

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF FIRCREST

and

PIERCE COUNTY

, 2017



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**ANNEXATION MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF FIRCREST
and
PIERCE COUNTY**

THIS MEMORANDUM OF UNDERSTANDING, hereinafter referred to as the “MOU,” is made and entered as of the Effective Date (defined in Section 2.3 below) by and between the City of Fircrest, a Washington municipal corporation and political subdivision of the State of Washington (hereinafter referred to as the “City”) and Pierce County, a Washington municipal corporation and political subdivision of the State of Washington (hereinafter referred to as the “County”), subject to the terms and conditions set forth herein.

RECITALS

WHEREAS, the County designated an Urban Growth Area for the City as required by the Growth Management Act (“GMA”), codified as RCW 36.70A;

WHEREAS, RCW 36.70A.110(7) states, “An urban growth area designated in accordance with this section may include within its boundaries...potential annexation areas designated for specific cities or towns within the county.”;

WHEREAS, the City is a non-charter code city incorporated under the Optional Municipal Code, codified as RCW 35A. and has authority under RCW 35A.14 to annex property within its urban growth area;

WHEREAS, the City has designated in its Comprehensive Plan its Potential Annexation Area (“PAA”) located at 62nd Avenue West and 44th Street West;

WHEREAS, RCW 35A.14.460 allows the City and Pierce County to enter into an Interlocal Agreement to annex the City’s affiliated Potential Annexation Area (“PAA”) when at

least sixty percent (60%) of the boundary of the area to be annexed are contiguous to the corporate boundary of the City and the area is within the City's PAA;

WHEREAS, the 62nd Avenue West and 44th Street West PAA is within the City's PAA, and more than sixty percent (60%) of its boundary is contiguous with the City's boundary;

WHEREAS, the City Council passed Resolution 1451 on October 25, 2016 directing City staff to negotiate an Interlocal Agreement with Pierce County to annex the Potential Annexation Area subject to this MOU as required by 35A.14.460(1);

WHEREAS, Multi-County Planning Policy MPP-DP-19 states, "[S]upport joint planning between cities and counties to work cooperatively in planning for urban unincorporated areas to ensure an orderly transition to city governance, including efforts such as: (a) establishing urban development standards, (b) addressing service and infrastructure financing, and (c) transferring permitting authority;"

WHEREAS, annexation of the Potential Annexation Area is exempt from compliance with the requirements of the State Environmental Policy Act pursuant to RCW 43.21C.222;

WHEREAS, the annexation ordinance provided for in RCW 35A.14.460 is subject to referendum within forty-five (45) days after adoption;

WHEREAS, upon the filing of a timely and sufficient referendum petition with the legislative body, signed by registered voters representing not less than fifteen percent (15%) of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to voters of the area in a general election if one is to be held within ninety (90) days or at a special election called for that purpose;

WHEREAS, after the expiration of the forty-fifth day from, but excluding the date of adoption of the annexation ordinance, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the City of Fircrest;

WHEREAS, the Fircrest City Council has enacted Resolution Number _____ on _____ authorizing the City Manager to enter into this MOU;

WHEREAS, the Pierce County Council has enacted Ordinance Number _____ on _____ authorizing the County Executive to enter into this Memorandum of Understanding;

NOW, THEREFORE, in consideration of the foregoing, the Parties hereto agree as follows:

SECTION 1. PURPOSE

1.1 Purpose. The purpose of this MOU is to set forth the terms of the Parties' agreement for the transition of governmental services from Pierce County to the City of Fircrest related to the City's annexation of the 62nd Avenue West and 44th Street West PAA. The Parties anticipate formulating a more definitive and enforceable Interlocal Annexation Agreement in conjunction with this MOU.

SECTION 2. DEFINITIONS

2.1 Affected Project. All projects within the PAA that are subject to the Notice of Application requirements of RCW 36.70B.110, or subject to review under the State Environmental Policy Act (SEPA).

