

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius
Director

Memorandum

June 27, 2022

TO: The Honorable Satpal Sidhu, Whatcom County Executive

FROM: Matt Aamot, Senior Planner

THROUGH: Steve Roberge, Assistant Director

RE: Interlocal Agreement with Nooksack Concerning Planning, Annexation, and Development within the Urban Growth Area

Whatcom County Comprehensive Plan Goal 2R and related policies indicate that the County should have interlocal agreements with the Cities relating to planning, annexation, and development in urban growth areas (UGAs).

The County had interlocal agreements with each City that were originally approved between 1997 and 2001. When these original interlocal agreements expired, new agreements were approved in 2012. However, the 2012 agreements have 10-year durations and are set to expire on June 30, 2022. Therefore, the County and the City of Nooksack worked together to develop a new interlocal agreement.

The County Council held a public hearing and approved a motion authorizing the County Executive to sign the agreement on June 21, 2022.

Thank you for your consideration of this matter.

INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF NOOKSACK AND WHATCOM COUNTY
CONCERNING PLANNING, ANNEXATION AND DEVELOPMENT
WITHIN THE NOOKSACK UGA

This agreement is made by and between the City of Nooksack (herein after referred to as the City) and Whatcom County (herein after referred to as the County), political subdivisions of the State of Washington, pursuant to the Interlocal Cooperation Act, RCW 39.34.

WHEREAS, cooperative relationships between the City and County benefit both organizations as well as residents and stakeholders of incorporated and unincorporated neighborhoods; and

WHEREAS, the Growth Management Act (GMA) adopted goals to guide the process of developing comprehensive plans and directed counties to adopt urban growth areas; and

WHEREAS, the *Whatcom County County-wide Planning Policies* direct each jurisdiction to acknowledge these policies and implement them through Interlocal Agreements; and

WHEREAS, review of development within the City's urban growth area (UGA) should anticipate future annexation into the City; and

WHEREAS, the Whatcom County Comprehensive Plan has identified a UGA that includes land within unincorporated Whatcom County which the City may annex in the future; and

WHEREAS, annexations proposed by the City are pursued in accordance with RCW 35A.14 and intended to be consistent with RCW 36.93.180; and

WHEREAS, the City and County recognize that there is a need to facilitate the proper transition of public services and capital projects from the County to the City at the time of annexation; and

WHEREAS, the City and County recognize that mutual coordination of land use densities and designations is necessary to reduce urban sprawl, support urban infrastructure and protect rural areas and resource lands within the County; and

WHEREAS, consistent regulations and cooperative development review facilitate creation of a vibrant, attractive and economically healthy urban area with distinct neighborhoods; and

WHEREAS, Whatcom County Comprehensive Plan Goal 2R is to establish interlocal agreements between the County and cities in order to accomplish a variety of growth-related goals; and

WHEREAS, the City and the County recognize the City's responsibility to annex lands needed for urban residential, commercial and industrial use; and

WHEREAS, the City and County recognize that as the City tax base grows, the County will share in that growth through revenue sharing mechanisms; and

WHEREAS, the City and County recognize that annexation of developed land will reduce County tax revenues used to support County services; and

WHEREAS, the City and County have established a formula to mitigate the impact on the County of revenue losses and to equitably compensate the County for certain capital facility expenditures in annexed areas; and

WHEREAS, the City and County recognize that annexations can have extra-jurisdictional impacts and that intergovernmental cooperation is an effective manner to address those impacts; and

WHEREAS, it is in the best interest of the citizens of both jurisdictions to coordinate plans and manage growth in the UGA prior to annexation; and

WHEREAS, the City and County desire to develop a general interlocal agreement that will apply to UGA planning and all annexations;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the City and County agree as follows:

Section 1. Applicability and Amendments to this Agreement

A. The City and the County agree that the contents of this interlocal agreement shall apply to growth management planning, development within the City's UGA and annexations.

