

# Council Agenda Coversheet



Council Date: 01/15/2013

Category: Consent Calendar

Agenda Item: C4

Key Element: Key 3 - Economic Vitality

Subject: AUTHORIZING A PRE-ANNEXATION AGREEMENT TO BE USED IN THE REATA ROAD ANNEXATION

Department: Community and Development Services

Ordinance/Resolution:

Reference:

Document Type: Contract/Agreement/Lease

### Recommended Motion:

Authorize the City Manager to sign and execute pre-annexation agreements with two property owners that are located within the proposed 137 acre annexation area, south of Reata Road.

### Summary:

Council passed Resolution No. 90-12 on November 5, 2012, authorizing the circulation of an annexation petition for a 137 acre annexation proposal for lands located south of Reata Road (see the attached vicinity map). Most of the annexation proponents are interested in the formation of a Local Improvement District (LID) so that City water and sewer services can be extended to enhance the future development potential of their properties. They are pursuing annexation as the first step in forming this LID. Two property owners within the proposed annexation area would not benefit at this time, from the extension of water and sewer lines to their properties and so have not been supporters of the LID. They are Steve Westermeyer owner of an RV storage facility and the Del Ray Development Company that owns the mini-storage facility in the proposed annexations area. The City cannot annex properties without the support of property owners representing at least 60% of the assessed valuation of the proposed annexation area. These two owners represent over 50% of the assessed valuation of the proposed annexation and so annexation is not possible without their support.

These two owners are not opposed to being annexed into the City, but do not wish to be assessed for an LID that they do not need. Since their properties are already improved and they have no plans to redevelop, they are in a different situation than other property owners within the proposed annexation area who have not yet developed their properties. Given this situation, it is not unreasonable to exempt these developed properties from the LID anticipated after the area is annexed. The attached pre-annexation agreement would formalize this understanding by exempting these two owners from the formation of an LID should the annexation be finalized. The agreement specifies that if these owners connect to City water and/or sewer services in the future, they would be subject to the payment of connection fees equivalent to what they would have paid if they had participated in the LID. Approval of the agreement would allow the City to collect the signatures necessary for the annexation to move ahead. If sufficient signatures can be obtained on the annexation petition, a public hearing will be scheduled before Council to provide Council with the opportunity to adopt an ordinance annexing the area. Once annexed, the remaining property owners can work to form an LID for the extension of City utilities.