2.2 Annexation Date. The annexation date shall be the date fixed by ordinance and shall not be fewer than forty-five (45) days from the date of adoption of the ordinance

2.3 Effective Date. The Effective Date of this MOU shall be the date upon which the MOU is approved by official action of the legislative bodies of each of the Parties, and the MOU is signed by the duly authorized representative of each of the Parties.

2.4 Development Regulations. The controls, requirements, and limitations placed on development, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, stormwater requirements, transportation requirements, SEPA ordinances, and subdivision ordinances.

2.5 Pierce County Code (PCC). The PCC no longer applies to the annexed area as of the Annexation Date except as to those matters the County retains in accordance with Sections 5, 6, and 7.

2.6 Potential Annexation Area (PAA). An area within the designated urban growth area, which has been identified as being appropriate for annexation. For this MOU, reference to a PAA(s) encompasses the areas as described in Section 3. Annexation Areas (the 62nd Avenue West and 44th Street West PAA).

2.7 Working Day. Every day is considered a “working day” unless it is considered a nonworking day. Nonworking days are all Saturdays, all Sundays, all of the following holidays: the third Monday of January, the third Monday of February, Memorial Day, July 4th, Labor Day, November 11th, Thanksgiving Day, the day after Thanksgiving, and the days between the time period starting on December 24th and concluding on January 1st. When any of the holidays fall on a Sunday, the following Monday shall be considered a nonworking day. When any of the holidays fall on a Saturday, the preceding Friday shall be considered a nonworking day.

SECTION 3. ANNEXATION AREAS

3.1 Annexation. This MOU shall apply to the Potential Annexation Area (PAA) discussed in this Section, annexed into the City following the entering into such annexation agreement and adoption of an ordinance by the City providing for such annexation pursuant to RCW 35A.14.460.

3.2 62nd Avenue West and 44th Street West PAA.

3.2.1 Boundaries. A legal description of the boundaries of this PAA is provided in Attachment A. A graphical illustration of this area is provided on the Map included as Attachment B.

3.2.2 Size. The area is comprised of 13 parcels and road right-of-way totaling approximately 5.8 acres.

SECTION 4. CRIMINAL JUSTICE SERVICES

4.1 General. Currently, Pierce County is responsible for criminal justice services (e.g. law enforcement, jail services, and court and prosecution services) within the PAA. The City would assume responsibility for criminal justice service upon annexation as provided in this Section.

4.2 Police Services. On the Annexation Date, police service responsibility within the PAA will be transferred to the City. The County will be responsible for all criminal cases and investigations for crimes that occurred before the Annexation Date, including but not limited to, all costs associated with these cases and investigations. The City will be responsible for all criminal cases and investigations for crimes that occurred on or after the Annexation Date, including but not limited to, all costs associated with these cases and investigations. The City's Chief of Police and the Pierce County Sheriff will work together to ensure a smooth transition plan.

4.3 Court and Prosecution Services. The County will be responsible for the court expenses, prosecution, and payment of any fees or assessments associated with misdemeanor criminal offenses that occur within the PAA prior to the Annexation Date. The City will be responsible for the court expenses, prosecution, and payment of any fees or assessments associated with misdemeanor criminal offenses that occur within the PAA on or after the Annexation Date.

4.4 Jail Services. Pierce County will be responsible for the incarceration of adult offenders found to have committed a misdemeanor or gross misdemeanor within the PAA before the Annexation Date. The City will be responsible for the incarceration of adult offenders found to have committed a misdemeanor or gross misdemeanor within the PAA on or after the Annexation Date.

SECTION 5. BUILDING AND LAND USE PERMITTING

5.1 General. The Parties agree that Pierce County Planning and Public Works (PPW) shall continue to review and approve all project permits for development proposals within the PAA

under the Development Regulations adopted by the County until the Annexation Date as provided in this Section.

5.2 Consultation. Following the Effective Date of this MOU, the County agrees to consult with the City on Affected Projects as provided in Section 9.

5.3 Building Permits. The County shall be responsible for completing the processing for all building permit applications and associated permits for properties within the PAA submitted to the County and deemed complete prior to the Annexation Date as provided below:

5.3.1 For the purpose of this Section, associated permits include mechanical, plumbing, fire suppression, stormwater, and road approach/curb cut permits for the underlying building permit.

