



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 27, 2004

Ordinance 15015

Proposed No. 2004-0353.1

Sponsors Constantine and Edmonds

1 AN ORDINANCE authorizing the executive to enter into
2 an intergovernmental agreement with the city of Seattle
3 relating to the ownership, operation and maintenance of
4 South Park Farm.

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6

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 **SECTION 1. Findings.**

9 A. King County is facing a multiyear fiscal crisis that is forcing major cuts in all
10 non-mandated government services funded by the current expense fund and as a result
11 does not have a sufficient, stable source of revenue to continue to operate and maintain
12 parks that are located within the boundaries of cities.

13 B. The county owns certain parcels of park and open space land, collectively
14 known as South Park Farm. South Park Farm is located entirely within the boundaries of
15 the city of Seattle and is used by the city's P-Patch program and community gardeners.

16 C. The county and the city of Seattle have agreed on the terms of an agreement
17 known as Intergovernmental Land Transfer Agreement between King County and the

18 City of Seattle relating to the ownership, operation and maintenance of South Park Farm
19 ("agreement").

20 D. The agreement provides for the transfer of ownership of South Park Farm to
21 the city of Seattle.

22 E. The agreement serves an important county purpose by ensuring that South
23 Park Farm will remain open and available to county residents, while the county is
24 relieved of maintenance and operation obligations.

25 SECTION 2. The King County executive is hereby authorized to enter into the
26 Intergovernmental Land Transfer Agreement between King County and the City of
27 Seattle relating to the ownership, operation and maintenance of South Park Farm

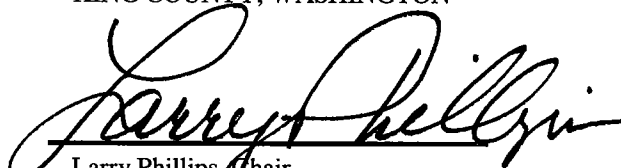
Ordinance 15015

28 substantially in the form attached to this ordinance, along with such other documents as
29 are necessary to complete the transfer consistent with the agreement.
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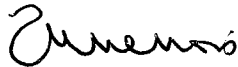
Ordinance 15015 was introduced on 7/19/2004 and passed by the Metropolitan King
County Council on 9/27/2004, by the following vote:

Yes: 12 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.
Pelz, Mr. McKenna, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Mr. Irons,
Ms. Patterson and Mr. Constantine
No: 0
Excused: 1 - Ms. Hague

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Larry Phillips, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 30 day of September 2004.


Ron Sims, County Executive

Attachments A. Intergovernmental Land Transfer Agreement between King County and the City of
Seattle

RECEIVED
2004 OCT -5 PM 5:27
CLERK
KING COUNTY COUNCIL

**Intergovernmental Land Transfer Agreement Between
King County and the City of Seattle**

Relating to the Ownership, Operation and Maintenance of South Park Farm

This Agreement is made and entered into this _____ day of _____, 2004 by and between the City of Seattle, a Washington municipal corporation, hereinafter called "City", and King County, a political subdivision of the State of Washington, hereinafter called "County".

WHEREAS the County acquired the real property commonly known as South Park Farm under the authority of RCW 36.89.050, and other state statutes, as part of its park, recreation and open space system that depends on the continued operation of its many individual properties and facilities in order to fully serve the needs of the residents of King County and the cities within it; and

WHEREAS the County desires to divest itself of ownership, management, and financial responsibility for parks, open space, recreational facilities and programs, such as South Park Farm, that are located inside the City's boundaries; and

WHEREAS the County has determined that it does not have a sufficient, stable source of revenue to continue to manage and maintain South Park Farm at current levels; and

WHEREAS the County has determined that it is legally restricted from converting South Park Farm from its current uses without expending funds to replace the converted facilities; and

WHEREAS the County has determined that given the legal restriction regarding conversion of South Park Farm, the marketability is limited and, as a result, the value of the property to the County is approximately equal to the cost of operating it; and

WHEREAS, under RCW 36.89.050, the County may transfer South Park Farm to the City subject to the City's maintaining South Park Farm for park, open space and recreation purposes or replacing it with equivalent facilities; and

WHEREAS the County desires to transfer South Park Farm to the City for park, open space and recreation purposes in consideration of the City's covenant to maintain South Park Farm for those purposes, and the City is willing to accept ownership and responsibility to operate and maintain South Park Farm subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the County agree as follows:

1. Conveyance of Title

1.1. Within thirty (30) days of execution of this Agreement, the County shall convey to the City by bargain and sale deed, subject to those encumbrances identified in Exhibit A, all its right, title and interest in the property located in Seattle and known as South Park Farm, as legally described on Exhibit B attached hereto (the "Property").