Fiscal Impact?  
 Yes  No

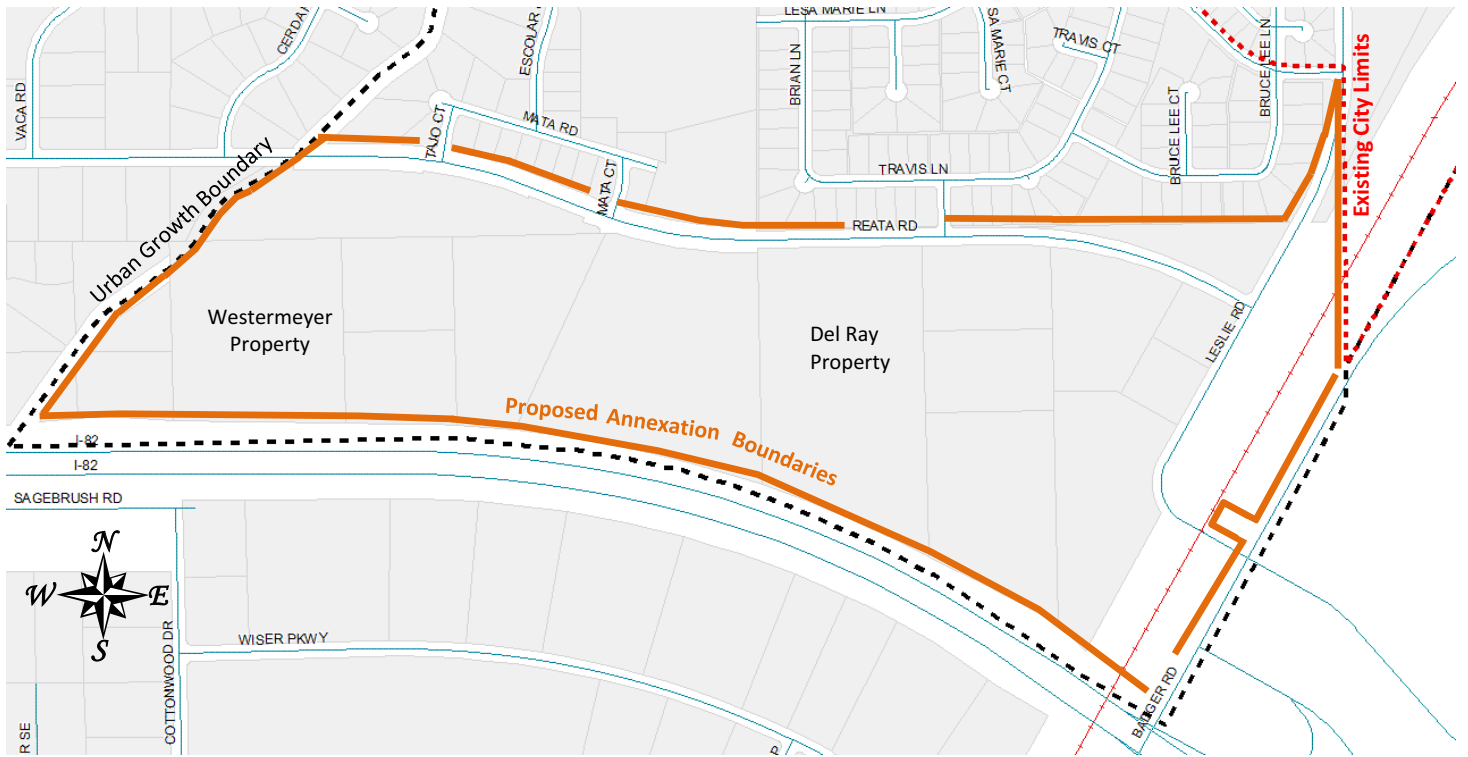
There are fiscal impacts associated with annexation. The City would realize property tax revenues and sales tax revenues from the annexed area but would also be responsible for providing City services. Staff will prepare a fiscal report on the annexation at the time that a formal public hearing is scheduled before Council.

### Attachments:

- 1) Vicinity Map
- 2) Draft Pre-Annexation Agreement

City Manager Approved:

Johnson, Cindy  
Jan 10, 13:52:04 GMT-0800 2013



ATTACHMENT 1 - VICINITY MAP

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## PRE-ANNEXATION AGREEMENT

1. Date and Parties. THIS DOCUMENT (“AGREEMENT”), is dated the \_\_\_\_ day of \_\_\_\_\_, 2012, and is made and entered into by and between City of Richland, a Washington municipal corporation (the “City”) and Del Ray Development Company, Inc. (“Owner”).

2. Recitals.

2.1 The Owner owns the real property described in Exhibit A attached hereto ("the Property").

2.2 The Property is included in a proposed annexation commonly referred to as the Reata Road Properties Annexation. The area within the Reata Roads Properties Annexation area is contiguous to the present corporate boundaries of the City of Richland and is within the City's urban growth area. A map of the properties included in the proposed Reata Road Properties Annexation is attached hereto as Exhibit B (“Reata Road Properties”).

2.3 Upon annexation of the Reata Road Properties, the City intends to form a local improvement district to fund the construction of water and sewer mains and appurtenances that will serve the Reata Road Properties and other properties (the “LID”).

2.4 The Property is already developed with existing commercial uses with on-site water and septic systems, and would not presently use the City’s extension of water and sewer service that would be constructed and funded in the LID.

2.5 The City and the Owner desire to enter into this Agreement to set forth the terms and conditions on which the Owner’s consent to annexation of the Property into the City.