5.3.2 Sign permits are not associated permits. The County will only complete sign permits submitted to the County prior to the Annexation Date.

5.3.3 Building permits and associated permits for homes within plats or short plats that have not received final plat approval prior to the Annexation Date shall be processed consistently with the terms of Section 5.4.

5.3.4 The County shall be responsible for defending and processing all appeals of building permits and other related permits issued by the County prior to and after the Annexation Date.

5.3.5 For the purpose of this Section, “complete” shall mean the final administrative or quasi-judicial approval, including final inspection and issuance of an occupancy permit.

5.4 Plats and Short Plats. The County shall be responsible for completing the processing for plats and short plat applications for properties within the PAA submitted to the County prior to the Annexation Date as provided below:

- 5.4.1 The County agrees to complete the review process through the phase (e.g. preliminary, civil, and final) that is pending on the Annexation Date and then turn the application over to the City for further processing.
- 5.4.2 The County agrees to complete associated permits filed either before or after the Annexation Date that are necessary to complete the current phase of the plat or short plat application that remains under the County's review as provided in Section 5.4.1 of this MOU.
- 5.4.3 For the purpose of Section 5.4, associated permits include shoreline permits, variances, site development, forest practice permits, civil permits, right-of-way permits, critical area permits, and reviews under the State Environmental Policy Act (SEPA).
- 5.4.4 For the purpose of Section 5.4, "complete" means the final administrative or quasi-judicial approval.
- 5.4.5 All building permits and associated permits as defined in Section 5.3 for homes within in a new subdivision shall be submitted to the City after the Annexation date.

5.5 Other Land Use Permits. The County shall be responsible for completing the processing for all other land use permit applications for properties within the PAA submitted to the County prior to the Annexation Date as provided below:

- 5.5.1 **Definition of Land Use Permits.** For the purpose of Section 5.5, other land use permits include nonconforming use permits, conditional use permits, shoreline permits, variances, site development, forest practice permits, critical area permits, and reviews under the State Environmental Policy Act (SEPA).
- 5.5.2 **Plats or Short Plats.** Other land use permits associated with plats or short plats shall be processed consistently with the terms of Section 5.4.

5.5.3 Definition of Complete. For the purpose of Section 5.5, “complete” means the final administrative or quasi-judicial approval, including final inspection and issuance of an occupancy permit.

5.6 Accepting County Conditions. Following annexation and transfer of a development application to the City for handling, the conditions of approval for all building and land use permits and preliminary plat applications in the annexed area will continue to apply as required by law.

5.7 Permit Fees. In order to cover the cost of processing building and land use permits submitted to the County prior to the Annexation Date, the County is authorized to collect fees for those permits after the Annexation Date. The County is further authorized to retain fees collected by the County for permits submitted to the County prior to the Annexation Date.

5.8 Permit Extensions. The County agrees to grant extension requests for permits discussed in Section 5 of this MOU only when construction authorized by the underlying permit is underway by the Annexation Date, or if the County approved the permit and issued the permit prior to the Annexation Date. The County further agrees that the County will not reactivate expired building permits and/or associated permits.

5.9 Appeals. The County shall be responsible for defending all administrative, quasi-judicial, or Land Use Petition Act appeals for land use decisions issued by the County prior to and after the Annexation Date.

5.10 Tracking of County Retained Permits. Upon the City’s written request and within the time period to which the Parties agree the County shall provide the City a list of all building and land use permit applications that are still pending, under review, or issued but not yet finalized. This list shall include the project number assigned by the County, parcel number, a brief description of the project, current status, and expiration date of the permit. The County shall provide the City an update as requested by the City until all permits on the list have either been finalized, expired, or otherwise completed.

SECTION 6. CODE ENFORCEMENT

6.1 General. On the Annexation Date, code enforcement responsibility within the PAA will be transferred to the City.

6.2 Code Enforcement Cases. The County shall provide the City a list of all pending code enforcement cases within thirty (30) days of the Effective Date of this MOU. Pierce County shall close these cases as of the Annexation Date. The City, at its sole discretion, may pursue any code enforcement action originally initiated by the County.

