

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Discussion of Proposed Settlement and Interlocal Agreement Between the City of Shoreline and Town of Woodway
<b>DEPARTMENT:</b>	City Attorney Office
<b>PRESENTED BY:</b>	Margaret King, City Attorney
<b>ACTION:</b>	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

**PROBLEM/ISSUE STATEMENT:**

Point Wells, in Snohomish County, has been identified as a future annexation area for both the City of Shoreline and Town of Woodway in each of our respective Comprehensive Plans. Each city has adopted a vision for the redevelopment of the area and over the years, the Town of Woodway and the City of Shoreline have had a number of disagreements and related litigation regarding our cities' respective interests in annexing Point Wells and potential control over utility services and the redevelopment of Point Wells. As the City of Shoreline attempted to proceed with the assumption of the Ronald Wastewater District (RWD) service area in Snohomish County, there was disagreement between the two cities regarding lift station number 13 and whether Point Wells was in the service area of RWD or Olympic View Water and Sewer District.

Recently the Court of Appeals overturned a favorable ruling by the Superior Court that had determined that Point Wells was part of the RWD service area. RWD is appealing this decision and has asked for review by the Washington State Supreme Court. Most of the current existing litigation between the two cities is about the issues of RWD service area at Point Wells. To settle the outstanding litigation between the two cities and to provide a framework on how Shoreline and Woodway could work together to address conflicts over the existing sewer service and the future redevelopment of Point Wells, the cities entered into mediation to work towards a Settlement Agreement. The draft Settlement and Interlocal Agreement (Attachment A) addresses issues regarding annexation, development standards, individual city responsibilities, lift station number 13, and resolution of outstanding litigation between the two cities.

**RECOMMENDATION**

Staff recommends that the Council review and discuss the proposed Settlement and Interlocal Agreement between the City of Shoreline and Town of Woodway. Staff further recommends that the Council provide direction to staff to schedule action on the proposed agreement for the Council to authorize the City Manager to execute the Settlement and Interlocal Agreement. Action could be scheduled for as soon as October 7, 2019, or later in October dependent on any amendments to the agreement that the City Council would like to consider.

Approved By:      City Manager **DT**      City Attorney **MK**

## **BACKGROUND**

Point Wells is an unincorporated portion of Snohomish County, bound on the west by Puget Sound, on the north and east by the Town of Woodway, and on the south by the City of Shoreline. Approximately 61 acres of this unincorporated area is owned by BSRE Point Wells, LP and has been an industrial use for over fifty years. The BSRE property currently serves as an asphalt plant. Vehicular access to the BSRE portion of the Point Wells area is through Shoreline via Richmond Beach Drive and the Shoreline road network.

The City of Shoreline has been interested in annexing the Point Wells area almost since its incorporation. In 1998, just three years after its incorporation, Shoreline adopted its first GMA Comprehensive Plan and designated Point Wells as a Potential Annexation Area (PAA). Subsequent to Shoreline identifying Point Wells as part of its PAA, Snohomish County refused to allow Shoreline to participate in the County's Municipal Urban Growth Area (MUGA) designation process in 2000. Then in 2001, with Shoreline shut-out of the Snohomish County Tomorrow designation process, the County designated Point Wells solely as Woodway's PAA. This resulted in the first litigation being filed over the Point Wells area when Shoreline challenged and appealed the MUGA process to the Growth Management Hearings Board, who refused to issue a declaratory ruling. The Court of Appeals next held that Woodway's subsequent MUGA designation was valid as there was nothing in the state statutes preventing Woodway from having an overlapping annexation area with Shoreline's PAA. *Chevron USA Inc. v. Central Puget Sound Growth Management Hearings Board*, 123 Wn. App. 161 (2004). In 2002, Shoreline also began to take steps to assume the Ronald Wastewater District (RWD). RWD provides sewer services to all of Shoreline and including the PAA area of Point Wells.

With an "overlapping" PAA, in 2010 Shoreline moved forward and adopted a Point Wells Subarea Plan that labeled the area as a "future service and annexation area" (FSAA). The Point Wells Subarea Plan articulates the City's concerns, interests, and aspirations regarding urban service delivery, governance, traffic, and impacts on adjacent neighborhoods and infrastructure in Shoreline. The Subarea Plan designates a segment of Richmond Beach Drive NW north of NW 199th Street as a neighborhood street with a maximum capacity of 4,000 vehicle trips per day.

