

**INTERLOCAL AGREEMENT
FOR PLAN REVIEW AND PERMIT SERVICES
RELATED TO THE GATEWAY DIVISION II UGA ANNEXATION**

THIS AGREEMENT is made and entered into the 28th day of March, 2018. The parties to this Agreement are the City of Lacey, a State of Washington municipal corporation ("City") and Thurston County, a political subdivision of the State of Washington ("County").

WHEREAS, on November 13, 2017, the City filed a complete Notice of Intention to the Thurston County Boundary Review Board (BRB) for the annexation of 73.77 acres within the City of Lacey Urban Growth Area, known as the Gateway Division II subdivision (Annexation Area); and

WHEREAS, on July 21, 2014, the County issued a preliminary plat approval for the Annexation Area upon request by landowner, SSHI, dba DR Horton (DR Horton) and the County does not anticipate final plat approval until sometime after the annexation takes effect; and

WHEREAS, DR Horton submitted a petition for review of the annexation to the BRB, as amended, on December 19, 2017, seeking clarity and delay of the annexation date to accommodate the execution of an interlocal annexation between the City and County; and

WHEREAS, the County submitted a separate petition for review to the BRB on December 27, 2017, seeking modification or denial of the City's proposed annexation; and

WHEREAS, the City and County wish to enter into this Agreement, relating to specific plan reviews and permit fees specific to Gateway II Annexation for purposes of avoiding the cost and expense of litigation, furthering the timely development review of the annexation area, and to accomplish an orderly transfer of contiguous lands within growth areas; and

WHEREAS, the City seeks continuity in performing plan review for those pending developments as detailed in this Agreement; and

WHEREAS, the County seeks a permitting process that avoids undue financial hardship or loss of fees that are needed to address local impacts to the County's infrastructure; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by the Growth Management Act, codified as Chapter 36.70A RCW, the Governmental Services Act, codified at Chapter 36.115 RCW, the Interlocal Cooperation Act, codified at Chapter 39.34 RCW, and other Washington law, as amended;

NOW THEREFORE, in consideration of the mutual terms, provisions and obligations contained herein, it is agreed by and between the City and the County as follows:

1. EFFECTIVE DATE. This Agreement shall become effective as of the date of the last signature hereon, (effective date).
2. PLAN REVIEW AND PERMITTING SERVICES.

a. County. The City and County (Parties) agree that the County shall provide plan review and permitting services for new residential construction for up to one hundred and seven (107) residential permit applications or the actual number of complete applications received by the County prior to twelve months after the effective date of this agreement, whichever is less.

i. Any permit applications for proposals within the Annexation Area, received by the County prior to the effective date of this agreement shall also count as part of the one hundred and seven (107) permits, as described above. The County's plan review and permitting shall only apply to applications for construction located within the Annexation Area, as described in Exhibit A and attached hereto and incorporated herein, except as provided in 2(b)(iv) below.

ii. The County will require payment of its own permit fees by permit applicants, including but not limited to any applicable impact fees, for the portion of applications processed under 2(a) of this agreement.

iii. The County's plan review and permitting services under 2(a) of this agreement applies to new residential construction only. Additions and remodels to existing homes will be reviewed and processed by the City. When the County receives applications for additions and remodels to existing homes, the County will timely transmit the applications and any associated documents electronically to the City for the City to review and issue a final decision.

iv. The County will review applications, under this agreement, based on city codes and regulations and to City standards. The County also acknowledges that any mitigation required under the State Environmental Policy Act (SEPA), including but not limited to fees due to the City, applies to Plat No. 2013104165 in its entirety.

v. The County agrees to complete the final plat review and approval of the first phase of Gateway Division Plat No. 2013104165 (known as "2A") to assure all conditions of preliminary plat approval and other platting legal requirements are met by the developer. The County will hold, inspect, issue final approval and authorize release of performance bonds submitted by the developer for the completion of the public improvements. The County shall consult with the City prior to issuance of final approval and release of performance bonds under this subsection.

vi. The County will complete civil review of the second phase of Gateway Division Plat No. 2013104165 (known as "2B") and issue plan approvals. The County will then transfer the files to the City for the City to assume the inspection schedule. The final plat, inspection and approvals of Gateway Division 2B will be conducted by the City.

vii. The Parties acknowledge and agree that the County's preliminary plat approval, dated July 21, 2014, is binding on the applicant for the development of both Gateway Division 2A and 2B. The City will implement all conditions and terms of the County's plat approval when the City conducts final plat inspection and approvals of Gateway Division 2B.