B. This interlocal agreement will be amended for individual annexations under the following circumstances:

- i. When the City is required by this agreement to reimburse the County for road or stormwater capital improvements pursuant to section 6 of this agreement. As part of the annexation review process, the County shall notify the City when a proposed annexation area includes a capital project that is eligible for reimbursement, and the amount of the reimbursement per the formula set out in Section 6C of this agreement. Reimbursement shall only be required for road or stormwater capital projects that are done in coordination with the City and built to either City design and development standards in existence at the time of construction or an alternative standard agreed to by the County Road Engineer and the City Engineer.
- ii. When agreements relating to maintenance or ownership of stormwater or drainage facilities, parks, open space or recreational facilities are needed pursuant to sections 7 or 8 of this agreement; or
- iii. When the City and County mutually agree to the amendment to address issues of concern.

C. Whenever possible, annexation-related amendments should be executed by the City and County prior to expiration of the County's 45-day annexation review period established pursuant to RCW 36.93.100. However, if the City and County cannot come to agreement concerning any annexation-related issues, the County may request a Boundary Review Board hearing, and the City and County may continue to negotiate annexation amendment language.

D. Annexation-related amendments to this interlocal agreement should include the following:

- i. The annexation's name and boundary review board number;
- ii. A map and legal description of the annexation area, with the map clearly labeling the annexation boundary area with supporting road names and associated infrastructure features (e.g. bridges, stormwater facilities, utilities, etc.);

- iii. The annexation method, resolution number and date of City acceptance of a petition or determination to pursue elections for the annexation area;
- iv. Compensation or reimbursement formulas for major capital improvements;
- v. Capital facilities and parks, open space, and recreational facility maintenance and ownership agreements;
- vi. Agreements regarding impact mitigation, including but not limited to traffic mitigation;
- vii. Agreements regarding balance between residential and commercial/industrial land;
- viii. Identification of the existing and intended service providers for the area (water, sewer, fire/EMS), including any interlocal agreements or contracts between the City and Special Purpose Districts; and
- ix. Signatures by the City's Mayor and County Executive and effective date of the annexation-related amendment.

E. The City and County recognize that other amendments to this interlocal agreement may be necessary to clarify the requirements of particular sections or update the agreement. These amendments may be pursued as necessary by both parties.

Section 2. Growth Management Planning

A. Inter-jurisdictional Coordination.

The County and the City will coordinate the Review and Evaluation Program (Buildable Lands) review as required by RCW 36.70A.215 and the Countywide Planning Policies.

The County and the City will coordinate the comprehensive plan and UGA reviews required by RCW 36.70A.130(1) and (3) through the following:

- i. Approving, by resolution of the respective legislative bodies, a schedule for joint County and City review of the UGA.

- ii. City and County planners will coordinate and review issues associated with growth management planning.
- iii. If deemed necessary by the County Executive, convening a group of elected officials from the County and cities to discuss and review issues associated with growth management planning.

B. Periodic Review. During the periodic review of comprehensive plans undertaken pursuant to RCW 36.70A.130 (1), the County and City will coordinate and share proposals for comprehensive plan amendments relating to the UGA and/or adjacent areas.

C. Urban Growth Area. Whatcom County will review the UGA in accordance with the schedule in RCW 36.70A.130 to ensure that the UGA can accommodate the urban growth projected to occur in the 20-year planning period established by the Whatcom County Comprehensive Plan. The County will coordinate with the City through the UGA review process. The City will submit recommendations to the County in accordance with the schedule for joint County and City review of the UGA. In conjunction with the UGA review, the City and County agree to jointly review the densities permitted, achieved and assumed within the City and UGA, and the extent to which the urban growth has occurred within the City and unincorporated portions of the UGA.

D. Land Capacity for the Periodic Review.

- i. The City and County agree to review and jointly approve, in conjunction with the other cities, the Whatcom County Land Capacity Analysis Detailed Methodology.
- ii. The City and County agree to review land capacity and needs for the UGA in conjunction with the next UGA review.
- iii. In general, for property within the City limits, the comprehensive plan designations, planned densities adopted in the City's GMA-compliant comprehensive plan, city zoning classifications and/or achieved densities will be utilized in the land capacity analysis unless mutually agreed by the parties or the County identifies clear and compelling rationale for deviating from these designations and densities.
- iv. For property within the UGA but outside the City limits, assumed densities will be determined through a collaborative process between the County and City, consistent with the Whatcom County Land Capacity Analysis Detailed Methodology, as now exists or hereafter may be amended.