In mid-2007, the owner of the property announced an intention to redevelop the site. The proposal required a change to the Snohomish County Comprehensive Plan Designation for the 61 acres from Urban Industrial to "Urban Center" and a zoning change from Heavy Industrial to Planned Community Business and then to "Point Wells Urban Center." The Snohomish County Council approved the requested changes to its Comprehensive Plan and Zoning to accommodate BSRE's development aspirations. Shoreline, along with Woodway and a citizen's group from Shoreline's Richmond Beach neighborhood, challenged the County's action by filing petitions for review with the Growth Management Hearings Board. While the Growth Board ruled in Shoreline and Woodway's favor in relation to the Urban Center designation under Washington's vesting laws BSRE still retained a vested permit to develop at the density of an Urban Center. Shoreline then turned its attention to working with BSRE and entered into a Memorandum of Understanding (MOU) that required BSRE to undertake a traffic

corridor study to determine traffic mitigation to Shoreline with an additional eye towards an annexation agreement with BSRE. After years of negotiations with BSRE over traffic mitigation, it became apparent that BSRE was not going to finish its corridor study (as set forth in the MOU between BSRE and Shoreline) and that BSRE was going to move forward with its Urban Center permits without a mitigation agreement with Shoreline. Snohomish County, however, petitioned the County Hearing Examiner to terminate the vested application due to BSRE's continued failure to demonstrate that it could meet certain mandatory provisions of the County's Urban Center code. The Hearing Examiner terminated the application, resulting in BSRE no longer being vested to the Urban Center, and BSRE appealed that decision to Superior Court.

On June 18, 2019, King County Superior Court Judge John F. McHale issued his Order on BSRE's appeal of Snohomish County's termination of its 2011 applications for the development of an Urban Center at Point Wells. Judge McHale's Order did not respond to the substantive issues of whether an Urban Center was even feasible at Point Wells, instead it concluded that after the Snohomish County Hearing Examiner terminated the applications BSRE was entitled to a six-month "reactivation" period for its applications. Shoreline subsequently requested reconsideration of this Order believing that the substantive issues would make any reactivation moot, however, Judge McHale summarily denied that request. Although the ruling was in its favor, on July 31, 2019, BSRE appealed the Superior Court ruling to the Court of Appeals and recently requested a stay of the six-month reactivation to allow it to pursue an appeal that seeks clarification of the substantive issues. The City filed an objection to the stay request, believing that BSRE is only entitled to a one time six-month window to demonstrate that it can meet the code and that allowing more time is beyond what they are entitled to under the old vested code provision. The Court of Appeals has not yet ruled on the stay.

#### **City of Shoreline's Interlocal Agreement with Ronald Wastewater District (RWD)**

On October 22, 2002, the City and Ronald entered into an Interlocal Operating Agreement (IOA). The IOA provides that the City will assume the entirety of the RWD service area. In 2002 the City and RWD understood that the RWD service area included the entirety of the City of Shoreline in King County and the Point Wells area (Upper Bluff and Lower Area) in Snohomish County.

The City has received approval from the King County Boundary Review Board to assume the RWD service area in King County. The City has attempted twice to get approval from the Snohomish County Boundary Review Board for assumption of the RWD service area in Snohomish County. The Board has denied that request both times.

Litigation has existed for several years between the RWD, Town of Woodway, Olympic View Water and Sewer District and the City of Shoreline regarding lift station number 13 and the service area territory in Snohomish County. In 2017, the Superior Court issued a ruling in favor of RWD finding that the Point Wells area was indeed in the RWD service area. This decision was appealed by Woodway and Olympic View to the Court of Appeals. On July 1, 2019, the Court of Appeals issued its decision, reversing the Superior Court's. Shoreline and RWD filed for reconsideration of the Court of Appeals'

decision which was denied. RWD has filed for review by the Washington Supreme Court.

## **DISCUSSION**

Given the on-going litigation between the City and the Town of Woodway, both cities agreed to meet for a day-long mediation session on Tuesday, January 8, 2019. The City of Shoreline representatives included the Mayor, the City Manager, and the City Attorney. The Woodway representatives included the Mayor, the Town Administrator, Councilmembers Whitson and Mitchell, and the City Attorney. The goal of the mediation process was to determine if Shoreline and Woodway could come to an agreement on how to resolve or settle existing litigation and move forward on the Point Wells issues that have proven costly from both a financial and time allocation perspective. Without resolution it was anticipated that litigation could be expected to continue for many years resulting in a drain on both entities and more importantly our respective tax payers.

Through the mediation process the cities were able to identify common areas of interests and potential path to settle outstanding litigation. Over the next several months the Shoreline City Manager, Woodway Town Administrator, and their respective legal counsels continued to negotiate toward a draft Settlement Agreement. The Agreement before the Council this evening is a result of that work effort.

### **Settlement and Interlocal Agreement (Agreement) Contents**

The Agreement is broken into three parts or sections. The first part deals with mutual obligations of Woodway and Shoreline to each other and in relation to Point Wells. The second part addresses Shoreline's obligations to Woodway, and the third are Woodway's obligations to Shoreline. Below is an overview of the MOU provision in each section.