viii. The Parties agree that all maintenance bonds submitted for public improvements associated with Gateway Division Plat No. 2013104165 2A and 2B will be transferred to the City for the management of the bond release program.

b. City. The Parties agree that the City shall provide full plan review and permitting services within the Annexation Area for all permit applications beyond what the County reviews under 2(a) above.

i. When the City receives permit applications that are to be reviewed and processed by the County under 2(a), the City will not accept or keep such applications and will promptly refer the applicant to the County for submittal.

ii. Upon request by the County, the City shall provide consultation services when needed to interpret and implement City codes and regulations, as required under 2(a)(iv). The Parties acknowledge that such consultation comes at a cost to the City and that the applicant shall pay the City's Design Review fee of \$96.79 as adopted under the City's fee schedule.

iii. The City agrees to apply all requirements required under SEPA and under the final plat approval of Gateway II, Plat No. 2013104165, including but not limited to the payment of fees for impacts to County roads, as required by the County's preliminary plat approval.

iv. Notwithstanding (2)(a) above, the Parties agree that the City, and not the County, shall provide full plan review and permitting services within the area known as the multi-family tract, Parcel B of BLA 16102656TC, as further described in Exhibit B and attached hereto and incorporated herein.

3. EFFECTIVE DATE OF ANNEXATION. For purposes of this Agreement, the effective date of annexation for the Annexation Area shall be the same as the effective date of this Agreement. The Parties acknowledge that, due to the petitions for review of the annexation to the BRB, said date may be different than the date the Annexation Area is legally annexed to the City of Lacey (Annexation date), depending upon the final disposition of the BRB. The Parties also acknowledge that except as conditioned and provided by this Agreement, all future applications shall vest under applicable City land use regulations, adopted at the time such applications are received.

4. ANNEXATION SERVICES AND ENFORCEMENT. As of the date the Annexation Area is legally annexed to the City of Lacey (Annexation date), police services shall transfer to the City for the entire Annexation Area. Pursuant to RCW 52.08.025, fire and related emergency services will transfer to Fire District 3 at that same time. All misdemeanors and infractions committed within the Annexation Area prior to the Annexation date shall be prosecuted by the County. All misdemeanors and infractions committed within the Annexation Area after the Annexation date shall be prosecuted by the City. All land use enforcement responsibilities for the entire Annexation Area shall also transfer to the City as of the Annexation date.

5. DATA TRANSFER. The County will provide the City with the files and data for permits issued by the County in the Annexation Area. Specifically, the City requests all land use approvals (plats, BSPs, CUPs, hearings examiner records, site plans, and SEPA). The files and other data shall be transferred electronically where possible in PDF format at a minimum of 300 dpi. Such files and data may be provided in installments.

6. INDEMNIFICATION.

a. City Indemnification. The City agrees to indemnify, defend and hold the County, its elected officials, commissioners, officers, employees, agents and volunteers harmless from any and

all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent caused by the negligent acts, errors, or omissions of the City, its elected officials, commissioners, officers, employees, agents and volunteers, or by the City's breach of this Agreement.

b. County Indemnification. The County agrees to indemnify, defend and hold the City, it selected officials, commissioners, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the County, its elected officials, commissioners, officers, employees, agents, and volunteers, or by the County's breach of this Agreement.

c. Survival. The provision of this Indemnification Section shall survive the expiration or termination of the Agreement with respect to any event occurring prior to such expiration or termination.

7. GENERAL PROVISIONS.

a. Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purposes.

b. Filing. A copy of this Agreement shall be filed with the Lacey City Clerk and recorded with the Thurston County Auditor and posted on each website.

c. Records. Both Parties shall maintain adequate records to document obligations performed under this Agreement. Both parties shall have the right to review the other Party's records with regard to the subject matter of this Agreement upon reasonable notice. Such rights last for six (6) years from the date of permit issuance for each specific development subject to this Agreement.

d. Amendments. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties.

e. Severability. If one or more of the clauses of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal, or contrary to public policy.

f. Assignment. Neither the City nor the County shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

g. Successors in Interest. Subject to the foregoing Subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs, and assigns.

h. Dispute Resolution. The Parties mutually agree to use a formal dispute resolution process such as mediation, through an agreed upon mediator and process, if agreement cannot be reached regarding interpretation or implementation of any provision of this Agreement. All costs for mediation services would be divided equally between the Parties. Each jurisdiction would be responsible for the costs of their own legal representation.

i. Attorney's fees. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorney's fees, costs and expenses.

j. No waiver. Failure of either the County or the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.

k. Applicable Law. Washington law shall govern the interpretation of this Agreement. Any lawsuit arising out of this Agreement shall be brought in the superior court of either of the two nearest judicial districts as determined pursuant to RCW 36.01.050.

l. Authority. Each individual executing this Agreement on behalf of the City and the County represents and warrants that such individuals are duly authorized to execute and deliver the Agreement on behalf of the City or the County.

m. Notices. Any notices required to be given by the Parties and so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

n. Performance. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

o. Equal Opportunity to Draft. The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

IN WITNESS THEROF, the Parties have executed this Agreement.

