

2002 592

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

Relating to the Ownership, Operation and Maintenance of Parks,
Open Space, Recreation Facilities and Programs

This Agreement is made and entered into this day by and between the City of Issaquah, hereinafter called "City", and King County, hereinafter called "County".

WHEREAS the City desires to own, operate, and maintain parks, open space, recreation facilities and programs and other municipal programs, facilities and property inside its boundaries; and

WHEREAS the County, under the authority of RCW 36.89.050, King County Resolution 34571 and other federal, state and county laws, has acquired and developed a substantial 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 inside and near the City boundaries; and

WHEREAS the County does not have a sufficient, stable source of revenue to continue to manage and maintain its parks, open space, recreational facilities and programs at current levels; and

WHEREAS the County is legally restricted from converting many of these parks, open space, and recreational facilities from their current uses without expending funds to replace the converted facilities; and

WHEREAS, given the legal restriction regarding conversion of the properties, the marketability of the properties is limited and, as a result, the cost of operating the facility is approximately equal to the value of the property to the County; and

WHEREAS it is in the best interest of the public that the City and the County take those actions necessary to meet those desires and to cooperate in any transition to insure a smooth transition and avoid service disruption;

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, King County shall convey to the City by deed all its ownership interest, and/or, when possible, by assignment, any leasehold interest or shared use responsibility, in the following listed park/recreation site(s), which are described more fully in Exhibits A and B (the "Property"):

Sammamish Cove Park

1.2 All deeds shall also 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 prohibits 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 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."

1.2 In Conveying the Property by deed, the County shall reserve a utility easement in substantially the same form as attached hereto as Exhibit C.

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 at the time of conveyance and/or in the deed of conveyance.

3. Protection of Art

3.1 Any King County artwork currently located at any of the sites referenced in Section 1.1 above shall remain on site, and shall remain the sole property of King County. This Intergovernmental Agreement shall not be construed as conveying ownership of such artwork to the City. The City and the County hereby agree at a later date to negotiate a separate long-term agreement for any such artwork, which fully protects and preserves the artwork, respects the legal rights of the artist(s) and assures continuity of care for and continued public access to these assets. Prior to the execution of such future agreement, the City shall consult with the County prior to undertaking any activity which may impact access to and/or affect any such artwork.

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

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

4.2 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.

4.3 The City acknowledges and agrees that except as indicated in paragraph 5.2, 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.

5. Environmental Liability

5.1 "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.

- 5.2 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.
- 5.3 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 immediately notify the County in writing. Such notice shall in no event be provided more than 10 days after discovery. After notice is provided the parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement. If the City fails to provide timely notice as provided for herein it shall be prohibited from bringing a statutory claim for contribution against the County.
- 5.4 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.

6. Indemnification and Hold Harmless

- 6.1 King 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 King 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 5 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 King County, King 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 King County and their respective elected officials, officers, agents and employees, King County shall satisfy the same.
- 6.2 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 attorney's fees.

- 6.3 The City shall indemnify and hold harmless King 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 5 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County or King County and the City, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its officers, agents and employees or jointly against King County and the City and their respective officers, agents and employees, the City shall satisfy the same.
- 6.4 Each Party to this Agreement shall immediately 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.
- 6.5 Each party agrees that its obligations under this paragraph 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.

7. Audits and Inspections

- 7.1 Until December 31, 2008, any of either party's records related to any matters covered by this Intergovernmental Agreement not otherwise privileged shall be subject to inspection, review, and/or audit by either party at the requesting party's sole expense. Such records shall be made available for inspection during regular business hours within a reasonable time of the request.

8. Waiver and Amendments

- 8.1 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.

9. Entire Agreement and Modifications

- 9.1 This Intergovernmental Agreement and its Exhibits sets forth the entire agreement between the parties with respect to the subject matter hereof. It may be supplemented by

addenda or amendments, which have been agreed upon by both parties in writing. Copies of such addenda and amendments shall be attached hereto and by this reference made part of this contract as though fully set forth herein.

10. Duration and Authority

10.1 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.