#### ***Section I – Provisions Applicable to All Parties***

This section sets out the provisions applicable to both cities. It requires that within 60 days of approving this MOU the cities will create a joint working group (3 staff members from each city) that will develop and recommend comprehensive plan policies, development regulations and design standards; and zoning, for presentation to the respective city councils. The goal is to have a recommendation within 180 days from its first meeting to present to the planning commissions for recommendation to the city councils for passage. Once adopted, the cities agree to keep the adopted regulations in place for 2 years post annexation, unless agreed to by the other city. The recommendation must include, at a minimum:

- That Point Wells be zoned and developed as a primarily residential development, and that any mixed-use development be pedestrian-oriented with limited commercial uses, dark sky standards, and mandatory public recreation accessible to residents of both cities.
- That any development application for Point Wells include a traffic study for Shoreline and Woodway roads consistent with the preparation criteria required by each City.

- Building height limitation of no more than 75 feet and additional view corridor requirements for the southern portion of Point Wells.
- Any development or redevelopment of Point Wells shall be subject to a Master Development Plan or a Development Agreement along with a required design review process that includes a consultation with each City.
- A traffic restriction for Richmond Beach Drive in Shoreline of 4,000 Average Daily Trips (ADT) and 0.9 Volume to Capacity (V/C) ratio.

After adoption, each city agrees to give the other 30 days written notice and an opportunity to comment for any action that would modify the comprehensive plan policies or development regulations adopted from the recommendations from the Working Group. The cities will also enter into a reciprocal mitigation agreement that provide for joint review of SEPA impacts. The agreement further provides that in the event neither city has annexed Point Wells prior to the developer submitting a development application to Snohomish County that each city agrees not to enter into any agreements with the developer and/or Snohomish County inconsistent with the terms set forth in the agreement.

### ***Section II – Provisions Applicable to the City of Shoreline***

With respect to annexation, Shoreline agrees to not take any action to annex Point Wells, or to challenge or object to Woodway's annexation of Point Wells, including any administrative or judicial process. Shoreline also agrees to affirmatively support Woodway's annexation of Point Wells, including support of any legislation necessary to effectuate an annexation without the consent of the Point Wells property owner.

With respect to traffic, Shoreline agrees that it will not reduce the current 4,000 ADT limitation on Richmond Beach Drive or restrict access to Point Wells via Richmond Beach Drive in any way that would unreasonably interfere with or prevent use of the road by the general public, unless necessary to protect the health and safety of its residents and the public or to implement emergency measures. The cities assume that the 4,000 ADT limitation should allow for approximately 400 to 800 multi-family residential units with this estimate being subject to appropriate mitigation.

### ***Section III – Provisions Applicable to the Town of Woodway***

With respect to annexation, Woodway agrees to use its "best efforts" to effectuate the annexation of Point Wells as expeditiously as possible. If Woodway formally notifies Shoreline that it does not want to annex Point Wells, then Shoreline may immediately do so and Woodway agrees to support Shoreline's annexation. Additionally, if Woodway fails to file a notice of intent to annex Point Wells with the Boundary Review Board (if such a notice is legally required) or to adopt an annexation ordinance (if Boundary Review Board approval is not required) within two (2) years from being able to do so then Shoreline may seek annexation of Point Wells under any method legally available and Woodway will fully support Shoreline's annexation. If Shoreline fails within three (3) years to annex the property, then Shoreline and Woodway will jointly request Snohomish County to undertake a zoning and annexation study to identify and address impacts to the cities in relation to development or redevelopment or continued industrial use of the unincorporated area.

Woodway agrees that after annexation it will require any development or redevelopment of Point Wells of 25 or more units, as a condition of development approval, to provide a general-purpose public access road wholly within Woodway that connects into Woodway's transportation network and provides a full second vehicular access point to Point Wells into Woodway. This road must be built to Woodway's road standards and accommodate full access for commercial, emergency and residential traffic that meets acceptable engineering standards, to provide a viable reasonable alternative to the use of Richmond Beach Drive.

