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INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF MILL CREEK  
AND FIRE PROTECTION DISTRICT NO. 7

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OFFICE OF THE CLERK  
SNOHOMISH COUNTY WASH.  
OFFICE

1.0 Parties.

This Interlocal Agreement ("Agreement"), dated this 14<sup>th</sup> day of DECEMBER, 1995, is entered into between THE CITY OF MILL CREEK, a Washington municipal corporation having its principal place of business at 15728 Mill Creek Boulevard, Mill Creek, Washington 98012 (the "City"), and SNOHOMISH COUNTY FIRE PROTECTION DISTRICT NO. 7, a Washington municipal corporation having its principal place of business at 8010 - 180th Street S.E., Snohomish, Washington 98290 (the "District").

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2.0 Recitals.

2.1 Pursuant to Title 52 RCW and Chapter 52.12 RCW, the District is a governmental agency explicitly empowered to provide fire protection services, capital facilities and related equipment (collectively "Fire Services") within and without the District, to enter into contracts for the performance of Fire Services, including contracts with other governmental entities, and to take all other lawful and necessary acts to carry out the purposes of Title 52 RCW.

2.2 Pursuant to Chapter 39.34 RCW, Title 52 RCW, Title 35A RCW and other authorities, the City and the District previously have contracted for the District to provide Fire Services within and for the benefit of the City (the "Fire Services Contract") so that the parties can meet their respective obligations to provide for the public health and safety. The Fire Services Contract requires the appropriation and expenditure of City funds and resources to pay for Fire Services and jointly fund the acquisition of capital facilities and related equipment proportionate to the City's demand.

2.3 Pursuant to Chapter 58.17 RCW and Mill Creek Municipal Code ("MCMC") Titles 14 through 18, prior to approval of a development application, the City is required to make written findings that appropriate provision has been made for the public health, safety, and general welfare. Dedication of land to any public body and the provision of public improvements to serve the development may be required as a condition of approval by the City. RCW 58.17.110.

2.4 Pursuant to the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA") and SEPA's implementing regulations at Chapter 197-11 WAC and Title 18 MCMC, the City may impose conditions on Development Activity within the City to mitigate potential adverse environmental impacts associated with the development. The City has adopted policies upon which the exercise of such authority is based. MCMC 18.04.240.

2.5 Pursuant to the exercise of its SEPA authority, the District has adopted Resolution No. 95-13 upon which it relies in making determinations and recommendations regarding the affect of Development Activity on the provision of Fire Services and the need for capital facilities and related equipment. The District has prepared, and from time to time updates and modifies, a "Capital Improvement Plan" pursuant to Resolution No. 95-13, a current copy of which is attached and incorporated into this Agreement as Exhibit A.

2.6 The District has expertise with respect to Fire Services and desires to avail the City of that expertise. The City acknowledges the District's expertise and wishes to incorporate that capability into the City's governmental responsibility to review development activity and perform the City's governmental functions.

2.7 Accordingly, under appropriate circumstances and in accordance with WAC 197-11-944, Title 18 MCMC, Chapter 58.17 RCW, Chapter 52.12 RCW, District Resolution No. 95-13 and RCW 39.34.030, the parties desire to jointly exercise SEPA responsibilities as "co-lead agencies" with respect to Development Activity having identifiable adverse environmental impacts to (A) the fire protection responsibilities of the City and the District; (B) the parties' ability to jointly provide Fire Services; and (C) the parties' ability to protect the public health, safety, and general welfare of the citizens of the City.

2.8 By jointly exercising this responsibility, the parties will be able to provide the City with SEPA determinations made upon and in accordance with the District's expertise, enabling both parties to fulfill their governmental obligation to provide Fire Services. The City and the District therefore desire to enter into this Agreement.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual benefits and covenants contained in this Agreement, the City and the District agree as follows:

3.0 SEPA Determinations: Procedure.

3.1 Notice of Action.

3.1.1 Whenever the City receives a completed application for (A) any subdivision or short subdivision of land for residential purposes, or (B) any activity which the City reasonably expects to affect the District's facilities, the provision of Fire Services, or the parties' performance of the Fire Services Contract and which requires the issuance of a permit by or other approval from the City (collectively "Development Activity"), the City shall promptly provide to the District a copy of the completed application as part of the City's SEPA notification process.

3.1.2 In the case of a Development Activity that is categorically exempt from the procedural requirements of SEPA but for which the City at its discretion otherwise desires comments from the District for purposes of making written findings in accordance with RCW 58.17.100 or other applicable law, the City may request such comments pursuant to this Section 3.0 by giving the District written notice of such facts together with a copy of the completed application for the Development Activity.