SECTION 7. ROAD FUNDS

7.1 County Road Taxes. In accordance with RCW 35A.14.801, the County shall distribute to the City those portions of the non-delinquent road district taxes, which the road district levied in 2017 for the PAA.

7.2 Transportation Benefit District. On December 2, 2014, Pierce County adopted Ordinance 2014-28 establishing a Transportation Benefit District (TBD), which encompassed all of the unincorporated areas of Pierce County at the time of the establishment of the TBD. Ordinance 2014-28 is silent as to how the annexation would affect the boundaries of the TBD. Therefore, the County will review this issue and consider options to forward to the TBD Governing Board to address the impact of annexations on the boundaries of the TBD.

SECTION 8. TRANSFER OF DOCUMENTS

8.1 County Records to be Transferred. Prior to and after the Annexation Date and upon the City's reasonable written request, the County will provide the City copies of requested County records (except for privileged documents) from the County Planning and Public Works Department pertaining to the transfer of jurisdictions, services, land use permitting from the County to the City. Such records may include but are not limited to the following:

8.1.1 Building Permit Records. Building permit files for properties within the PAA.

8.1.2 Public and Private Stormwater Facilities. Records, including, but not limited to maintenance files, illicit discharge notices, drainage or water quality complaints, and capital improvement plans.

8.1.3 Transportation Facilities. Records including but not limited to, traffic count data, sign inventory, road maintenance, payment and sidewalk condition, street and traffic light location information, and as built drawings.

SECTION 9. CONSULTATION

9.1 General. The Parties agree that any time the words “consult”, “confer”, or “consultation” are used in this MOU, that the word is referencing the process provided in this Section regardless if this Section is specifically identified in the text of the MOU.

9.2 Consultation. The Parties agree that the following is the minimum required for consultation:

9.2.1 Notice. The County shall consider the City a party of record for all Affected Projects, and provide the City with the Notices of Application, Hearing, and Decision within the timeframes required by Chapter 36.70B RCW.

9.2.2 Materials. Upon request of the City, the County will provide within ten (10) working days to the City paper or electronic copies of all of the materials in its possession that were submitted as part of the permit application for which the City received a notice under Section 5.3.1.

9.2.3 Comments. The City shall provide written comments and any requested mitigation measures within twenty-eight (28) working days of the receipt of the materials identified in section 9.2.2. The County shall provide a written response to the City within twenty-eight (28) working days from the date of receipt of the City’s comment letter.

9.2.4 Subsequent Submittals. The Parties agree that if the City previously requested copies under Section 9.2.2 and/or provided comments under Section 9.2.3, the County shall automatically provide to the City within ten (10) working days all additional or resubmitted materials for that Affected Project. The City shall provide written comments and any requested mitigation measures within twenty-one (21) working days of the receipt of the subsequent submittals. The County shall provide a written response to the City within twenty-one (21) working days from the date of receipt of the City's comment letter. This process shall be repeated for all subsequent submittals for an Affected Project.

9.2.5 Technical Review Meetings. The County shall provide the City notice at least seven (7) days prior to any technical review meetings for Affected Projects. The City shall be allowed and encouraged to attend all building permit pre-construction conferences and/or technical review meetings for Affected Projects.

9.2.6 Project Conditions of Approval and Mitigation. The Parties agree to negotiate in good faith to jointly identify conditions of approval and/or mitigation measures for an Affected Project. Final approval will remain with the jurisdiction having regulatory authority at the time of project review and approval.

SECTION 10. TERM

10.1 Duration. This MOU shall remain in effect for five (5) years after the Annexation Date unless terminated earlier in accordance with Section 10.2.

10.2 Termination.

10.2.1 Either Party may terminate the MOU upon ninety (90) days' advance written notice to the other Party. Notwithstanding the expiration or earlier

termination of the MOU, the County and City shall remain responsible for fulfilling any outstanding obligations under this MOU that were incurred prior to the date on which the MOU expired or terminated.