Woodway also agrees to co-lead with Shoreline any SEPA review and to impose the current LOS established for Richmond Beach Drive of 4,000 average daily trips (ADT) and LOS D, 0.90 volume to capacity (V/C) for the remaining network

### **Additional Items**

- The Agreement requires Woodway to recognize Shoreline's ownership of Lift Station Number 13 after assumption of RWD and that Shoreline's operation of the Lift Station is a superior public use. Woodway also agrees not to take any actions that would interfere or be inconsistent with Shoreline's ownership and operation of the lift station and related infrastructure. The initial draft of the proposed Agreement released for public review on September 5, 2019, did not include Section III.A.4 which addresses this issue. Since that time the City Manager and Woodway Town Administrator came to agreement on the language provided in Section III.A.4 in the draft Agreement before the Council for discussion this evening.
- The Agreement remains in effect until the responsibilities and obligations of the parties are fulfilled, but no later than December 31, 2034, unless there is mutual agreement to extend.
- The Agreement can be terminated by mutual consent of the two cities.
- A dispute resolution process is provided.

### **Summary**

The Agreement sets forth an outline of how the two cities can work together to attempt to jointly address certain common concerns related to redevelopment of the Point Wells area. It is important for Council and the public to understand, however, the redevelopment of Point Wells is currently under the jurisdiction of Snohomish County and BSRE currently holds a vested permit application under the Urban Center zoning dependent on the outcome of its appeal of the Superior Court's decision or BSRE's reactivation of its Urban Center application.

### **RESOURCE/FINANCIAL IMPACT**

The requirements of the Agreement will require a dedication of staff time and resources to fulfill the requirements of the agreement, specifically the development standards as outlined in Section I.

### **RECOMMENDATION**

Staff recommends that the Council review and discuss the proposed Settlement and Interlocal Agreement between the City of Shoreline and Town of Woodway. Staff

further recommends that the Council provide direction to staff to schedule action on the proposed agreement for the Council to authorize the City Manager to execute the Settlement and Interlocal Agreement. Action could be scheduled for as soon as October 7, 2019, or later in October dependent on any amendments to the agreement that the City Council would like to consider.

### **ATTACHMENTS**

Attachment A: Draft Settlement and Interlocal Agreement Between the City of Shoreline and Town of Woodway

**SETTLEMENT AND INTERLOCAL AGREEMENT**  
**BETWEEN**  
**CITY OF SHORELINE**  
**AND**  
**TOWN OF WOODWAY**

This Settlement and Interlocal Services Agreement (“ILA”) ILA sets forth the terms of agreement between the City of Shoreline (“Shoreline”) and the Town of Woodway (“Woodway”) for the purpose of addressing services, infrastructure, mitigation, impacts, and related issues related to development or re-development of the unincorporated area of Snohomish County commonly referred to as Point Wells. Shoreline and Woodway are each a “City” and collectively the “Cities” and “Parties” to this Agreement.

WHEREAS, the Interlocal Cooperation Act, chapter 39.34 RCW, authorizes Shoreline and Woodway to enter into a cooperative agreement for the provision of services and facilities in a manner that will accord best with the factors influencing the needs and development of their cities; and

WHEREAS, Shoreline and Woodway are both municipal corporations of the State of Washington organized and operating under Title 35A RCW and planning under the Growth Management Act, chapter 36.70A RCW (GMA); and

WHEREAS, both Shoreline and Woodway have identified the Point Wells Area, located within an unincorporated area of Snohomish County, for future annexation in their respective comprehensive plans, which property is described and depicted in Exhibit A; and

WHEREAS, Shoreline and Woodway each have responsibility and authority derived from the Washington State Constitution and State laws to plan for and regulate uses of land and the resultant environmental impacts; and

WHEREAS, Shoreline and Woodway recognized that planning and land use and transportation decisions can have extra-jurisdictional impacts and that intergovernmental cooperation is an effective way to deal with and mitigate impacts and provide opportunities that transcend local jurisdictional boundaries; and

WHEREAS, the State Environmental Policy Act, chapter 43.21C RCW (SEPA), requires Shoreline and Woodway to consider the environmental impacts of development on their communities, adjacent communities and where applicable, regional impacts; and

WHEREAS, following analysis of various options, the cities agree that the long-term regulation and development of Point Wells is best served and controlled by annexation of Point Wells by either Woodway or Shoreline; and

WHEREAS, Woodway’s Municipal Urban Growth Area Subarea Plan for Point Wells contains various goals and policies, including that development should be pursuant to a master plan that results from

a coordinated planning effort between the Point Wells property owner, Woodway, and Shoreline, and that Woodway should coordinate with Shoreline, the Richmond Beach Neighborhood, and other affected property owners to ensure that development is compatible with existing residential neighborhoods; and

WHEREAS, Shoreline's Point Wells Subarea Plan contains various goals and policies for Point Wells including that consideration of traffic mitigation should include the participation of Woodway; and

WHEREAS, Shoreline and Woodway have expended valuable public resources over the years to protect their respective community interests regarding Point Wells, and Shoreline and Woodway desire to work together and with others toward adoption of interlocal agreements to address the issues of land use planning, transportation, provision of urban services, construction and development impacts, and local governance; and

