or the application of the provisions to other persons or circumstances shall not be affected

12.8. Exercise of Rights or Remedies Failure of either party to exercise any rights or remedies under this Agreement shall not be a waiver of any obligation and shall not prevent either party from pursuing that right at any future time

12.9. Records Both parties shall maintain adequate records to document obligations performed under this Agreement. Upon reasonable notice, each party shall have the right to review the other party's records with regard to the subject matter of this Agreement.

12.10. Entire Agreement, Amendments This Agreement constitutes the entire Agreement between the parties with respect to the Northeast Area Annexation. All amendments shall be in writing and executed in the same manner as provided for the execution of this Agreement

12.11. Mutual Negotiation This Agreement has been mutually negotiated by the parties. No ambiguity shall be construed against either party based upon a claim that the party drafted the ambiguous language. The parties each acknowledge, represent, and agree that they have read this Agreement; that they fully understand the terms thereof; that they have been fully advised by their legal counsel, and that the Agreement has been executed with the advice of their legal counsel

12.12. Governing Law and Stipulation of Venue This Agreement shall be governed by the laws of the State of Washington. Any action shall be brought in the Superior Court for Snohomish County



12.13 Contingency. The obligations of the parties are contingent on the availability of funds through legislative appropriation and allocation in accordance with law. In the event funding is withdrawn, reduced, or limited in any way after the effective date of this Agreement, the City or County shall consult and seek appropriate amendment(s) and/or renegotiation in light of the new funding limitations and conditions

13.14 Recording. This Agreement shall be promptly recorded in the Office of the Snohomish County Auditor.

IN WITNESS HEREOF, the parties have signed this Agreement on the dates indicated below.

**SNOHOMISH COUNTY:** SUSAN NEELY  
Executive Director

**CITY OF MILL CREEK:**

*Susan K. Neely*  
\_\_\_\_\_  
for Aaron G. Reardon, County Executive

*Steve Nolen*  
\_\_\_\_\_  
Steve Nolen, City Manager

Date: October 26, 2005

Date November 16, 2006

ATTEST.

*Barbara Sitovick*  
\_\_\_\_\_  
Asst. Clerk of the Council

ATTEST

*Kelly Hennessey*  
\_\_\_\_\_  
Kelly Hennessey, City Clerk

APPROVED AS TO FORM  
Snohomish County Prosecutor

APPROVED AS TO FORM  
Office of the City Attorney

\_\_\_\_\_  
Deputy Prosecuting Attorney

*Scott M. Missall*  
\_\_\_\_\_  
Scott M. Missall  
Short Cressman & Burgess PLLC

- Exhibit A:** Depiction of Northeast Area
- Exhibit B:** Legal Description for Graymor Development site