1.2 The deed shall contain the following specific covenants pertaining to use, which covenants shall run with the land for the benefit of the County and the County land that makes up its public park, recreation and open space system. The County and the City agree that the County shall have standing to enforce these covenants, which shall be set forth as follows:

"The City, as required by RCW 36.89.050, covenants that the Property shall be continued to be used for open space, park, or recreation facility purposes or that other equivalent facilities within the County shall be conveyed to the County in exchange therefore."

"The City acknowledges that the Property was purchased for open space purposes with funds from Open Space Bonds authorized in 1989 by King County Ordinance 9071 and covenants that it shall abide by and enforce all terms, conditions and restrictions in Ordinance 9071, including that the City covenants that the Property will continue to be used for the purposes contemplated by Ordinance 9071, which would exclude both active recreation and motorized recreation such as off-road recreational vehicles but allows passive recreation, that the Property shall not be transferred or conveyed except by agreement providing that the Property shall continue to be used for the purposes contemplated by Ordinance 9071, and that the Property shall not be converted to a different use unless other equivalent lands and facilities within the County or the City shall be received in exchange therefore."

"The City covenants that it shall not use the Property in a manner that would cause the interest on County 1989 Open Space bonds related to the Property to no longer be exempt from federal income taxation."

"The City further covenants that it will not limit or restrict access to and use of the Property by non-city residents in any way that does not also apply to city residents. The City covenants that any and all user fees charged for the Property, including charges imposed by any lessees, concessionaires, service providers, and/or other assignees shall be at the same rate for non-city residents as for the residents of the city."

"The City covenants that it shall place the preceding covenants in any deed transferring the Property or a portion of the Property for public park, recreation or open space uses."

1.3 Upon conveyance of the deed, the City and the County agree that the City is the County's assign for the purposes of the indemnification provision contained in paragraph 5.7 of that certain Real Estate Purchase and Sale Agreement between Fibres International, LLC and King County, fully executed as of January 14, 1998, concerning that portion of the Property legally described as Parcels A and B on Exhibit B attached hereto and incorporated herein.

2. Existing Restrictions, Agreements, Contracts or Permits

2.1 The City shall abide by and enforce all terms, conditions, reservations, restrictions and covenants of title identified in Exhibit A and/or in the deed of conveyance.

3. Condition of Premises and Responsibility for Operations, Maintenance, Repairs, Improvements, and Recreation Services

3.1 The City has inspected and knows the condition of the Property and agrees to accept the Property in AS IS condition, subject to the provisions of Section 4 below, and to assume full and complete responsibility for all operations, maintenance, repairs, improvements of, and provision of recreational services at, the Property.

3.2 King County does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Property, and no official, employee, representative or agent of King County is authorized otherwise.

3.3 Prior to closing, the County will provide the City with contact information for the primary organizations that use the Property.

3.4 The City acknowledges and agrees that except as specified in paragraph 4.2, the County shall have no liability for, and that the City shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Property without regard to whether such defect or deficiency was known or discoverable by the City or the County.

4. Environmental Liability

4.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.

4.2 Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that the City might have against the County under federal or state environmental statutes that arises from Hazardous Materials deposited or released on the Property by the County during the County's period of ownership. The City may not, however, assert such

a claim to the extent that the City creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the City performing construction activities on the Property, changing the configuration of the Property or changing the use of the Property.

- 4.3 If the City discovers the presence of Hazardous Materials at levels that could give rise to a statutory claim for contribution against the County it shall reasonably promptly notify the County in writing. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation. In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

5. Indemnification and Hold Harmless

- 5.1 The County shall indemnify and hold harmless the City and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent action or omission of the County, its officers, agents and employees in performing its obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred prior to the effective date of conveyance of the Property to the City, except to the extent that indemnifying or holding the City harmless would be limited by Section 4 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the City or the City and the County, the County shall defend the same at its sole cost and expense and, if final judgment be rendered against the City and its elected officials, officers, agents and employees or jointly against the City and the County and their respective elected officials, officers, agents and employees, the County shall satisfy the same.
- 5.2 In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County or both, the City shall satisfy the same, including all chargeable costs and attorneys' fees.
- 5.3 The City shall indemnify and hold harmless the County and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent act or omission of the City, its officers, agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred on or after the effective date of conveyance of the Property to the City, except to the extent that indemnifying or holding

the County harmless would be limited by Section 4 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the County or the County and the City, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against the County and its officers, agents and employees or jointly against the County and the City and their respective officers, agents and employees, the City shall satisfy the same.

5.4 Each party to this Agreement shall reasonably promptly notify the other of any and all claims, actions, losses or damages that arise or are brought against that party relating to or pertaining to the Property.