WHEREAS, Shoreline and Woodway desire to enter into this ILA that sets forth the framework to formulate future intergovernmental agreements under the Authority of the Interlocal Cooperation Act, chapter 39.34 RCW, for the provision of services and facilities in a manner that will accord best with the factors influencing the needs and development of their cities to ensure that any future project in Point Wells is developed or redeveloped in the best interest of their respective communities and mitigates the related impacts.; and

NOW, THEREFORE, Shoreline and Woodway agree as follows:

## **I. PROVISIONS APPLICABLE TO ALL PARTIES**

- A. Joint Planning Working Group – Comprehensive Plan Policies, Development Regulations, and Design Standards.** Within sixty (60) calendar days from the execution of this ILA, the Cities agree to create a joint staff working group (“Working Group”) to develop and recommend mutually agreeable comprehensive plan policies, development regulations and design standards, including applicable zoning, for Point Wells that will be considered for adoption by each City prior to annexation of Point Wells by either City.
1. The Working Group shall be comprised of three (3) staff representatives from Woodway and three (3) staff representatives from Shoreline. Each City shall have sole discretion on selecting and appointing their representatives.
  2. The Working Group shall meet on a schedule mutually agreed to by its members, but no less than one (1) time per month until a recommendation is submitted to the Planning Commissions of Woodway and Shoreline for consideration and subsequent consideration and adoption by their respective Councils. The first meeting of the Working Group shall be held no later than thirty (30) calendar days after its formation. In formulating its recommendation, the Working Group shall consider this ILA, the goals and policies adopted in each of the Cities' Subarea Plans for Point Wells as contained in their respective comprehensive plans, and the goals

and requirements of the Growth Management Act and other applicable laws and regulations.

3. The Working Group's shall attempt to complete its work within 180 calendar days of its first meeting. Upon completion of the work, the Working Group shall submit its recommendation to their respective Planning Commissions and City Councils for final consideration and adoption and inclusion in that City's respective comprehensive plan and/or implementing regulations applicable to Point Wells pursuant to the amendment process set forth in the Woodway Municipal Code (WMC), including chapter 15.04 WMC and Title 14 WMC, and the Shoreline Municipal Code (SMC), including chapter 20.30 SMC.
4. The recommendation developed by the Working Group shall be consistent with the provisions of this ILA and shall contain, at a minimum:
  - a. Requirements that Point Wells be zoned and developed as a primarily residential development, and that any mixed-use development be pedestrian-oriented and incorporate a variety of residential types and limited commercial uses along with public recreation accessible to residents of both cities. This provision does not apply to Snohomish County Tax Parcel No. 27033500303600.
  - b. Requirement that any development application for Point Wells include a traffic study for Shoreline and Woodway roads consistent with the preparation criteria required by each City.
  - c. A building height limitation of no more than 75 feet and a process or regulations for additional height restrictions for development located within the southern portions of Point Wells based on consideration and preservation of view corridors for Woodway's residents and Shoreline's Richmond Beach neighborhoods.
  - d. Mandatory public recreational facilities and public access to the Puget Sound shoreline, with adequate public parking requirements that must be incorporated into the site plan in a manner that avoids large surface parking lots.
  - e. Requirements that development at Point Wells must demonstrate appropriate and adequate sensitivity to the natural environment, with mixed-use and residential development reflecting an effort to achieve the highest level of environmental sustainability for design, construction, and operation of buildings and infrastructure.
  - f. Requirements that development must adhere to "dark skies" standards, such as light source shielding to prevent the creation of light pollution from light fixtures and landscaping.

g. A requirement that development or redevelopment of Point Wells shall be subject to a Master Development Plan or a Development Agreement with a required design review process that includes a consultation with each City.

h. A traffic restriction of 4,000 ADT on Richmond Beach Drive in Shoreline and a LOS D with 0.9 V/C for the remaining Richmond Beach Road Corridor. This requirement or level of service will apply within each city as well as for any development in Point Wells per the applicable County development regulations, such as Urban Center or Urban Village, to the fullest extent allowed by law.