3. Consent to Annexation. The Owner hereby consents to the annexation of all the Property into the City of Richland, and the simultaneous adoption of land use regulations, and the assumption of a fair portion of the City of Richland’s existing indebtedness, and agrees to sign, whenever requested, any letter, petition or other document necessary to effectuate such annexation.

4. Waiver of Protest. The Owner hereby covenants and agrees not to protest or challenge by referendum or any other method, any annexation of the Property to the City of Richland.

5. Limited Power of Attorney. The Owner hereby grants and conveys to the City an irrevocable special power of attorney to sign on behalf of the Owner, any letter, petition, or any other document necessary to annex all or any portion of the Property to the City of Richland. This power of attorney shall be considered a power coupled with an interest and shall remain in full force and effect for five years from the date of recording of this Agreement, and shall terminate at the end of such five year period.

6. LID Exclusion. The City shall not include any portion of the Property in the LID that is formed to fund the construction of water and sewer mains and appurtenances that will serve the Reata Road Properties and other properties.

7. Connection Charge. Prior to connection of the Property to the City's public water or sewer system, the Owner shall pay to the City and the City shall collect from the Owner, in addition to all other applicable fees and charges, a connection charge equal to the amount the Property would have been assessed had it been included in the LID, based upon the same formula used to determine the LID assessments for the LID participants. The connection charge shall be imposed through a latecomer's agreement in accordance with Chapter 35.91 RCW and Chapter 3.10 of the Richland Municipal Code. The City Council shall hold a public hearing prior to adoption of the latecomer's agreement. The City shall provide the Owner with the preliminary connection charge amount and calculation, and notice of the public hearing at least 20 days prior to the public hearing. The City shall have no obligation to provide public water or sewer service to the Property unless the connection charge is paid.

8. Connection Required. Owner shall be required to connect the Property to the City's public water and sewer systems under any of the following circumstances:

8.1 When the Benton-Franklin district health department, or any state or local agency with jurisdiction over on-site sewage systems determines that the private sewer system serving the Property has failed or is defective;

8.2 When the Benton-Franklin district health department, or any state or local agency with jurisdiction over potable water supplies determines that the private water system serving the Property has failed or is defective; or

8.3 Prior to issuance of any building permit for an additional improvement on the Property for which an authorized regulatory official requires connection to the City utility systems.

9. Notices.

9.1 All notices under this Agreement to the Owner shall be sent to the mailing address shown on the County Assessor's rolls for the Property.

9.2. All notices under this Agreement to the City shall be sent to the following address:

City of Richland  
Community and Development Services  
P.O. Box 190, MS 02  
Richland, WA 99352

10. Covenant Running With the Land. This Agreement shall be binding on the City and the Owner and their respective successors, grantees and assignees. This Agreement shall constitute a covenant running with Property, and shall be recorded with the Benton County Auditor.

11. Enforcement and Attorneys Fees. This Agreement may be specifically enforced in equity in addition to any other remedy provided by law. In the event suit is brought to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys fees from the other party.

12. Governing Law and Venue. Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Benton County Superior Court.

OWNER:

By: \_\_\_\_\_

Its: \_\_\_\_\_

THE CITY:

City of Richland, Washington

By: \_\_\_\_\_

Cynthia D. Johnson  
City Manager

ATTEST:

\_\_\_\_\_  
Marcia Hopkins  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas O. Lampson  
City Attorney

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Del Ray Development Company, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
Print Name: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of Benton )

I certify that I know or have satisfactory evidence that Cynthia D. Johnson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Richland to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
Print Name: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**EXHIBIT A**  
**Description of Property**

THE WEST 750.50 FEET OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 8 NORTH, RANGE 28 EAST, W.M., BENTON COUNTY, WASHINGTON, LYING NORTHERLY OF SR 82 RIGHT OF WAY.

Assessors Tax Parcel Nos. 111881000006000

**EXHIBIT B**  
**Map of Reata Road Properties Annexation Area**