



## CITY OF KIRKLAND

Department of Public Works  
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800  
www.kirklandwa.gov

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### MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Jamie Ward, Development Engineer  
John Burkhalter, Development Engineering Manager  
John Starbard, Deputy Director of Public Works  
Kathy Brown, Director of Public Works

**Date:** August 22, 2019

**Subject:** LATECOMER AGREEMENT WITH GREG FINN—STORM WATER FACILITIES

### **RECOMMENDATION:**

It is recommended that City Council approve the proposed Resolution authorizing the City Manager to enter into a Storm Facilities Agreement with Greg Finn.

### **BACKGROUND AND DISCUSSION:**

Property developers sometimes are required to install public infrastructure that is of a greater capacity or a longer distance than is needed for that developer's project alone because of the location, or other factor, of the property that is being developed. In such a case, State law allows the developer the option to enter into a latecomer agreement with the municipality in which the property is located that enables the developer to be proportionally reimbursed over time by future development that connects to that infrastructure. Latecomer agreements are available for street improvements (RCW 35.72) and utility improvements (RCW 35.91).

A utility latecomer agreement must be at least twenty years in duration, and it establishes the latecomer fee(s) that the municipality will charge to and collect from future developers whose project connects to or uses the main line infrastructure. The municipality may retain a reasonable fee for administering the agreement, then remits the balance of the fee to the developer who caused the infrastructure to be built. Utility-related latecomer agreements may be for domestic water, sanitary sewer, or storm water infrastructure.

Latecomer fees are calculated by dividing the total number of lots or properties being served—now or projected to be in the future—into the total cost that was paid by the developer for the utility main extension. This yields the latecomer charge per lot. Properties being served are categorized as receiving either "direct benefit," meaning a future lot can tap directly into the new main and thus receive a benefit equal to one of the developer's lots, or "general benefit," meaning a future lot will need to extend the main line further to make a connection for that lot and perhaps others. General benefit latecomer fees are less than direct benefit latecomer fees. Fifteen percent of the latecomer fee is retained by the City for administering the agreement, and eighty-five percent of the fee is remitted to the developer. Kirkland uses the terms "latecomer agreement" and "facilities agreement" interchangeably.

**Public Infrastructure Installed**

Greg Finn redeveloped one single-family home at 345-10<sup>th</sup> Avenue (Attachment A). As a condition of approval, Mr. Finn was required to install 166 linear feet of storm drainage main extension in the alleyway between 9<sup>th</sup> Avenue and 10<sup>th</sup> Avenue (Exhibit A). The new storm drainage main serves Mr. Finn's property and can serve three neighboring parcels ("Benefit Area").

Mr. Finn paid a total of \$23,296 for the storm drainage extension, \$5,824 of which is a direct benefit to Mr. Finn's property. As shown in the Latecomers Assessment Roll attached to the Agreement, a total of four lots could be served by this new public infrastructure, including Mr. Finn's, and all four do or would receive a direct benefit. Over the twenty-year term of the Agreement, Mr. Finn may recover an additional \$14,851.20 and the City may collect \$2,620.80 in administrative fees. Property owners listed on the Latecomers Assessment Roll who apply for connection to the storm drainage main will pay the amount identified in the Agreement plus usual Kirkland connection fees. All new development or redevelopment in the Benefit Area will need to connect to the storm drainage main, though existing developed properties that are not planning redevelopment will have the choice to connect.

Upon approval of the proposed resolution via approval of the consent calendar and subsequent signing of the agreement by the City Manager, the agreement will be sent to King County for recording. Finally, notice of latecomer connection charges will be sent to each property owner included in the agreement.

Attached: Vicinity Map  
Proposed Resolution  
Exhibit A: Storm Drainage Facilities Agreement



RESOLUTION R-5382

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A STORM FACILITIES AGREEMENT WITH GREG FINN AND AUTHORIZING THE CITY MANAGER TO SIGN SAID AGREEMENT ON BEHALF OF THE CITY OF KIRKLAND.