- B. **Adoption of Recommended Policies, Regulations, and Standards.** Each City agrees to timely process the Working Group's recommendation and to place the Planning Commission's and Working Group's recommendation (if different) before its City Council for consideration and adoption within 180 calendar days of submittal of the Working Group's recommendations, PROVIDED that the Cities recognize that any recommended amendments to a City's comprehensive plan or development agreement shall adhere to the requirements of the Growth Management Act (GMA). Prior to the effective date of a City ordinance or state legislation authorizing annexation, a City will consider necessary amendments to its comprehensive plan and development regulations in the manner set forth in Section IA. Each City further agrees that it will affirmatively recommend to its City Council not to amend or repeal the adopted regulations or amendments resulting from the Working Group's recommendations for a period of two (2) years after: (1) the effective date of any state unilateral annexation legislation; or (2) adoption of a city resolution or ordinance annexing Point Wells, unless required to do so by a court of competent jurisdiction, including the Growth Management Hearings Board, or unless the other City formally agrees to such modifications in writing.
- C. **Amendment of Comprehensive Plan and Implementing Regulations.** Each City shall provide the other City with at least thirty (30) calendar days written notice (unless otherwise agreed to or waived in writing), and a review and comment opportunity, for any legislative actions that may modify or amend the comprehensive plan policies or development regulations adopted from the recommendations from the Working Group, or that otherwise impacts the uses, development or redevelopment of the Point Wells area. Notice shall include, but not be limited to, notice of all Planning Commission and City/Town Council meetings and hearings related to such legislative considerations or actions.
- D. **Reciprocal Mitigation Agreements.** The Cities will create reciprocal mitigation agreements related to the impacts of development and redevelopment within the Cities for recommended adoption by the respective legislative bodies of the Cities for approval. The agreements will provide for issues related to cooperative review of environmental impacts and will include, but not be limited to, issues such as SEPA lead status, review process, and review of impacts related to transportation and park/recreation facilities and may address other impacts of development as well.

- E. **Consultation on land use permit applications.** After annexation, each city agrees to provide the other no less than thirty (30) calendar days written notice of all land use permit applications for Point Wells consistent with chapter 36.70B RCW, Local Project Review. Each city agrees to invite the other city's staff to attend meetings between city staff and the applicant relating to such permit applications, including, pre-applications meetings, and allow the other city reasonable review and comment opportunity.
- F. In the event neither city has annexed Point Wells prior to the developer submitting a development application to Snohomish County each city, except as required by law or by a judicial or administrative order/decision, agrees not to enter into any agreement(s) with the developer and/or Snohomish County inconsistent with the terms set forth in this Agreement.

## II. PROVISIONS APPLICABLE TO THE CITY OF SHORELINE

- A. **No Annexation of Point Wells.** In accordance with this ILA, Shoreline agrees that it will take no actions to annex Point Wells, except as otherwise allowed and provided for herein.
- B. **Support of Woodway Annexation of Point Wells.** Upon the Effective Date of this ILA, Shoreline agrees not to challenge or object to Woodway's annexation of Point Wells, including any administrative or judicial process. Shoreline further agrees to work with Woodway and to fully support Woodway's annexation of Point Wells, including support of any legislation necessary to effectuate an annexation without the consent of the Point Wells property owner, provided said legislation does not interfere or conflict with the requirements of this ILA. Should there be inconsistency between any legislation providing for such annexation and the terms of this ILA, Woodway and Shoreline mutually agree, to the extent the law allows, that the requirements of this ILA shall control.
- C. **Richmond Beach Drive.** Shoreline agrees that, following annexation of Point Wells by Woodway, Shoreline will not take action that would reduce the current 4,000 ADT limitation on Richmond Beach Drive. The Cities assume that the 4,000 ADT limitation should allow for approximately 400 to 800 multi-family residential units with such estimate being subject to appropriate mitigation. Further, Shoreline agrees that it will not restrict access to Point Wells via Richmond Beach Drive in any way that would unreasonably interfere with or prevent use of the road by the general public, unless agreed to in writing by Woodway, who shall not unreasonably withhold its approval. Notwithstanding the foregoing, nothing shall prevent Shoreline from taking standard health and safety actions to protect its residents and the public from risk or harm or implement emergency measures.