11. Notice

11.1 Any notice provided for herein shall be sent to the respective parties at:

King County
Ron Sims
King County Executive
516 Third Avenue, Suite 400
Seattle, WA 98104

City
Leon Kos
City of Issaquah
P.O. Box 1301
Issaquah, WA 98027

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

City of Issaquah

King County Executive

Mayor

Date

Date

Approved as to Form:

Approved as to Form:

King County
Deputy Prosecuting Attorney

City Attorney

Date

Date

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this _____ day of _____, 2002, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared, to me known to be the individual described in and who executed the forgoing instrument, and acknowledged to me that _____ signed and sealed the said instrument as _____ free and voluntary act and deed for the uses and purposed therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of Washington, residing

at _____
City and State

My appointment expires _____

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

On this _____ day of _____, 2002, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared, to me known to be the individual described in and who executed the forgoing instrument, and acknowledged to me that _____ signed and sealed the said instrument as _____ free and voluntary act and deed for the uses and purposed therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of Washington, residing

at _____
City and State

My appointment expires _____

EXHIBIT A
King County Parks Transferring to the City of Issaquah

Name of park

Amenities/facilities

Sammamish Cove Park

EXHIBIT B
Legal Descriptions

SAMMAMISH COVE PARK

That portion of Government Lots 3, 4, 5 and 6, Section 20, Township 24 North, Range 6 East, Willamette Meridian, in King County, Washington, lying Northeasterly of Primary State Highway No. 2 as conveyed to the State of Washington by deeds recorded under Recording Nos. 3066534 and 4722298; TOGETHER WITH shorelands of the second class adjoining thereto as conveyed by the State of Washington by deed recorded under Recording No. 619364; EXCEPT that portion thereof lying within the right of way for drainage ditch condemned by Drainage District No. 4 of King County, in King County Superior Court Cause No. 115812; ALSO EXCEPT that portion thereof lying Southwesterly and Westerly of the Easterly line of that certain tract conveyed to Joe A. Chandler and Marie B. Chandler by deed recorded under Recording No. 5214298 and established by that deed and Boundary Line Agreement recorded under recording No. 8705271211, described as follows: Commencing at a point where the West line of the East 632.00 feet of Government Lot 4 intersects the Northeasterly margin of N.W. Sammamish Rd., which point is marked by a concrete monument stamped Park Boundary-Jones-C96 1974 as established by the Jones Associates in survey recorded in Book 3 of Surveys, Page 272; thence along the Northeasterly Margin of said N.W. Sammamish Rd., as follows: North 59-16-08 West a distance of 820.47 feet; thence North 30-43-52 East a distance of 25.00 feet; thence continuing North 59-16-08 West a distance of 259.47 feet to a PK nail with aluminum washer, L.S. No. 11691 set in a concrete filled 1-1/2" galvanized pipe, the true point of beginning of the line herein described; thence North 13-07-06 West along and about 10 feet Northeasterly of the centerline of a small creek, a distance of 432.26 feet to a PK nail with aluminum washer, L.S. No. 11691 set in a concrete filled 1-1/2" galvanized pipe which is 0.1 feet Easterly of a 1.8 foot diameter metal planter and about 6 feet Southerly of the shore of Lake Sammamish, the terminus of the line herein described. (Said line to be extended or shortened so as to terminate at the line of ordinary high water of said lake). The bearings, distances, points called for etc. are as shown on the "Boundary Line Agreement Map" attached to deed and Boundary Line Agreement recorded under Recording No. 8705271211 and identified as "Exhibit A" which by this reference is made a part hereof; ALSO EXCEPT the East 632 feet of Government Lots 3 and 4 of said Section 20 and the shorelands adjoining thereto condemned by the State of Washington in King County Superior Court Cause No. 684942; ALSO EXCEPT that portion, if any, lying within the West 578 feet of the East 1210 feet of said Government Lot 3 and the shorelands adjoining Government Lots 3 and 4 as condemned by the State of Washington in King County Superior Court Cause No. 687735.

SUBJECT TO: 1) Easement and conditions contained therein, as disclosed by instrument recorded on February 2, 1959, Recording No. 4992472; 2) The question of location of lateral boundaries of said second class tidelands or shorelands; 3) Any prohibition or limitation of use, occupancy or improvement of the real property resulting from the rights of the public or riparian owners to use any portion which is now or has been formerly covered by water; 4) Paramount rights and easements in favor of the United States for commerce, navigation, fisheries and the production of power; 5) Agreement and the terms and conditions thereof between Municipality

of Metropolitan Seattle, a Municipal Corporation, and Eastgate Sewer District, a Municipal Corporation, which agreement was recorded on April 21, 1967, under King County Recording No. 6465047; 6) Agreement and the terms and conditions thereof between City of Issaquah, a Municipal Corporation, and E.M. Greenwood, which agreement was recorded on November 21, 1977, under King County Recording No. 7711210304; 7) The right to make necessary slopes for cuts or fills upon the real property herein described as granted in deed to grantee, King County, which Deed was recorded on April 7, 1932, under King County Recording No. 2716847; 8) Conservation Easement in favor of the State of Washington, as recorded under Recording No. 9308301941.

RESERVED UNTO KING COUNTY, WASHINGTON, a permanent Utility Easement as described in the attached Reservation of Utility Easement.