E. Population and Employment. The County and City will work together to develop proposed population and employment projections and allocations that are within the range of the Washington State Office of Financial Management projections. The proposed projections and allocations should be developed in conjunction with the other cities. The proposed projections and allocations will be forwarded to the respective legislative bodies for consideration.

F. City Comprehensive Plan. The City will adopt comprehensive plan designations for annexation areas consistent with the GMA.

G. Accommodation of Growth. The City and County agree, through a collaborative process, to accommodate and plan for population and employment growth allocated to the UGA in the Whatcom County Comprehensive Plan.

H. Residential Zoning Districts. The City and County recognize that urban densities must be achieved in order to meet the goals of the GMA. The City will consider adopting minimum urban densities in residential zoning districts. The City will retain the final authority to determine whether or not to adopt such minimum densities.

I. Capital Facility and Urban Service Planning. At a minimum, the City will utilize Whatcom County Comprehensive Plan population and employment projections, for the planning horizon year in the County Plan, when developing or updating capital facility and/or urban service plans. The City, at its discretion, may plan for growth above that contained in the Whatcom County Comprehensive Plan, provided that such growth is contained within the designated UGA, UGA Reserve or future study areas. City capital facility and/or urban service plans may also project and plan for growth beyond the 20-year planning period established in the Whatcom County Comprehensive Plan, but such additional growth projections do not obligate Whatcom County to modify its projections or Comprehensive Plan.

J. Water and Sewer. The City will develop and maintain capital facility plans, in compliance with the requirements of the GMA, to provide urban levels of water and sewer service within the UGA. The City agrees to consider the Coordinated Water System Plan when the City's System Plan is updated and the County agrees to consider the City's Water System Plan when the Coordinated Water System Plan is updated.

K. Stormwater Plans. The City will review, and if necessary, adopt a new or updated stormwater plan for the UGA.

L. Transportation Plan. The City will review and, if necessary, adopt a new or updated transportation plan or element for the UGA.

M. County-Wide Planning Policies. When the County-wide Planning Policies are updated, the City and County agree to work together to develop a set of policies that are acceptable to, and adopted by, both jurisdictions.

Section 3. Annexations

A. Role of Boundary Review Board. The Boundary Review Board was established prior to adoption of the Growth Management Act, prior to the establishment of UGA boundaries, and prior to the adoption of a City/County interlocal agreement that addresses issues associated with the potential impacts of annexations and includes a process for resolving disputes. As a result, the City and County agree to jointly review with the other jurisdictions and service providers the potential for modifying the role of BRB in the annexation process.

B. Annexation Planning. Annexations may only take place for land within the UGA designated in the Whatcom County Comprehensive Plan. Annexations shall be based on policies adopted in the City's Comprehensive Plan, be consistent with adopted County-wide Planning Policies and Whatcom County Comprehensive Plan Goal 2P, and Policies 2P-1, and 2P-2. Annexations shall include logical boundaries and be timed in a way which allows for transition of services between the City and County (and Special Purpose District, if applicable). Considerations in defining logical physical boundaries shall include one or more of the following:

- i) Size and shape of the area to be annexed;
- ii) Preservation of neighborhoods and communities;
- iii) Use of physical boundaries, including but not limited to, bodies of water, roads, and land contours;
- iv) Creation and preservation of logical service areas;
- v) Prevention of abnormally irregular boundaries;
- vi) Dissolution of inactive Special Purpose Districts;
- vii) Adjustment of impractical boundaries;
- viii) Annexation of unincorporated areas which are urban in character;
- ix) Consistency with the City's Annexation Blueprint, if adopted;
- x) The City's ability to provide the full range of urban services.