10.2.2 This MOU shall be terminated immediately if a referendum petition is filed within the allotted time period and the resulting annexation vote defeats the proposed annexation(s).

SECTION 11. GENERAL PROVISIONS

11.1 Notices, Demands, and Communications. Formal notices, demands, and communications between the City and the County shall be sufficient if given and shall not be deemed given unless dispatched by certified mail, postage prepaid, returned receipt requested, or delivered personally, to the principal offices of the City and the County as follows:

City:

City Manager
City of Fircrest
115 Ramsdell Street
Fircrest, WA 98466
Phone (253)566-8901

County:

Office of the Pierce County Executive
County-City Building, Room 737
930 Tacoma Avenue South
Tacoma, WA 98402
Phone (253) 798-7477

Director:

Pierce County Planning and Public Works
Public Services Building
2401 South 35th Street, Room 175
Tacoma WA 98409
Phone (253) 798-7210

11.2 Indemnification and Defense.

11.2.1 The City agrees to defend, indemnify and save harmless the County, its appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgements, settlements, attorney's fees and costs by reason of any and all claims and demands upon the

County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons, and for damages to property including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the City, its Subcontractors, its successor or assigns, or its or their agent, servants, or employees.

11.2.2 The County agrees to defend, indemnify and save harmless the City, its appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgements, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons, and for damages to property including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the County, its Subcontractors, its successor or assigns, its or their agent, servants, or employees.

11.2.3 In the event of liability for damages of any nature whatsoever arising out of the performance of this MOU by the City and the County, including claims by the City 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 hereunder shall only be to the extent of that party's negligence.

11.2.4 In the event that one Party defends the other, the defending Party shall have the sole right to select legal counsel to defend against the claim, demand, or cause of action. In the event that defense is undertaken, the defending Party shall be empowered to settle or compromise the claim, demand, or cause of action, and the defended Party shall not interfere therewith, provided that if

the defending Party settles a claim, demand, or cause of action against the other Party without that Party's consent, the non-consenting Party shall not be liable for any settlement or fees.

11.3 Amendments. This MOU may be amended or modified in accordance with applicable laws, rules or regulations, and upon mutual consent of the Parties, such mutual consent of the Parties shall be evidenced by a written amendment signed by the Parties.

11.4 Rights Reserved. Nothing in this MOU is intended to waive or limit the rights of the Parties to require mitigation for any impact as allowed by federal, state, or local laws and ordinances including but not limited to environmental impacts governed by Chapter 43.21C RCW or mitigation fees governed by RCW 82.02.050.

11.5 Title of Parts and Sections. Any titles of the parts, sections, or subsections of this MOU are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provisions.

11.6 Applicable Law. This MOU shall be interpreted under and pursuant to the laws of the State of Washington.

11.7 Severability. If any term, provision, covenant, or condition of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding, or unenforceability.

11.8 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this MOU, or to collect damages as a result of any breach of the MOU, the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in the action.

11.9 Joint Board. This MOU does not establish or create a separate legal administrative entity, joint board, or joint budget authority to accomplish the purposes of the MOU.

11.10 Recordation. Within ten (10) days after the effective date of this MOU, the Clerk of the County Council shall have this MOU recorded with the County Auditor/Recorder of Pierce County. In the alternative, the Parties may mutually agree to post this MOU electronically on their websites.

11.11 Execution of Other Documentation. The City and the County agree to execute any further documentation that may be necessary to carry out the intent and obligations under this MOU.

11.12 Complete Understanding of the Parties. This MOU is executed in two (2) duplicate originals, each of which is deemed to be an original. This MOU consists of 17 pages and two (2) attachments, and constitutes the entire understanding and agreement of the Parties.

CITY OF FIRCREST

PIERCE COUNTY

Interim City Manager

Bruce Dammeier
Pierce County Executive

By direction of the Fircrest City Council
in Open Public Meeting on _____

Dated: _____

Dated: _____

Authenticated by:

Attested by:

Fircrest City Clerk

Pierce County Council Clerk

Approved as to Form:

Approved as to Form:

City of Fircrest Attorney

Pierce County Attorney