Exhibit

Recording Requested By And
When Recorded Mail To:

King County
Department of Natural Resources and Parks
Wastewater Treatment Division
MS KSC-NR-600
201 South Jackson Street
Seattle, WA 98104-3855

Grantor: City of Issaquah, a municipal corporation
Grantee: King County, a political subdivision of the State of Washington
Abbreviated Legal Description: GOV. LOT 3-6, SECTION 20 TOWNSHIP 24N RANGE
06E
Assessor's Tax Parcel Nos.: 202406-9070-08
Project: Sammamish Cove Transfer
Parcel No.:

RESERVATION OF UTILITY EASEMENT

THIS RESERVATION OF UTILITY EASEMENT is made and effective as of _____, 2002, between King County, a political subdivision of the State of Washington, its successors and assigns (hereinafter together referred to as "County") and City of Issaquah, a municipal corporation in the State of Washington, its successors and assigns (hereinafter together referred to as "City").

RECITALS

- A. City has agreed to acquire from the County and the County has agreed to convey to the City, for and in consideration of the terms and conditions of that certain inter-local transfer agreement, dated _____, by and between City and County, and other valuable considerations, the receipt of which is hereby acknowledged, and hereby agree to the reservation for the benefit of County, of a permanent easement over, across, along, in, upon and under, the legally described property on Exhibit A attached hereto ("Property").
- B. The County owns Utility facilities located on and under the Property. An easement for these Utility facilities had been granted to Municipality of Metropolitan Seattle (hereinafter Metro) by documents dated April 20, 1967, recorded under King County Recorder's number 6171993, and document dated July 7, 1967, recorded under King County Recorder's number 6207199 ("Metro Easements"). Since the granting of the Metro Easements, the County and Metro merged, thereby causing a merger of title between the Property and the Metro Easements. This Reservation of Easement shall supercede and replace the language of the Metro Easements.

~~B.~~c. The County's agreement to convey the Property to the City is conditioned upon the County's reservation of permanent utility easements.

The City and County, by accepting and recording this Reservation of Utility Easement, hereby mutually covenant and agree as follows:

1. The County hereby reserves, for the purposes stated below, permanent utility easements over, across, along, in, upon and under the property more particularly described in Exhibit B, attached hereto and incorporated herein by reference ("Utility Easement" Area) :
2. The Utility Easement being granted herein is for the purpose of installing, constructing, operating, maintaining, removing, re-constructing, repairing, replacing and using sewer pipeline, pipelines or other transmission or conveyance lines, including but not limited to communication lines or devices and optic lines with all connections, manholes and appurtenances thereto (hereinafter collectively referred to as "facilities"), within the Utility Easement Area, together with the right of ingress to and egress from said described property for the foregoing purposes.
3. The term of the utility easement shall be perpetual, and shall be appurtenant to, be binding upon, and run with the Property.
4. County shall, if the above described Property is disturbed by the maintenance, removal, repair or replacement of the facilities specified herein, restore the surface of the above described Property as nearly as possible to the condition in which it existed at the commencement of said maintenance, removal, repair or replacement.
5. County shall indemnify, defend and hold harmless City, its elected officials, staff, officers, agents and employees, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including costs and attorneys fees in defense and costs on appeal thereof, for injuries, sickness or death of persons or damage to property, which is caused by or arises out of said County, its officers, agents, or employees' errors or omissions in the performance of activities related to this easement, provided, however, that County's obligation to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole negligence of City, its elected officials, officers, agents or employees. County agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. For this purpose, County by mutual negotiation, hereby waives as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
6. City shall indemnify, defend and hold harmless County, its elected officials, staff, officers, agents and employees, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including costs and attorneys fees in defense and costs on appeal thereof, for injuries, sickness or death of persons or damage to property, which is caused by or arises out of said City, its officers, agents, or employees' acts, errors or omissions on the Property, both inside and outside the Utility Easement Area, provided, however, that

City's obligation to indemnify, defend and hold harmless shall not extend to injuries sickness, death or damage caused by or resulting from the sole negligence of County, its elected officials, officers, agents or employees. City agrees that it's obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of it's employees, or its agents. For this purpose, City, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

7. All right, title, and interest that may be used and enjoyed without interfering with the Reservation of Utility Easement rights are reserved to the City. Except as otherwise provided herein, and after the date of this agreement, the construction, installation, or maintenance of any structures, whether temporary or permanent, shall be absolutely prohibited within the above described permanent easement area and shall be deemed an unreasonable interference with County's easement rights unless specifically approved in writing by the County. Moreover, as to such non-approved structures, the provisions of paragraph 4 and 5 above, shall not apply.

WITNESSETH, the City has hereunto signed the day and year first above written.

GRANTOR:

By: _____

Its _____

F:\EASEMENT.SPARKPROPERTIES.1.DOC

EXHIBIT "A "