In order to facilitate communication and review of annexations, the City will notify the County Director of Planning and Development Services and County Director of Public Works, or their designees, prior to the City Council's acceptance of a Notice of Intent to Commence Annexation. The City will also notify the County Director of Planning and Development Services and County Director of Public Works, or their designees, within 10 days of approving or denying a resolution or ordinance to accept the petition for annexation. The County Public

Works Department will notify the City if compensation for road construction or stormwater facilities will be sought under section 6 of this Interlocal Agreement.

C. Balanced Annexations. The City agrees to employ its annexation authority in a manner that strives to maintain a balance of commercial, industrial and residential properties inside the City and within successive annexation plans and proposals.

D. City Zoning. The City agrees to identify appropriate city zoning at the time it accepts the initial annexation proposal submitted by residents and/or owners of the proposed annexation area. The City will adopt the zoning to be applied to the area at the same time the annexation ordinance is adopted. Zoning changes adopted within annexation areas shall be considered in evaluating the balance of residential, commercial and industrial properties.

E. Appropriate Urban Densities. For residential zoning districts in annexation areas, the City agrees to adopt appropriate urban densities consistent with the State GMA, City Comprehensive Plan, and the overall density goals of the County Comprehensive Plan.

F. Administration of Special Assessments. When annexations occur which encompass less than the entirety of a local improvement district (LID), utility local improvement district (ULID), local utility district (LUD), road improvement district (RID) or local road improvement district (LRID), the assessments for those parcels within the annexation area will continue to be administered by the County Treasurer. If an annexation includes the entirety of an LID, ULID, LUD, RID or LRID future administration will be mutually agreed upon by the City and County.

G. Developer Reimbursement Agreements. The City will assume administrative duties for any developer reimbursement agreement, including but not limited to latecomer agreements, for the portion of the affected area that the City annexes. For developer reimbursement agreements involving property located partially or wholly within the City's UGA, the County will include a provision in the agreement stating that upon annexation, the administrative functions under the agreement for the annexed area will transfer to the City with no additional action needed by the parties, and further stating that said transfer of administrative responsibilities will include the authority to collect any associated administrative fees as established in the agreement. Upon execution of any developer reimbursement agreement where the affected area is located wholly or partially within the City's UGA, the County will provide to the City a copy of the agreement.

H. Records Transfer. The County agrees to make every effort to transfer all relevant records for properties in an annexation area within 60 days of receiving written notice from the City of an approved annexation.

I. Annexation Blueprint. The City intends to adopt and periodically update an Annexation Blueprint, or annexation phasing plan, to guide future annexations. The City agrees to transmit a copy of the draft Annexation blueprint or phasing plan to the County for comment prior to City adoption of the plan.

Section 4. Processing Applications Prior to Annexation

A. Zoning. Whatcom County zoning will apply within the City’s unincorporated UGA until annexation.

B. Rezones within the UGA. The County will not approve rezone requests for property within the UGA without consideration of City input, which should include an evaluation of consistency with the City Comprehensive Plan. The County agrees to notify the City of any rezone applications received within the UGA within 30 calendar days of receiving a complete application. The County agrees to meet with City staff to share information and discuss issues regarding any proposed rezone. The County agrees to provide notice of the time, date and location of the public hearing at least ten days prior to the public hearing.

C. Notice for Land Use Permits, Subdivisions, and Binding Site Plans. The County agrees to notify the City of the following land use permit, subdivision, and binding site plan applications:

- i. Applications proposing to use or using city water or sewer; and
- ii. Applications located within the City’s UGA.

Such notice will be provided concurrent with the notice of application.

D. Subdivisions and PUDs. The County agrees to invite the City to participate and respond in Technical Review Committee meetings regarding such projects. If adopted by the County, City subdivision standards shall be applied when appropriate. The City agrees to review subdivision plans for consistency with City design standards and development regulations and to participate in the TRC review process.

E. Commercial/Industrial Building Permits. The County should notify the City within fifteen days of receipt of an application for a building permit for a commercial or industrial structure within the UGA or that is using city water or sewer.

F. Development Standards. The City may make specific recommendations to the County to adopt city development standards within the Urban Growth Area. The County will retain the final authority to determine whether or not to adopt City development standards.