5.5 Each party agrees that its obligations under this Section 5 extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

6. Audits and Inspections

6.1 Prior to closing, the County shall provide the City with copies of its records related to any matters covered by this Agreement that are not privileged.

7. Waiver and Amendments

7.1 Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

8. Entire Agreement and Modifications

8.1 This Agreement and its Exhibits, which are incorporated herein by this reference, sets forth the entire agreement between the parties with respect to the subject matter hereof. Amendments must be in writing and signed by both parties.

9. Duration and Authority

9.1 This Agreement shall be effective upon signature and authorization by both parties. The terms, covenants, representations and warranties contained herein shall not merge in the deed of conveyance, but shall survive the conveyance and shall continue in force unless both parties mutually consent in writing to termination.

10. Notice

10.1 All notices required or permitted hereunder shall be in writing and shall either be delivered in person, sent by certified mail, return receipt requested, or delivered via facsimile transmittal, and shall be deemed received on the sooner of the actual or facsimile receipt or three (3) days after deposit in the mail, postage prepaid, addressed to City or County, as the case may be, at the address/facsimile number set forth below

King County:

City of Seattle:

Acting Division Manager,
Parks and Recreation
Division, DNRP
Suite 700, King Street Center
201 S. Jackson Street
Seattle, WA 98104

Joann Cowan
Supervisor,
Property Management
Seattle Parks and Recreation
800 Maynard Ave South, 3rd Fl
Seattle, WA 98134

11. The invalidity of any clause, sentence, paragraph, section or portion of this Agreement shall not affect the validity of the remainder of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

City of Seattle

King County Executive

Mayor

Date

Date

Approved as to Form:

Approved as to Form:

King County
Senior Deputy Prosecuting Attorney

City Attorney

Date

Date

EXHIBIT A
Encumbrances

1. Easement and the terms and conditions referenced therein, including, but not limited to, the following:

Grantee: Georgetown Water Company, a corporation
Purpose: Right and private of laying water pipes and conveying water
Area affected: Exact location not sufficiently described.
Recorded: October 4, 1905
Recording Number: 356062

2. Rainier Vista Sewer District Resolution No. 538 and the terms and conditions thereof:

Recorded: June 19, 1985
Recording Number: 8506190902

3. Open space use restrictions and restrictions on alienation as specified in RCW 84.24.200 et seq., and King County Ordinance No. 9071, as disclosed by recital contained in deed recorded September 3, 1998 under Recording Number 9809031211.

4. Maintenance provisions, covenants, conditions and reserved easements contained in instrument:

Recorded: September 3, 1998
Recording Number: 9809031211
Purpose: Maintaining existing noise barrier berm
Location: Southerly portion of Parcels A and B

5. Rainier Sewer District Temporary Service Agreement and the terms and conditions thereof:

By: Fibres International, a Washington corporation and Rainier Vista Sewer District, a Washington municipal corporation
Recorded: November 21, 1989
Recording Number: 8911211184

6. Agreement and the terms and conditions thereof:

By: Fibres International, Inc.
Recorded: December 1, 1989
Recording Number: 8912010295
Regarding: Joint use and maintenance of service retention/detention system

7. Agreement for maintenance of easement and noise barrier berm and the terms and conditions thereof:

By: Fibres International LLC and King County

Recorded: September 3, 1998

Recording Number: 9809031212

Said instrument amends agreement recorded under Recording Number 9010151300, as it relates to the property herein described.

8. A survey of the herein described property was recorded under Recording Number 8906079008.
9. Special district taxes not yet due and payable.

EXHIBIT B
Legal Description

PARCEL A:

That portion of Government Lots 5 and 6, Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington, described as follows:

Commencing at the iron pin at the intersection of the south line of Section 32 and the west line of the John Buckley Donation Claim in Township 24 North, Range 4 East, W.M., in King County, Washington;

Thence north 0°06'50" west along the west line of the said John Buckley Donation Claim 1015.35 feet;

Thence north 89°47'50" west 285.32 feet to an iron pipe which is the point of beginning of the tract to be described;

Thence north 0°59' east 408.6 feet to an iron pipe;

Thence north 88°31' west 637.39 feet to an iron pipe;

Thence south 1°02' east along the centerline of county road 422.9 feet;

Thence south 89°47'50" east 592.3 feet to the point of beginning;

EXCEPT the west 30 feet of the south 340.8 feet for county road;

AND EXCEPT beginning at the intersection of the south line of Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington and the west line of the John Buckley Donation Claim;

Thence north 0°06'50" west along the west line of the John Buckley Donation Claim 1015.35 feet;

Thence north 89°47'50" west 285.32 feet to the TRUE POINT OF BEGINNING of this exception;