3.2 Request for Comments.

3.2.1 Receipt by the District of notice pursuant to Section 3.1 shall constitute the City's request for the District's comments and SEPA determination(s) regarding (A) appropriate provisions (including, without limitation, appropriate dedications of land and contributions in lieu of such dedications) of the Development Activity for fire protection services, capital facilities and related equipment within the City, and (B) appropriate conditions needed to mitigate identified adverse environmental impacts arising from the proposed Development Activity (collectively, "Mitigation"), if any, to the District, and to the parties' ability to provide Fire Services within the City, and to the parties' performance of the Fire Services Contract.

3.2.2 The City's notification shall specify a date by which the District's comments must be received.

3.3 Submission of Comments.

3.3.1 The District shall review the completed application received from the City, and shall prepare and timely submit to the City comments concerning the proposed

Development Activity. The District shall provide its comments to the City on or before the date specified in the City's notification.

3.3.2 The District's comments shall include all determinations by the District regarding (A) appropriate provisions (including, without limitation, appropriate dedications of land and contributions in lieu of such dedications) by the Development Activity to ensure adequate fire protection services, capital facilities and related equipment, and (B) appropriate conditions needed to mitigate identified adverse environmental impacts arising from the proposed Development Activity, if any, to the District, and to the parties' ability to provide Fire Services within the City, and to the parties' performance of the Fire Services Contract.

### 3.4 Co-Lead Agency Status; Designation.

3.4.1 Whenever the City requests comments and SEPA determinations from the District pursuant to this Section 3.0, and under circumstances where, for purposes of SEPA and in accordance with WAC 197-11-930, the City is both the "lead agency" and the only "agency with jurisdiction" for the Development Activity in question, the City's request for comments shall, in accordance with WAC 197-11-944, be deemed to designate the District as the co-lead agency for the proposed Development Activity for the purpose of making such comments and SEPA determinations. The City shall remain the nominal lead agency for all other substantive and procedural purposes.

3.4.2 The comments and determinations submitted by the District pursuant to this Section 3.0 shall be submitted in the District's co-lead agency capacity. The District may reject co-lead agency designation only by giving written notice of rejection or failing to submit comments within the specified time.

### 3.5 Imposition and Use of Mitigation.

3.5.1 To the extent permitted by applicable law, and subject to the provisions of Section 3.5.2, the City will condition approval of a proposed Development Activity to incorporate the District's determinations made in accordance with this Agreement.

3.5.2 This Agreement is not intended, and shall not be construed as an unlawful delegation by the City to the District of any substantive authority to approve, condition or deny a Development Activity. The substantive authority necessarily vested in the City by law to approve, condition or deny a Development Activity is reserved to and remains within the City's jurisdiction.

3.5.3 Mitigation received by the City pursuant to this Agreement may be used by the City or transferred to the District for acquisition of land, capital facilities, equipment, or capital improvement purposes as required or permitted by the Fire Services Contract or as needed by the City to meet its fire protection obligations. All such Mitigation shall constitute cash or equity assets of the City, and upon transfer to the District shall be credited by the District in accordance with the Fire Services Contract against capital obligations of the City arising under the Fire Services Contract. Said obligations shall be related to capital facilities set forth in the District's capital facility plan that provide Fire Services within the City.

#### 4.0 Limitation of Liability, Indemnity and Hold Harmless.

4.1 Limitation of Liability. Except as otherwise agreed to herein, the parties, for themselves and their respective directors, officers, elected officials, agents and employees agree that each party shall be responsible only for its own conduct in the performance of its respective obligations arising under this Agreement.

4.2 Indemnity and Hold Harmless. To the fullest extent permitted by law, the District agrees to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from and against any and all damages, costs, expenses, claims, suits or liabilities, including attorney's fees, asserted against or incurred by the City which arise from, are related to, or are connected with the District's performance under this Agreement. The City may select defense counsel of its choice under this provision.

#### 5.0 General Provisions.

5.1 Notice. Any notice or other communications required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by U.S. mail, properly addressed and stamped with the required postage, to the intended recipient, as follows:

If to City: City of Mill Creek  
15728 Mill Creek Boulevard  
Mill Creek, Washington 98012  
Attn: City Manager

If to District: Fire Protection District No. 7  
8010 - 180th Street S.E.  
Snohomish, Washington 98290  
Attn: Fire Chief



RECEIVED

MAY 07 1997

CITY OF MILL CREEK

SNOHOMISH COUNTY FIRE DISTRICT #7  
RESOLUTION #97-04  
A RESOLUTION ADOPTING A FIRE MITIGATION FORMULA FOR  
THE CITY OF MILL CREEK