If the County adopts City development standards, the City agrees to review development in the UGA and make recommendations to the County relating to whether the development complies with City development standards.

Section 5. Permit Processing After Annexation.

The City and County agree as follows:

A. Building Permits. As the agent of the City, the County shall continue to process under County codes and building permit requirements to completion any building permits and associated permits for which it received a fully complete permit application and accompanying fee prior to the effective date of the annexation. Associated permits shall be defined as clearing, grading, mechanical, plumbing, fire sprinkler, and occupancy permits related to those projects being processed by the County. Completion shall mean final administrative approvals.

Except as provided below for permit extensions, in the case of building permits issued prior to the date of an annexation, the applications and permits shall be processed through final inspection and/or issuance of an occupancy permit by the County. The final inspection for building permits should be a joint City/County inspection with the City in attendance for information purposes only. The County will transmit the permit records to the city after final inspection.

B. Land Use Permits and Subdivision. As the agent of the City, the County shall continue to process to completion any land use permit and subdivision proposals, including those for short plats, administrative approval use permits, shoreline permits, long plats, binding site plans and conditional use permits, for which it received a fully complete permit application and accompanying fee prior to the effective date of an annexation. The County will transmit the permit records to the city after processing to completion. Completion shall mean final administrative or quasi-judicial approvals or, for subdivisions, recording relevant documents. Such permit applications will be transferred to the City for processing if mutually agreed by the City and County. In the case of action required by the legislative body, the City Council shall take final action relating to property that has been annexed.

C. Permit Extensions. Any request for extension of a permit issued by the County which is received after the annexation date shall be made to and administered by the County. Prior to extending a permit, the County will notify the City.

D. Enforcement of Conditions. To the extent authorized by law, the City agrees to enforce any conditions imposed by the County unless waived or modified by the City. The City should notify the County and provide the County with the opportunity to comment prior to

waiving or modifying any conditions imposed by the County. The County will make its employees available to provide assistance in any enforcement action relating to conditions originally prepared by County personnel.

E. Development Securities or Financial Guarantees. For permits that are transferred to the City for processing after annexation, performance and maintenance securities, landscape securities, critical area or shoreline mitigation sureties, and other associated securities received by the County prior to annexation will be assigned to the City, if such securities allow assignment. As of the effective date of this interlocal agreement, the County will ensure that all such securities allow assignment to the City without further approval by any party, if allowed by the security provider.

For permits that the County continues to process after annexation, the County will continue to hold the associated securities.

In the event that the securities are not assigned to the City, the City and the property owner will be notified that the County will continue to hold the securities until:

- i. The jurisdiction processing the permit under section 5A or 5B above confirms that the securities may be released; or
- ii. The jurisdiction processing the permit under section 5A or 5B above determines that the developer has not complied with the condition of approval, at which time the County agrees to exercise the security and transfer the funds to the City to fulfill the condition of approval; or
- iii. The securities automatically expire.

F. Permit Status Review. At the request of the City or County, the jurisdictions will meet to discuss the status of permits in an annexation area remaining under review by the County and determine whether or not responsibility for continued processing should be transferred to the City. Any change in permit processing responsibility shall be provided by written agreement, acceptable to both parties.

Section 6. Roads and Stormwater Facilities

A. Maintenance and Ownership Responsibilities. Unless the County agrees to retain a specific road in County jurisdiction, the City will annex the entire right-of-way of County roads adjacent to an annexation boundary and will assume full maintenance responsibility for those roads upon the effective date of the annexation. It may also be desirable to include in an annexation adjacent road sections to avoid dead-end segments or portions of roads that

meander in and out of jurisdictions. Such situations may be negotiated on a case by case basis.

B. Unexpended Mitigation Payments. Funds for road related mitigation payments or impact fees received by the County for projects within an annexation area which remain unexpended as of the effective date of the annexation will be transferred to the City, if allowed by law, within six months of the effective date of the annexation.

C. Compensation for Capital Construction Projects. The City agrees to reimburse the County for the depreciated value of capital road and stormwater construction projects that are either built to City standards in existence at the time of construction or an alternative standard agreed to by the County Road Engineer and the City Engineer and completed during the fifteen-year period prior to annexation as shown on Exhibit A, which will be updated at the time of annexation if necessary.