1           WHEREAS, the improvement of public health is furthered by  
2 adequate storm water control systems; and  
3

4           WHEREAS, the Washington State Legislature enacted the  
5 Municipal Water and Sewer Facilities Act (RCW 35.91.010 et seq.) in  
6 furtherance of this goal and authorizing municipalities to enter into  
7 agreements of this nature; and  
8

9           WHEREAS, The City of Kirkland concludes entering into this  
10 agreement will promote this goal.  
11

12           NOW, THEREFORE, be it resolved by the City Council of the City  
13 of Kirkland as follows:  
14

15           Section 1. The City Manager is hereby authorized and directed  
16 to execute on behalf of the City, the Storm Facilities Agreement between  
17 the City and Greg Finn. A copy of this Agreement is attached as Exhibit  
18 A.  
19

20           Passed by majority vote of the Kirkland City Council in open  
21 meeting this 3<sup>rd</sup> day of September, 2019.  
22

23           Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_,  
24 2019.

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

# Greg Finn Storm Facilities Agreement



## STORM FACILITIES AGREEMENT PURSUANT TO CHAPTER 35.91 REVISED CODE OF WASHINGTON

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THIS AGREEMENT made and entered into this day, pursuant to RCW Chapter 35.91, between the City of Kirkland, a non-charter optional code city, hereinafter referred to as “City” and Greg Finn hereinafter referred to as “Developer”:

WITNESSETH

Section 1. Developer does hereby agree to construct, at its sole expense, the STORM FACILITIES described in EXHIBIT 1, attached hereto and by this reference incorporated herein, all in accordance with the specifications and standards of the City of Kirkland pertaining to STORM construction and installation.

Section 2. Upon completion of said storm facilities to the satisfaction of the Kirkland Director of Public Works, and acceptance thereof by the City of Kirkland, said facility shall become the property of the City of Kirkland and a part of its storm system with full power of the City of Kirkland to charge for its use such storm connection and service rates and charges as the City of Kirkland may be authorized by law to establish, and all further maintenance operation costs of said facility shall be borne by the City of Kirkland.

Section 3. The benefit area to be served by said facility is described and designated on EXHIBIT 1 attached to this agreement and by this reference incorporated herein. Said Exhibit is a map showing the total benefit area and delineating thereon that portion of the benefit area owned by Developer. EXHIBIT 2 attached to this agreement and by this reference incorporated herein is a listing of each lot or parcel within the benefit area including the lot or parcel legal description and the lot of parcel's "pro rata share" of the cost of construction of the storm facilities. EXHIBIT 2 identifies those lots or parcels owned by Developer and not subject to the provisions of Section 4 of this agreement.

Section 4. Any owner of any real property located within the benefit area (other than those properties designated in EXHIBIT 1 as Developer’s properties) who shall hereafter tap into or use said storm facility (including not only connecting directly into, but also to users connecting laterals or branches connected thereto) shall, prior to such tap in or use, pay to the City of Kirkland, in addition to any connection or other change required by the ordinances of the City of Kirkland to be paid upon connecting to a storm facility, their fair pro rata share of the cost of construction of said facility.

Section 5. For the purposes of determining such “fair pro rata share” the cost of construction of said facility shall be considered to be \$23,296.00 provided, however, the City may adjust said cost to reflect the true and final cost of construction of said facility. The “FAIR PRO RATA SHARE” of the cost of construction as designated on EXHIBIT 2, and is hereby approved by the City of Kirkland.

Section 6. Within sixty (60) days after receipt by the City of any "fair pro rata share," the City shall disburse said sum, less fifteen (15) percent thereof to be retained by the City of Kirkland to cover costs of administering the provisions of this agreement, to Developer at Greg Finn, 345 10<sup>th</sup> Ave Kirkland, WA 98033, until such time as Developer shall have received the total sum of \$14,851.20, or the expiration of twenty (20) years from the date of this agreement, whichever event shall first occur. Thereafter, any amount of charge made or received by the City to tap into or use said facility shall be retained by the City. It shall be the duty of the Developer to advise the City of any change in the Developer's mailing address.