D-4



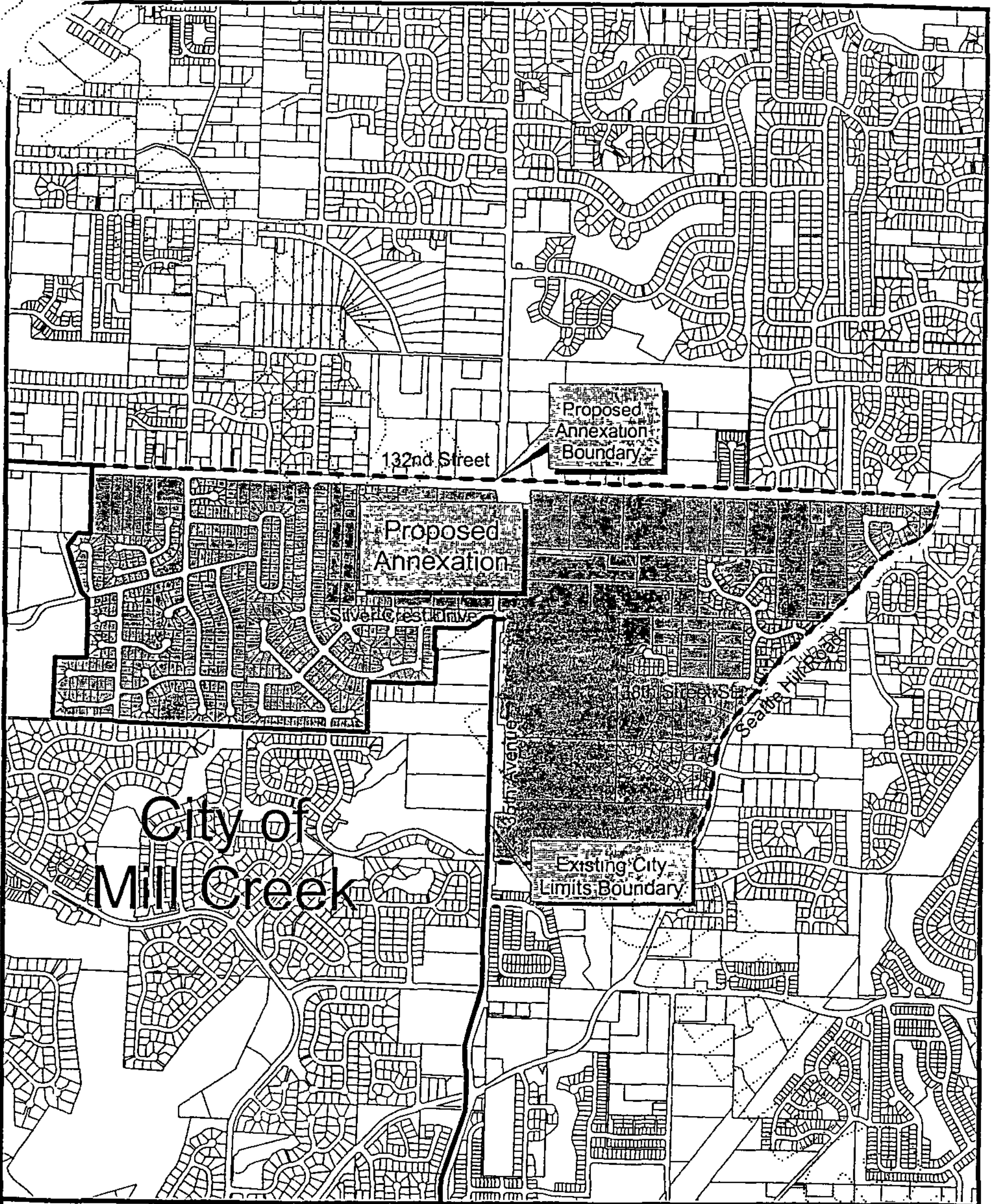


Exhibit A  
Proposed Northeast/Area A  
Annexation





# Exhibit B

## Legal Description:

**PARCEL A.**  
THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE  
NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 28 NORTH, RANGE  
5 EAST W.M., RECORDS OF SNOHOMISH COUNTY, WASHINGTON,

EXCEPT A STRIP 20 FEET WIDE ON THE SOUTH SIDE OF A  
CENTERLINE COMMENCING AT THE NORTHWEST CORNER OF SAID  
SECTION 33,

THENCE SOUTH 89°50'40" EAST, 1997 80 FEET, ALL IN THE  
NORTHWEST QUARTER OF SAID SECTION 33, FOR ROAD PURPOSES,

AND EXCEPT THOSE PORTIONS THEREOF CONVEYED TO SNOHOMISH  
COUNTY FOR ROAD BY INSTRUMENTS RECORDED UNDER SNOHOMISH  
COUNTY RECORDING NO. 83120200114;

AND EXCEPT THE WEST 0 22 FEET THEREOF

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON

**PARCEL B.**  
THE NORTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST  
QUARTER AND THE WEST 0 22 FEET OF THE WEST HALF OF THE  
NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE  
NORTHWEST QUARTER OF THE SECTION 33, TOWNSHIP 28 NORTH,  
RANGE 5 EAST W.M., RECORDS OF SNOHOMISH COUNTY, WASHINGTON,

EXCEPT A STRIP 20 FEET WIDE ON THE SOUTH SIDE OF A  
CENTERLINE COMMENCING AT THE NORTHWEST CORNER OF SAID  
SECTION 33;

THENCE SOUTH 89°50'40" EAST, 1997 80 FEET, ALL IN THE  
NORTHWEST QUARTER OF SAID SECTION 33, FOR ROAD PURPOSES,

AND EXCEPT THOSE PORTIONS THEREOF CONVEYED TO SNOHOMISH  
COUNTY FOR ROAD BY INSTRUMENTS RECORDED UNDER SNOHOMISH  
COUNTY RECORDING Nos. 8310200114 AND 9201230590;

AND EXCEPT THAT PORTION CONDEMNED FOR ROAD IN SNOHOMISH  
COUNTY SUPERIOR COURT CAUSE No 98-2-08976-6

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON

NOTE. THE RECORD DESCRIPTIONS ARE CONTIGUOUS WITH NO  
HIATUSES OR OVERLAPS.

Additional legal description is on page \_\_\_ of document