The City agrees to reimburse the County for depreciated County costs incurred by the County in implementing the projects listed in Exhibit A based on a 15 year, straight line depreciation.

The City may reserve the right to inspect roadways and infrastructure in order to determine compliance with approved engineered civil construction plans, prior to payment.

This reimbursement will be for the value of the County's share of funds spent for the construction of major public facilities, excluding grant funding, including but not limited to new roads and sidewalks or those roads which have undergone a major reconstruction. It shall not include routine maintenance expenditures for such facilities.

Actual reimbursement amounts and timing of payments shall be negotiated between the City and County Public Works Department prior to annexation. The agreement shall be included as part of an amendment to this interlocal agreement. Exhibit A lists the County capital road and stormwater construction projects that have been completed within 15 years prior to the effective date of this agreement. Exhibit A will be updated as necessary to incorporate any new projects. These projects are to be included within the reimbursement mentioned in this section. Reimbursement shall not include routine maintenance expenditures. A project listed on Exhibit A shall be automatically removed from the list at the end of the fifteenth budget year following final acceptance of the project.

The County also agrees to consult with the City in planning for new capital road and stormwater construction projects within the City's UGA. At the time of consulting with the City, both parties will discuss the need for shared responsibilities in implementing a project, including the potential for grant funding, bonding or loans. Any agreements related to shared responsibilities for road projects within the City's UGA shall be added as amendments to Exhibit A of this interlocal agreement.

Section 7. Water Resource Management

A. Stormwater Management. The City and the County, and where appropriate, special purpose districts, will coordinate development of and funding for stormwater management and drainage plans and standards. The City and the County will also work together to develop and implement the Comprehensive Flood Hazard Management Plan.

B. Watershed Planning. The County and the City recognize that watershed management planning is ongoing. The County and City may develop and adopt interlocal agreements for joint watershed management planning, groundwater protection, capital construction and other related services.

C. Maintenance and Ownership of Drainage Facilities. If an annexed area includes stormwater or drainage improvements or facilities the County currently owns or maintains, the City and County shall agree to the maintenance and ownership responsibilities prior to annexation. The responsibilities resulting from such discussions shall be included as part of an annexation-related amendment to this agreement, except for facilities located in right-of-way annexed by the City that will be maintained by the City.

Section 8. Parks, Open Space and Recreational Facilities

A. Open Space and Parks. Open space and parks will be identified through advanced, joint planning and review of development projects within the City UGA and should be based upon the City's adopted park and/or trail plan and City standards. The City should consider mapped floodplain areas when identifying open space within the urban growth area.

B. Maintenance and Ownership Responsibilities. If an annexed area includes park, open space or recreational facilities the County currently owns listed in Exhibit B, the City and County shall agree to the maintenance, operation and ownership responsibilities prior to annexation. The responsibilities resulting from such discussions shall be included as part of an annexation-related amendment to this agreement.

Section 9. Provision of Services

A. Police Services. Law enforcement services shall transfer from the Sheriff's Department to the City Police Department upon annexation.

B. Special Purpose Districts. Prior to each annexation, the County and/or the City may negotiate interlocal agreements with Special Purpose Districts providing services inside and outside urban growth areas to address issues such as financial concerns and level of service.

C. Fire and Emergency Medical Services.

Upon annexation, the City shall assume responsibility for delivery of fire and emergency medical services (basic life support or BLS) within the annexed area unless the city is within or contracts with the appropriate fire district.

D. Urban Services. In general, cities are the units of local government most appropriate to provide urban governmental services. It is not appropriate that urban governmental services be extended to or expanded outside the UGA, except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at non-urban densities permitted by existing County zoning and do not permit urban development.

E. Impact Fee Review. The City and County agree to discuss the potential for a comprehensive, county-wide system of impact fee collection.

F. School Impact Fees. The County should consider adopting school impact fees if the School District requests impact fees and meets the requirements of Whatcom County Code 20.75.