CITY:



Scott Spence, City Manager

Date: March 28, 2018

COUNTY:



Bud Blake, Chair



John Hutchings, Vice-Chair



Gary Edwards, Commissioner

Date: 3/28/18

ATTEST:



for Carol Litten, City Clerk

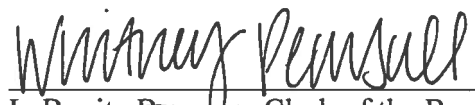
Date: 3/28/18

APPROVED AS TO FORM:



David Schneider, City Attorney

ATTEST:



LaBonita Bowmar, Clerk of the Board, Acting
Whitney Pearsall

Date: 3/23/18

APPROVED AS TO FORM:



Travis Burns
Deputy Prosecuting Attorney

EXHIBIT A

Exhibit A

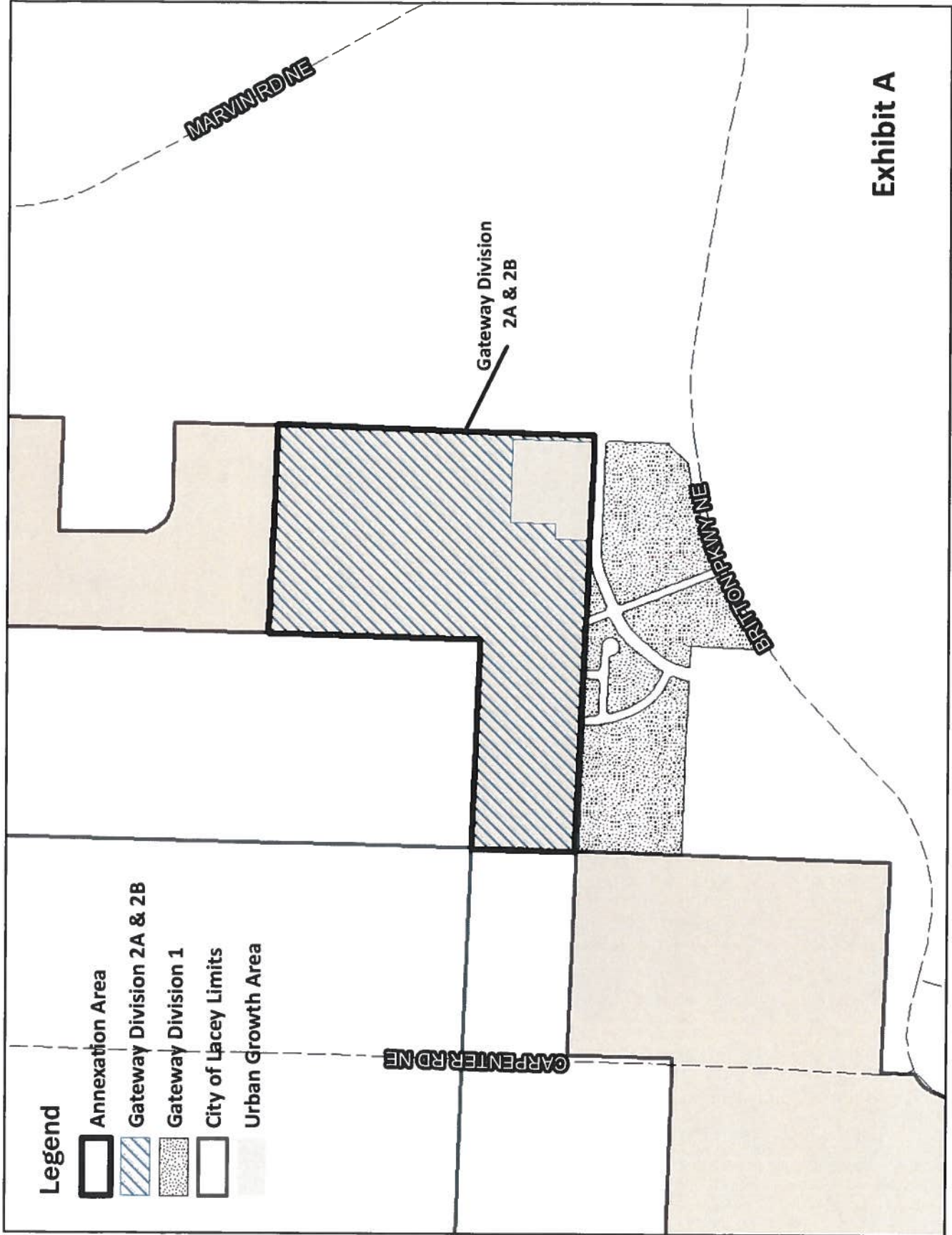







EXHIBIT B

Legend

-  Annexation Area
-  Multi-family tract
-  Gateway Division 1
-  City of Lacey Limits
-  Urban Growth Area

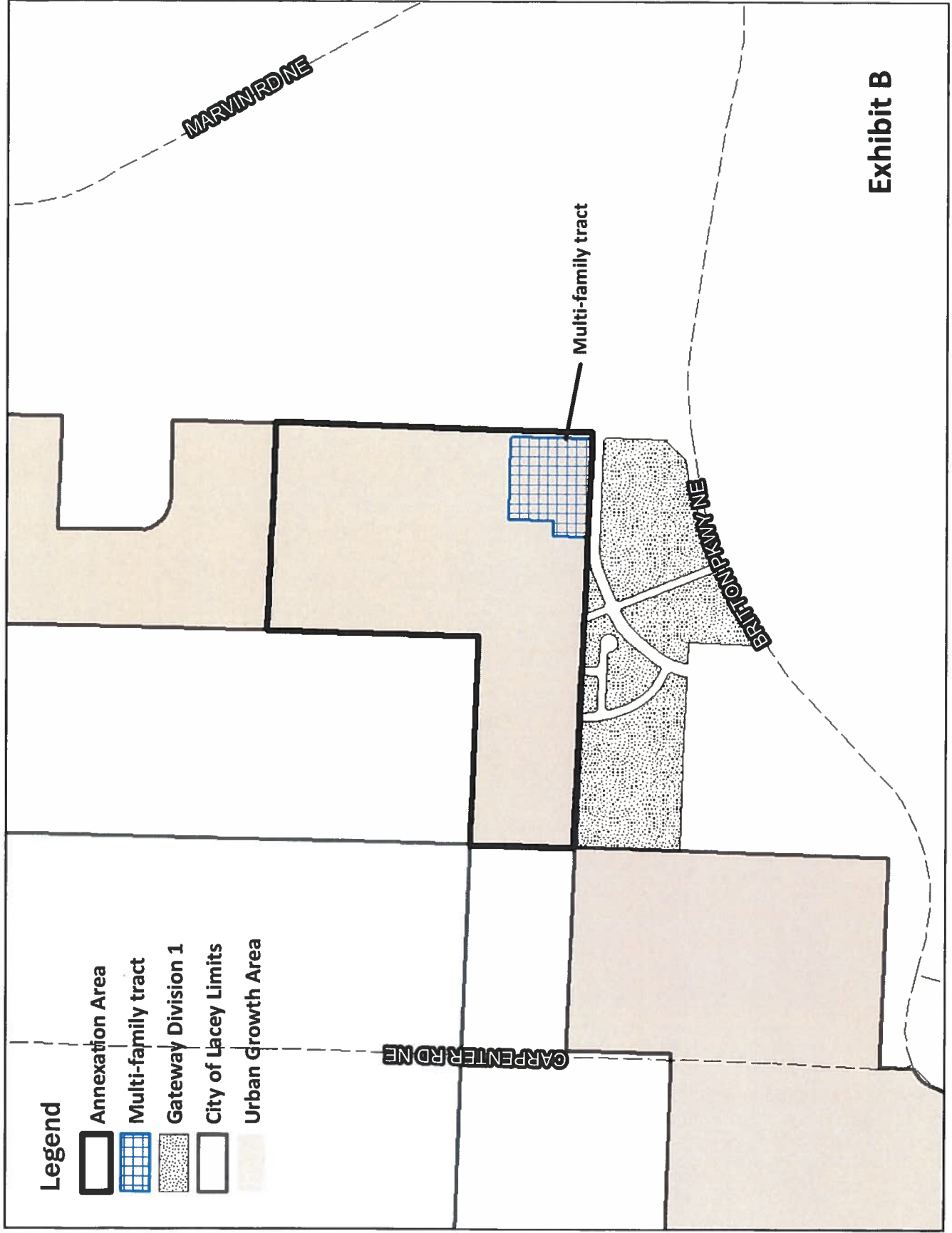


Exhibit B