WHEREAS: Snohomish County Fire District #7 provides fire and emergency medical services to the City of Mill Creek under the terms and conditions established in the Joint Long Term Fire Services and Emergency Medical Agreement Between The City of Mill Creek and Fire District #7; and

WHEREAS: Under appropriate circumstances, and in accordance with WAC 197-11-944, Title 18 MCMC, Chapter 58.17 RCW, Chapter 52.12 RCW, District Resolution No. 95-13 and RCW 39.34.030, the District and the City joined together to jointly exercise SEPA responsibilities as "co-lead agencies" with respect to Development Activity having identifiable adverse environmental impacts to the fire protection responsibilities of the District and the City; the parties' ability to jointly provide Fire Services; and the parties' ability to protect the public health, safety, and general welfare of the citizens of the City; and

WHEREAS: The District has developed a "Fire Flow Mitigation Formula" for the City of Mill Creek in accordance with all authorities for the purpose of fulfilling its legal, statutory and contractual obligations to provide fire services to the City of Mill Creek.

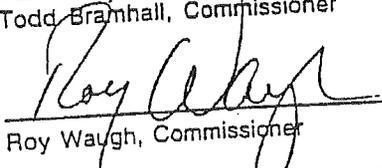
NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF FIRE DISTRICT #7, SNOHOMISH COUNTY, STATE OF WASHINGTON THAT:

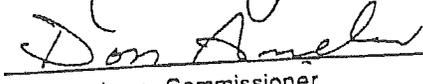
1. The "Fire Flow Mitigation Formula" for the City of Mill Creek as outlined in the attached document shall hereby be adopted by the Board of Fire Commissioners.
2. Capital Fire Service needs have been determined as outlined in the Fire Station Location plan as adopted by the district and shall from time to time be updated as necessary.

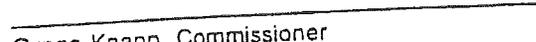
ADOPTED AT A MEETING OF THE BOARD OF FIRE COMMISSIONERS, SNOHOMISH COUNTY, FIRE DISTRICT #7 THIS 8TH DAY OF MAY, 1997

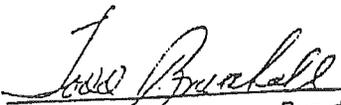
  
Thomas Fawcett, Commissioner

  
Todd Branhall, Commissioner

  
Roy Waugh, Commissioner

  
Don Andrew, Commissioner

  
Gregg Knapp, Commissioner

  
Attest to: Secretary to Board

**Fire Protection District No. 7**

**Fire Flow Mitigation Formula  
For  
The City of Mill Creek**

**May, 1997**

**1.0 Authority**

1.1 This fire mitigation formula ("Formula") is based on a number of authorities which arise under the jurisdiction of or are implemented by Fire Protection District No. 7 (the "District"), including but not limited to the following:

- A. The Uniform Fire Code and Appendices, current edition.
- B. The Fire Mitigation Interlocal Agreement between the City and District, recorded under Snohomish County Auditor's no. 9607250126.
- C. The Joint Long Term Fire and Emergency Medical Services Agreement between the City and District.
- D. RCW Title 52, Title 35A, Title 39, and Title 58.
- E. The Mill Creek Municipal Code, including but not limited to Titles 15 through 18.
- F. The State Environmental Policy Act, RCW Chapter 43.21C.
- G. The District's annual budget, Fire Station Location Plan (revised Jan. 1997), and District Resolution 95-13.
- H. Other applicable laws, codes, plans and regulations.

1.2 The District has determined this Formula in accordance with the authorities set forth in Section 1.1 above for the purpose of fulfilling its legal, statutory and contractual obligations to provide fire services to the City of Mill Creek ("City").

1.3 This Formula is adopted by the Board of Fire Commissioners to implement the principal that both existing and new development within the City should pay its fair share of the capital costs needed for the District to provide adequate fire services to the City, its residents and its businesses. The District specifically finds that the Formula set forth in this document meets the legal tests of nexus and proportionality as currently applied in the state of Washington.

### Formula

2.1 Under the authorities set forth in Section 1.0 and using the definitions and calculations set forth in Section 3.0, the District has determined that the appropriate "per unit" fee for capital expenditures needed to provide adequate fire services ("Fire Mitigation Fee") to the City can be expressed through the following formula:

$$\text{Fire Mitigation Fee} = \frac{\text{[Total Cost of Capital Fire Services Needs in 2012]}}{\text{[Total Equivalent Dwelling Units in 2012].}}$$

### 3.0 Definitions and Calculations

3.1 "Fire Mitigation Fee" is the mitigation fee attributed to and payable by an Equivalent Dwelling Unit to fund capital expenditures and improvements which the District has determined necessary to provide fire services to the City and its residents.