Section 10. Sales Tax Revenue Sharing

City and County agree to share in the sales tax revenues for annexations of "significant developed commercial and/or industrial land" (as defined below). In those cases, sales tax revenues will be computed and shared on the following basis:

To determine Base Value for the local sales tax revenue, Base Value for the 1st, 2nd and 3rd years equals total sales tax revenue from the 1% local sales tax collected in the 12 full calendar months following the effective date of the annexation and following the first and second anniversaries, respectively, so that the Base Value is established on the actual sales tax collected during the time between payments.

1 st year County receives of Base Value	.80
2 nd year County receives of Base Value	.50
3 rd year County receives of Base Value	.20

The County shall receive .15 directly from the State. The City will reimburse the difference (.65 Base Value 1st year, .35 Base Value 2nd year, and .05 Base Value 3rd year) to the County.

The first payment from the City to the County shall be due and payable within ninety days of the first anniversary of the effective date of the annexation with subsequent payments due and payable within ninety days of the second and third anniversary dates of the effective date of the annexation. It is agreed that upon completion of payments as scheduled, each party will have been fairly, fully and adequately compensated for their respective annexation impacts under this section.

For the purposes of this interlocal agreement “significant developed commercial and/or industrial land” shall be those properties which together generated \$50,000 or more in annual sales tax revenue from the 1% local sales tax over the one year period prior to annexation. Said one year period shall include the 12 full calendar months preceding the effective date of the annexation. In these cases sales tax revenues will be computed and shared on the basis described above.

The process for sales tax revenue sharing is set forth below:

Step 1 – Determine Whether Sales Tax Revenue Sharing is Required

- The City provides a specific list of businesses by State Department of Revenue (DOR) registered name (and Unified Business Identification or UBI number) within the annexation area. If the City does not have access to the DOR information, provide the common name and parcel number for each business.
- The County Treasurer’s Office looks up the sales tax revenue to determine if sales tax revenue sharing is required under the Interlocal Agreement. Specifically, City revenue sharing is required if developed commercial and/or industrial land in the annexation area together generated \$50,000 or more in annual sales tax revenue from the 1% local sales tax over the one year period prior to annexation.

- If developed commercial and/or industrial land in the annexation area together generated less than \$50,000 in annual sales tax revenue from the 1% local sales tax over the one year period prior to annexation, revenue sharing is not required.

Step 2 – City Makes 1st Year Payment (if applicable)

- If revenue sharing is required under Step 1, the City calculates the amount of local sales tax to be shared with the County under the Interlocal Agreement and pays this amount to the County within ninety days of the first anniversary of the effective date of the annexation.

Step 3 – City Makes 2nd Year Payment (if applicable)

- If revenue sharing is required under Step 1, the City calculates the amount of local sales tax to be shared with the County under the Interlocal Agreement and pays this amount to the County within ninety days of the second anniversary of the effective date of the annexation.

Step 4 – City Makes 3rd Year Payment (if applicable)

- If revenue sharing is required under Step 1, the City calculates the amount of local sales tax to be shared with the County under the Interlocal Agreement and pays this amount to the County within ninety days of the third anniversary of the effective date of the annexation.

Section 11. Resource Lands and Rural Areas

In order to implement the Growth Management Act and Whatcom County Comprehensive Plan, the County and City are outlining the respective roles of the County and City in protecting designated resource lands (agriculture, forestry, or mineral resource lands) and rural areas:

A. Density Credits. If the City is required to undertake “reasonable measures” under the Review and Evaluation (Buildable Lands) Program pursuant to RCW 36.70A.215, the City will consider adopting a density credit program in conjunction with the County. The density credit program may consist of granting density bonuses or other development incentives inside City limits if the developer contributes to the Whatcom County Conservation Easement Program fund.

B. Compatibility. The City will assure that the use of lands adjacent to designated resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food and other agricultural products, pursuant to RCW 36.70A.060(1)(a).

Section 12. Other Provisions

A. GIS Data Sharing. The City and the County will cooperate in data sharing.

B. Transfer of Land: The City and County will consult on the possibility of transfer of land from County to City ownership if included in an annexation.