Section 7. The provisions of this agreement shall not be effective as to any owner of real property designated in EXHIBIT 2, other than Developer, until such time as this agreement shall have been recorded in the Office of the King County Department of Elections and Records and then only as to such real property owners as tap into or connect into said facility subsequent to such recording. City shall not be required to disburse any "fair pro rata share" to Developer which may not be lawfully collected from such real property owner at the time said real property taps into or connects to said facility.

Section 8. In the event the cost, or any part thereof, of a or storm improvement, whether local or general, is or will be assessed against the owners of real property and such improvement will be connected into or will make use of the facility constructed pursuant to this agreement and the cost thereof was not contributed to by the owners of said real property, there shall be included in the Engineer's estimate for the hearing or any such improvement, separately itemized, and in such assessments, a sum equal to the amount provided for in this agreement as a fair pro rata share due from such owners in accordance with the provisions of this agreement.

Section 9. No person, firm, or corporation, other than Developer's, as to the real property identified as owned by Developer in EXHIBIT 2 hereto, shall be granted a permit or authorized to tap into or use said facility or extensions thereof without first paying their fair pro rata share as herein provided.

DATED at Kirkland, Washington, this 21 day of AUGUST, 2019.

CITY OF KIRKLAND:

DEVELOPER:

\_\_\_\_\_  
CITY MANAGER FOR THE City of Kirkland  
KIRKLAND WHO IS AUTHORIZED TO  
EXECUTE THIS AGREEMENT ON  
BEHALF OF SAID CITY BY VIRTUE  
OF RESOLUTION NO. \_\_\_\_\_

GREGORY & CORNIE FINN  
\_\_\_\_\_  
By: [Signature]  
By: [Signature]

(Sign in blue ink)

(Individuals Only)

OWNER(S) OF REAL PROPERTY (INCLUDING SPOUSE)

[Signature]  
[Signature]



(Individuals Only)

STATE OF WASHINGTON )

County of King ) SS.

On this 21<sup>st</sup> day of August, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Gregory Finn and Connie Finn to me known to be the individual(s) described herein and who executed the Storm Facilities Agreement and acknowledged that they signed the same as themselves free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