3.2 "Equivalent Dwelling Unit" ("EDU") is defined in terms of the amount of fire flow needed to serve one average size (i.e., 2700 square feet) single family house. For purposes of the Formula, one EDU equates to a fire flow of 1,000 gallons per minute ("g.p.m."). EDUs are comprised of either residential or nonresidential EDUs as defined below.

3.3 "Residential EDU" is defined as an existing or projected residential dwelling unit within the City. Under the Uniform Fire Code, current edition, the fire flow needed to serve one average size single family house is 1,000 g.p.m. The number of existing residential dwelling units within the City is determined according to the current records of the City. The number of projected residential dwelling units within the City by the year 2012 is determined according to the City's current Comprehensive Plan.

3.4 "Nonresidential EDU" is defined as an existing or projected residential dwelling unit equivalent within the City, measured by fire flow. Under the Uniform Fire Code, current edition, nonresidential development requires 1,000 g.p.m. fire flow for every 2,400 square feet (see Section 5.0 below). The amount of existing nonresidential space within the City is approximately 500,000 square feet according to the current records of the City. The amount of new nonresidential space projected within the City by the year 2012 is approximately 900,000 square feet, for a total of 1,400,000 square feet in 2012.

3.5 "Total EDUs" is defined as the estimate of total residential and nonresidential EDUs within the City by the year 2012 based on current information and Comprehensive

Plan projections. Based on these sources, the City currently estimates that there will be 6068 EDUs within Mill Creek in 2012, broken down by land use as follows:

Existing Residential EDUs:	4,185
New Residential EDUs:	1,300
Existing Nonresidential EDUs:	208
New Nonresidential EDUs:	375
<b>Total &gt;</b>	<b>6,068 EDUs</b>

3.6 "Cost of Capital Fire Service Needs" is defined as the land and construction costs for the new fire station in Mill Creek (estimated at \$2,015,000) and the cost of a new pumper truck to man the fire station (estimated at \$200,000), based on the documents set forth in Section 1.1. The total capital fire service costs included in the Formula is \$2,215,000.

#### 4.0 Fire Mitigation Fee

4.1 Based on the parameters set forth above, the Fire Mitigation Fee for new development with the City is calculated as follows:

Total Cost of Capital Needs - 2012	=	\$2,215,000	=	\$365
<hr/>		<hr/>		<hr/>
Total EDU's - 2012		6,068 EDUs		EDU

#### 5.0 Notes and Comments

5.1 Using current projections, new residential and nonresidential development within the City represents 1,675 of the 6,068 EDUs expected within the City by the year 2012. This equals 27.6 percent of the total expected demand on fire services within the City from all sources. The Formula is structured to ensure that new development will pay Fire Mitigation Fees totaling 27.6 percent, or \$611,424, of the Cost of Capital Fire Service Needs required to provide fire services to the City by the year 2012. The remainder of the capital costs will be paid by other means and/or sources.

5.2 Capital Fire Service Needs have been determined by reference to the documents set forth in Section 1.1. The fire station planned for Mill Creek is a new capital cost and includes the cost of locating and constructing a station close to the center of the City. The pumper truck which will be housed in the station is a newly-acquired capital asset with a twenty year depreciable life. The capital cost of this asset is calculated as approximate replacement cost in the year 2012.

5.3 The fire flow calculation to determine one EDU for commercial structures is determined by reference to the 1994 UFC, Appendix III-A and Table A-III-A-1, using a construction Type 5-N (for worst case scenario):

- A. Type 5-N Construction requires 1,500 g.p.m. fire flow (up to 3,600 square feet of commercial space)
- B.  $1,500 \text{ gpm} \div 3,600 \text{ sq. ft.} = 0.417 \text{ gpm per sq. ft. of commercial space}$
- C.  $0.417 \text{ gpm} \times 2,400 \text{ sq. ft.} = 1,000 \text{ gpm fire flow}$
- D. Thus, 1 EDU = 1,000 gpm = 2,400 sq. ft. commercial space

5.4 The projected EDUs and Capital Fire Service Needs identified in this document are subject to periodic review and change by the City and the District. Accordingly, while the Formula will remain constant, the amount of the Fire Mitigation Fee and the basis used to calculate the Fire Mitigation Fee should be revisited periodically to keep pace with actual events and with updated District and City codes. The District expects to review this document on a two year cycle.

5.5 Significant changes in the City's population and/or boundaries (e.g., annexations) will change the basic projections on which the Fire Mitigation Fee is based and will require prompt revision of this document.