C. Offsite Mitigation Improvements: The City and County should cooperate on establishing a program that would allow development activities within the City to transfer wetland mitigation to locations within the unincorporated County, in order to permit development sufficient to achieve urban densities within the City and accomplish the best ecological outcome, subject to the following:

- i. Whatcom County will not assume any new administrative responsibilities, such as approving and monitoring wetland mitigation, unless explicitly approved by the Whatcom County Council.
- ii. Prior to proposing a wetland mitigation program that includes areas designated as Agriculture on the Whatcom County Comprehensive Plan map, the City and the County will consider recommendations of the Agricultural Advisory Committee.
- iii. The County and City will consider any mutually agreeable changes to their respective development regulations addressing off-site wetland mitigation.
- iv. In some cases, such offsite mitigation may include the transfer or purchase of development rights.

D. UGA Expansions – The City and Whatcom County agree to consult with an adjacent city, if any, prior to expanding a UGA.

Section 13. Existing Agreements

The City and County mutually agree to identify and evaluate, as appropriate, existing mitigation agreements and interlocal agreements affecting an annexation area to which the City or County is a party.

Section 14. Relationship to Existing Laws and Studies

This agreement in no way modifies or supersedes existing State laws and statutes. In meeting the commitments encompassed in this agreement, all parties will comply with the requirements of the Open Public Meeting Act, State Environmental Policy Act, annexation statutes and other applicable State or local law. The ultimate authority for land use and development decisions is retained by the County and City within their respective jurisdictions. By executing this agreement, the County and City do not purport to abrogate the decision-making responsibility vested in them by law.

Section 15. Hold Harmless

The City shall protect, save harmless and indemnify at its own expense, the County, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever arising out of the City's performance of this agreement. The County shall protect, save harmless and indemnify at its own expense, the City, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever arising out of the County's performance of this agreement.

Section 16. Dispute Resolution

In the event of an impasse relating to any provision of this interlocal agreement, the jurisdictions involved may mutually agree to use mediation for a minimum of 90 days. After the 90 day period, the parties may, by mutual agreement, elect to utilize binding arbitration. In the event that the parties agree to use arbitration, a three member arbitration panel will be selected by mutual agreement. If the parties cannot agree on membership of the panel, each party will select one member and those two members will select the third member. The decision of the arbitration panel on the issue will be final.

Section 17. Implementation

Whatcom County and the City will strive to engage in collaborative discussions in order to implement this interlocal agreement. When these discussions lead to proposed legislative action, such as amendments to a comprehensive plan, the County Council and City Council are not bound to take any specific future action.

Section 18. Effective Date, Duration and Termination

This agreement shall be effective on July 1, 2022 if signed by both the Mayor of the City and Whatcom County Executive. This agreement shall remain in effect until June 30, 2032, unless modified or terminated by written agreement of both parties.

Section 19. Severability

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

Each signatory below to this agreement warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the agreement and bind the party thereto.

CITY OF NOOKSACK

DocuSigned by:
By Kevin W. Hester
1A741560280F41A...
Kevin Hester, Mayor

WHATCOM COUNTY

DocuSigned by:
By Satpal Sidhu
1192C7C18B864E3...
Satpal Sidhu, County Executive

Date 7/7/2022

Date 7/7/2022

Approved as to form:
Office of the City Attorney

Approved as to form:
Whatcom County Prosecutor

DocuSigned by:
Catherine Moore for ROBERT Carmichael
FBBDC741692F406...

DocuSigned by:
Royce Buckingham 6/29/2022
4EE6DDDD9642404...

EXHIBIT A

COUNTY ROAD AND STORMWATER PROJECTS
REQUIRING POTENTIAL REIMBURSEMENT

No County road or stormwater projects, potentially requiring reimbursement under Section 6.C of this interlocal agreement, have been identified in the Nooksack UGA.

EXHIBIT B

COUNTY OWNED PARK, OPEN SPACE AND RECREATIONAL FACILITIES
WITHIN THE UGA

There are no County owned facilities within the Nooksack UGA at the time of this agreement.