## III. PROVISIONS APPLICABLE TO THE TOWN OF WOODWAY

- A. **Annexation of Points Wells.** Woodway shall use its best efforts to effectuate the annexation of Point Wells as expeditiously as reasonably possible considering the factors affecting its ability to annex Point Wells, consistent with this ILA.
1. If Woodway, by resolution or formal action of its Town Council, notifies Shoreline of Woodway's election to not annex Point Wells, then Section II(A) of this ILA shall become immediately null and void, and Shoreline may seek annexation of Point Wells under any method legally available to Shoreline. Under such circumstance, Woodway agrees to support and work with Shoreline to have Snohomish County include Point Wells into Shoreline's Municipal Growth Area in Snohomish County, and to fully support Shoreline's annexation, including support of any changes in state legislation necessary to facilitate such annexation.
  2. If Woodway fails to file a notice of intent to annex Point Wells with the Boundary Review Board (if such a notice is legally required) or to adopt an annexation ordinance (if Boundary Review Board approval is not required) within three (3) years from the date of a direct petition or within three (3) years after the availability of a statutorily-authorized method of annexation without the property owner's consent becomes legally available, (whichever occurs first), then Shoreline may seek annexation of Point Wells under any method legally available to Shoreline. Should this occur, there shall be no requirement of a resolution of Woodway's Town Council and upon Shoreline providing a notice to Woodway of Shoreline's desire to annex Point Wells, Sections II(A) and (B)) of this ILA shall become immediately null and void, and upon receipt of such notice Woodway shall fully support Shoreline's annexation as set forth in subsection (1) of this section above.
  3. Should Shoreline fail after being fully able to annex Point Wells to move forward and file a notice of intent to annex Point Wells with the Boundary Review Board (if such a notice is legally required) or to adopt an annexation ordinance (if Boundary Review Board approval is not required) within three (3) years from the date of a direct petition, or within three (3) years after the availability of a statutorily-authorized method of annexation without the property owner's consent becomes legally available (whichever occurs first), Woodways obligation under the preceding section to fully support Shoreline's annexation shall become immediately null and void. Shoreline and Woodway may then pursue annexation of Point Wells without obligation of support from the other party.
  4. Woodway shall not acquire any of Shoreline's sewer utilities located within or outside of the area annexed by Woodway or provide service to Shoreline residents, absent a separate agreement with Shoreline. Woodway shall not interfere in any way with Shoreline's acquisition of property from BSRE in relation to Lift Station 13 and agrees that Shoreline's acquisition of property in relation to Lift Station 13 is a superior public use to any use that Woodway may have for the property. Woodway also expressly recognizes that the existing Lift Station 13 facilities and property is

property that will become Shoreline's property and part of Shoreline's wastewater utility system upon its assumption of Ronald Wastewater District. Lift Station 13, as used herein, is the property and system that is currently located off of Richmond Beach Drive in unincorporated Snohomish County.

**B. Woodway Access Road.** Upon annexation of Point Wells by Woodway, Woodway shall require that any development or redevelopment of Point Wells of 25 or more units or commercial development that would trigger the equivalent number of trips, or any combination thereof, shall, as a condition of development approval, provide a general-purpose public access road wholly within Woodway that connects into Woodway's transportation network and provides a full second vehicular access point to Point Wells into Woodway. This road shall be built to Woodway's standards and shall accommodate full access for commercial, emergency and residential traffic that meets acceptable engineering standards, and provides a viable reasonable alternative to the use of Richmond Beach Drive. This secondary access road, including the ingress and egress to and from the road, shall not be restricted in any way that would prevent such use of the road by the general public, unless agreed to in writing by Shoreline. Notwithstanding the foregoing, nothing shall prevent Woodway from taking standard health and safety actions to protect its residents and the public from risk or harm or implement emergency measures. This provision may not be relied upon by any applicant, other third party, or governmental entity as an obligation on Woodway to construct the access or a requirement to approve access.

**C. State Environmental Policy Act (SEPA) Mitigation.**

1. Per WAC 197-11-944, the cities will share or divide the responsibilities of lead agency on SEPA review and mitigation for specific environmental impacts from any non-exempt SEPA action and in relation to the development or redevelopment of Point Wells. The City in which the development is located shall designate one of them as the nominal lead agency and the cities shall apply the mitigations, conditions and levels of service as set forth in Section I of this ILA.
2. Nothing in this ILA limits the ability of either City to request additional mitigation pursuant to SEPA where a City has determined and identified specific environmental impacts of development as being significant adverse impacts that are not addressed by this ILA or a SEPA determination.
3. If Snohomish County is the jurisdiction responsible for SEPA review and mitigation in relation to the development or redevelopment of Point Wells, each city agrees to support the mitigation measures and applicable terms set out in this ILA when participating in the County's environmental review process.

#### **IV. GENERAL PROVISIONS**

A. **TERM**

The intent of the Cities is that this ILA shall remain in full force and effect until the responsibilities and obligations of the parties set forth herein are fulfilled, but no later than December 31, 2034, unless an extension is mutually agreed to in writing by the parties. This ILA may be terminated at any time by mutual consent of the Cities, provided that such consent to terminate is in writing and authorized by the Shoreline City Council and the Woodway Town Council.