[Signature]  
Notary's Signature

marla c. Oswald  
Print Notary's Name

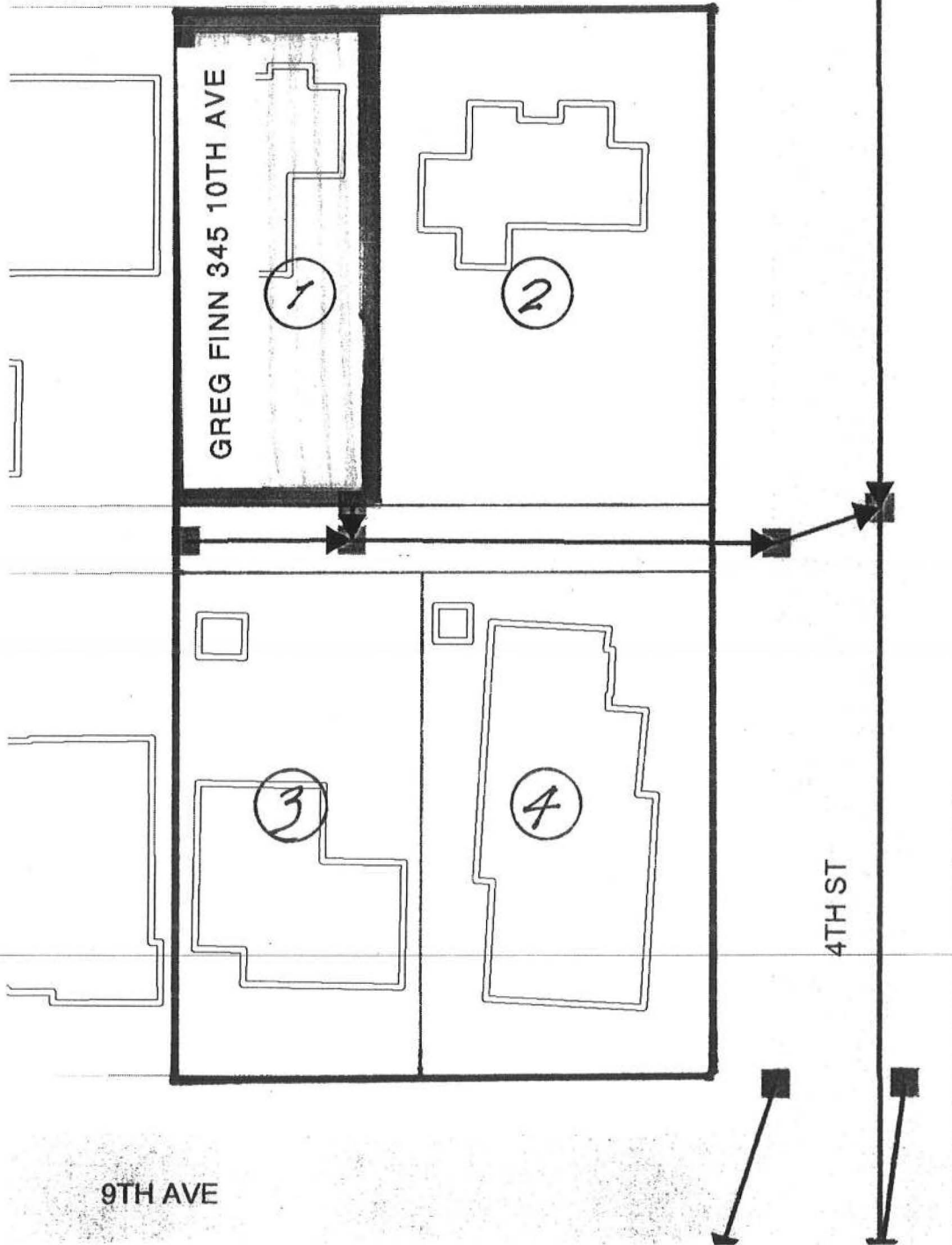
Notary Public in and for the State of Washington, Residing at:

Gold Bar, WA  
My commission expires: 4/15/2023



10TH AVE

# EXHIBIT 1



9TH AVE

Greg Finn Developer's Assessment Roll

EXHIBIT 12

Ref No.	Tax/Parcel No.	Owner/Address	Abbreviated Legal Description	Lot Area	Direct Benefit Total LF	General Benefit Total LF	Direct Benefit Cost	General Benefit Cost	Total Cost	Reimburse Developer @ 85%	Reimburse City @ 15%
1	124500-3660	Grag Finn, 345 10th Ave Kirkland WA 98033	Lot A of Kirkland LLA, LL94-37, Recorded under KC. Rec. No. 9407121502	6,000	6,000				\$5,824.00		
2	124500-3665	Douglas Chickering, 349 10th Ave, Kirkland, WA 98033	Lots 11 and 12, Block 141, Burke & Farra's addn, Vol 21 of Plats, Page 90, KC	9,600	9,600		\$5,824.00		\$ 5,824.00	\$ 4,950.40	\$ 873.60
3	388580-5055	Roy Kunz, 340 9th ave Kirkland, WA 98033	Lots 33 and 34, Block 166, Town of Kirkland, Vol 6 of Plats, Page 6, KC	7,200	7,200		\$5,824.00		\$ 5,824.00	\$ 4,950.40	\$ 873.60
4	388580-05065	Zus Khosh, 907 4th ST, Kirkland, WA, 98033	Lots 35 and 36, Block 166, Maps of Kirkland, Vol 6 of Plats, Page 83 KC, WA	8,400	8,400		\$5,824.00		\$ 5,824.00	\$ 4,950.40	\$ 873.60
<b>TOTALS</b>				<b>31,200</b>	<b>31,200</b>	<b>0</b>	<b>\$17,472.00</b>	<b>\$ -</b>	<b>\$ 23,296.00</b>	<b>\$ 14,851.20</b>	<b>\$ 2,620.80</b>