Thence north 0°59' east 84.3 feet, more or less;

Thence north 88°31' west 312 feet;

Thence north 0°59' east 97 feet;

Thence north 88°31' west 318 feet;

Thence south 0°59' east 188.45 feet;

Thence south 89°47'50" east 592.3 feet, more or less, to the TRUE POINT OF BEGINNING;

EXCEPT the west 30 feet thereof;

AND EXCEPT that portion lying south of the south boundary of the City of Seattle as described in City of Seattle charter as revised to September 15, 1981;

AND EXCEPT that portion lying within that certain property described in an agreement for joint use and maintenance of a noise barrier berm as set forth in instrument recorded under Recording Number 9010151300, in King County, Washington, which is more particularly described as follows:

Commencing at the iron pin at the intersection of the south line of Section 32 and the west line of the John Buckley Donation Claim in Township 24 North, Range 4 East, W.M., in King County, Washington;
Thence north 0°06'50" west along the west line of the said John Buckley Donation Claim 1015.35 feet;
Thence north 89°47'50" west 285.32 feet to an iron pipe;
Thence north 0°59' east 327 feet, more or less, to said south boundary of the City of Seattle, which is the point of beginning of the tract to be described;
Thence north 0°59'18" east 49.92 feet;
Thence north 87°22'32" west 77.71 feet;
Thence south 89°37'04" west 262.33 feet;
Thence south 87°59'33" west 183.28 feet;
Thence south 77°38'35" west 61.07 feet;
Thence south 39°01'23" west 43.52 feet to said south boundary of the City of Seattle;
Thence north 89°51'01" east along said south boundary 609.32 feet to the point of beginning;

PARCEL B:

Beginning at the stone monument which is at the intersection of the west line of the John Buckley Donation Claim and the south line of the A. Hograve Donation Claim in Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington;
Thence north 89°58'20" west along the south line of the said A. Hograve Donation Claim produced 916.5 feet;
Thence south 0°19'20" east 386.9 feet to an iron pipe;
Thence south 88°31' east 637.8 feet to an iron pipe;
Thence south 0°59' west 408.6 feet to an iron pipe;
Thence south 89°47'50" east 285.3 feet to an iron pipe on the west line of the said John Buckley Donation Claim;
Thence North 0°06'50" west along the west line of said John Buckley Donation Claim 812.5 feet to the TRUE POINT OF BEGINNING;
EXCEPT that portion of Government Lots 5 and 6, Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at a point 358.69 feet north 89°58'20" west of the stone monument at the intersection of the west line of the John Buckley Donation Claim and the south line of the A. Hograve Donation Claim, in said Section 32;
Thence north 89°58'20" west 557.81 feet;
Thence south 0°19'20" east 386.9 feet to an iron pipe;
Thence south 88°31'00" east 558.07 feet;
Thence north 0°19'20" west 393.95 feet to the point of beginning;

AND EXCEPT that portion lying south of the south boundary of the City of Seattle as described in City of Seattle Charter as revised September 15, 1981; AND EXCEPT that portion lying within that certain property described in an agreement for joint use and maintenance of a noise barrier berm as set forth in instrument recorded under Recording Number 9010151300 in King County, Washington, which property is more particularly described as follows:

Commencing at the iron pin at the intersection of the south line of Section 32 and the west line of the John Buckley Donation Claim in Township 24 North, Range 4 East, W.M., in King County, Washington;
Thence north 0°06'50" west along the west line of the said John Buckley Donation Claim 1015.35 feet;
Thence north 89°47'50" west 285.32 feet to an iron pipe;
Thence north 0°59' east 327 feet, more or less, to said south boundary of the City of Seattle which is the point of beginning of the tract to be described;
Thence north 0°59'18" east 49.92 feet;
Thence south 87°22'32" east 189.60 feet;
Thence south 68°38'49" east 31.80 feet;
Thence south 18°21'45" east 30.62 feet to said south boundary of the City of Seattle;
Thence south 89°51'01" west along said south boundary 229.53 feet to the point of beginning;

PARCEL C:

A tract of land in Government Lots 5 and 6, Section 32, Township 24 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at a point 358.69 feet north 89°58'20" west of stone monument at intersection of west line of the John Buckley Donation Claim and the south line of A. Hograve Donation Claim in said Section 32;
Thence north 89°58'20" west 557.81;
Thence south 0°19'20" east along said east margin 386.9 feet to an iron pipe;
Thence south 88°31'00" east 558.07 feet;
Thence north 0°19'20" west 393.95 feet to the point of beginning;
EXCEPT the north 20 feet of the west 340 feet thereof;
AND EXCEPT any portion thereof lying within 4th Avenue South.