B. **SEVERABILITY**

This Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

C. **DISPUTE RESOLUTION.**

1. **Dispute Resolution.** It is the Cities' intent to work cooperatively and in good faith to resolve any disputes in an efficient and cost-effective manner. If any dispute arises between the Cities relating to this ILA, then the Shoreline City Manager, or designee, and the Woodway Town Administrator, or designee, shall meet and seek to resolve the dispute, in good faith, within ten (10) calendar days after a City's written request for such a meeting to resolve the dispute. If the matter cannot be resolved amicably and promptly by the Shoreline City Manager and the Woodway Town Administrator, then the matter shall be subject to mediation.
2. **Mediation proceedings.** The mediator will be selected by mutual agreement of the Cities. If the Cities cannot agree on a mediator, a mediator shall be designated by the American Arbitration Association. Any mediator so designated must be acceptable to the Cities. The mediation will be conducted in King County, Washington. Any City may terminate the mediation at any time. All communications during the mediation are confidential and shall be treated as settlement negotiations for the purpose of applicable rules of evidence, including Evidence Rule 408. However, evidence that is independently admissible shall not be rendered inadmissible by nature of its use during the mediation process. The mediator may not testify for either City in any subsequent legal proceeding related to the dispute. No recording or transcript shall be made of the mediation proceedings. The cost of any mediation proceedings shall be shared equally by the Cities. Any cost for a City's legal representation during mediation shall be borne by the hiring City.

D. **INDEMNIFICATION AND LIABILITY.**

1. Indemnification of Woodway. Shoreline shall protect, save harmless, indemnify and defend, at its own expense, Woodway, its elected and appointed officials, officers, employees, volunteers and agents, from any loss or claim for damages of any nature whatsoever arising out of Shoreline's good faith performance of this ILA, including claims by Shoreline's employees or third parties, except for those damages caused solely by the negligence, recklessness or intentional misconduct of Woodway, its elected and appointed officials, officers, employees, volunteers or agents.
2. Indemnification of Shoreline. Woodway shall protect, save harmless, indemnify, and defend at its own expense, Shoreline, its elected and appointed officials, officers, employees, volunteers and agents from any loss or claim for damages of any nature whatsoever arising out of the Woodway's good faith performance of this ILA, including claims by Woodway's employees or third parties, except for those damages caused solely by the negligence, recklessness or intentional misconduct of Shoreline, its elected and appointed officials, officers, employees, volunteers or agents.
3. Extent of liability. In the event of liability for damages of any nature whatsoever arising out of the performance of this ILA by Shoreline and Woodway, including claims by Shoreline's or Woodway's own officers, officials, employees, agents, volunteers, or third parties, caused by or resulting from the concurrent negligence of Shoreline and Woodway, their officers, officials, employees and volunteers, each party's liability hereunder shall be only to the extent of that party's negligence.
4. Hold harmless. No liability shall be attached to Shoreline or Woodway by reason of entering into this ILA except as expressly provided herein. Shoreline shall hold Woodway harmless and defend at its expense any legal challenges to Shoreline's requested mitigation. Woodway shall hold Shoreline harmless and defend at its expense any legal challenges to Woodway's requested mitigation.

#### **E. GENERAL PROVISIONS**

1. **Notice.** Any notice required under this ILA will be in writing, addressed to the appropriate City at the address which appears below (as modified in writing from time to time by such City), and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

City Manager  
City of Shoreline  
17500 Midvale Avenue N  
Shoreline, WA 98133-4905  
(206) 801-2700

dtarry@shorelinewa.gov

Town Administrator  
Town of Woodway  
23920 113<sup>th</sup> Place W  
Woodway, WA 98020  
(206) 542-4443  
eric@townofwoodway.com

2. **Governing Law.**

- a. This ILA shall be construed and enforced in accordance with the laws of the State of Washington.
- b. This ILA in no way modifies or supersedes existing law and statutes. In meeting the commitments encompassed in this ILA, Shoreline and Woodway shall comply with the requirements of the Open Public Meetings Act, chapter 42.30 RCW, Growth Management Act, chapter 36.70A RCW, State Environmental Policy Act, chapter 43.21C RCW, Public Records Act, chapter 42.56 RCW, Annexation by Code Cities, chapter 35A.14 RCW, and other applicable laws and regulations, as amended from time to time.
- c. By executing this ILA, Shoreline and Woodway do not purport to abrogate any land use and development authority vested in them by the law.

3. **Venue.** Venue of any suit between the Cities arising out of this ILA shall be in either King County Superior Court or Snohomish County Superior Court.

4. **Third Party Beneficiaries.** There are no third-party beneficiaries to this ILA, and this ILA shall not be interpreted to create any third-party beneficiary rights.

**Each individual signing below hereby represents and warrants that he/she is duly authorized to execute and deliver this Interlocal Agreement on behalf of the city for which they are signing and, that such city shall be bound by the terms contained in this Interlocal Agreement.**

CITY OF SHORELINE

By:

\_\_\_\_\_  
City Manager

Approved as to form:

TOWN OF WOODWAY

By:

\_\_\_\_\_  
Mayor

Approved as to form:

---

City Attorney

---

Town Attorney

**EXHIBIT A – POINT WELLS DESCRIPTION**

DRAFT

