



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

June 24, 2008

Ordinance 16144

Proposed No. 2008-0244.2

Sponsors Hague

1 AN ORDINANCE authorizing the King County executive
2 to enter into an interlocal transfer agreement for West Hill
3 Park between King County and the city of Bothell.
4

5 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

6 **SECTION 1. Findings:**

7 A. King County's Annexation Initiative encourages the transfer of local parks
8 within the cities and their potential annexation areas to achieve both financial stability in
9 the general fund, and the regional land use vision set forth in the countywide policies.

10 B. Consistent with the parks and recreation division's Business Transition Plan
11 and the focus on partnering with groups and jurisdiction to provide recreation
12 opportunity, this transfer will result in the enhancement of the city's park system.

13 C. The city of Bothell under agreement with King County has maintained and
14 operated West Hill Park for thirty years.

15 D. King County and the city of Bothell have agreed to terms of an interlocal
16 agreement for the transfer of West Hill Park to the city.

17 E. The recitals in the agreement set forth relevant facts supporting and explaining
18 the terms of the transfers.

19 F. King County and the city have agreed that the transfer will take place within
20 thirty days following execution of the interlocal agreement by both parties.

21 G. Transfer of the property under the terms and conditions of the attached
22 agreement will serve an important county purpose by ensuring that local parks within
23 cities become the responsibility of the cities.

24 SECTION 2. The King County executive is hereby authorized to enter into an
25

26 interlocal agreement, substantially in the form of the attached agreement, with the city of
27 Bothell relating to the transfer of real property.

28

Ordinance 16144 was introduced on 5/5/2008 and passed by the Metropolitan King
County Council on 6/23/2008, by the following vote:

Yes: 9 - Ms. Patterson, Mr. Dunn, Mr. Constantine, Ms. Lambert, Mr. von
Reichbauer, Mr. Ferguson, Mr. Gossett, Mr. Phillips and Ms. Hague

No: 0

Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON




Julia Patterson, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 3 day of July, 2008.



Ron Sims, County Executive

RECEIVED
2008 JUL -3 AM 7:36
KING COUNTY COUNCIL CLERK

Attachments A. Intergovernmental Land Transfer Agreement Between King County and the City of
Bothell (Revised 5/27/08)

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

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 Bothell, 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 certain parks, open space and recreational facilities and programs inside City boundaries and within designated potential annexation areas; and

WHEREAS West Hill Park is located in the City, and

WHEREAS the City has maintained and operated West Hill Park for thirty (30) years by agreement with the County, 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 to the extent the City provides scholarships, reduced fees or other means of assuring access to parks and recreational programming for City residents, the City has a goal of ensuring that such scholarships or other needs-based rates and programs are available to all persons desiring to use the park and recreational programs regardless of residency, 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, or as soon thereafter as practicable, 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"), all subject to the retained Utility Easement set forth in Exhibit C:

West Hill Park (formerly known as Northshore No. 2)

- 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 covenants that it shall abide by and enforce all terms, conditions and restrictions in King County Resolution 34571, including that the City covenants that the Property will continue to be used for the purposes contemplated by Resolution 34571, that the Property shall not be transferred or conveyed except by agreement providing that such lands shall continue to be used for the purposes contemplated by Resolution 34571, and that the Property shall not be converted to a different use unless other equivalent lands and facilities within the County or 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 covenants herein in any deed transferring the Property or a portion of the Property for public park, recreation or open space uses."

- 1.3 In conveying the Property by deed, and as a condition of such conveyance, the County shall retain 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. 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, 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 The City acknowledges and agrees that except as indicated 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 immediately notify the County in writing. Such notice shall in no event be provided more than 10 days after discovery. 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.
- 4.4 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.

5. Indemnification and Hold Harmless

- 5.1 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 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 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.
- 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 attorney's fees.
- 5.3 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 4 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.

5.4 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.

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 Until December 31, 2014, any of either party's records related to any matters covered by this 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.

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 sets forth the entire agreement between the parties with respect to the subject matter hereof. It may be supplemented by addenda or amendments agreed upon by both parties and set forth 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.

9. Duration and Authority

9.1 This Agreement shall be effective upon recording after 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 Any notice provided for herein shall be sent to the respective parties at:

County;

City:

Kevin Brown
Division Director
Parks and Recreation Division
201 South Jackson Street, #700
Seattle, WA 98104
206-296-8631 FAX; 206-2968686
Kevin.brown@kingcounty.gov

INSERT CITY INFORMATION

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

City of Bothell

King County Executive

City Manager

Date

Date

Approved as to Form:

Approved as to Form:

King County
Senior Deputy Prosecuting Attorney

City Attorney

Date

Date

EXHIBIT A
Legal Description

The south 144.38 feet of Government Lot 5 and the North 152 feet of Government Lot 6; all in Section 6, Township 26 North, Range 5 East, W.M., in King County, Washington; EXCEPT the east 30 feet thereof conveyed to King County for road purposes by Deed recorded under Auditor's File No. 1595820 and 5039210.

EXHIBIT B
“The Property”

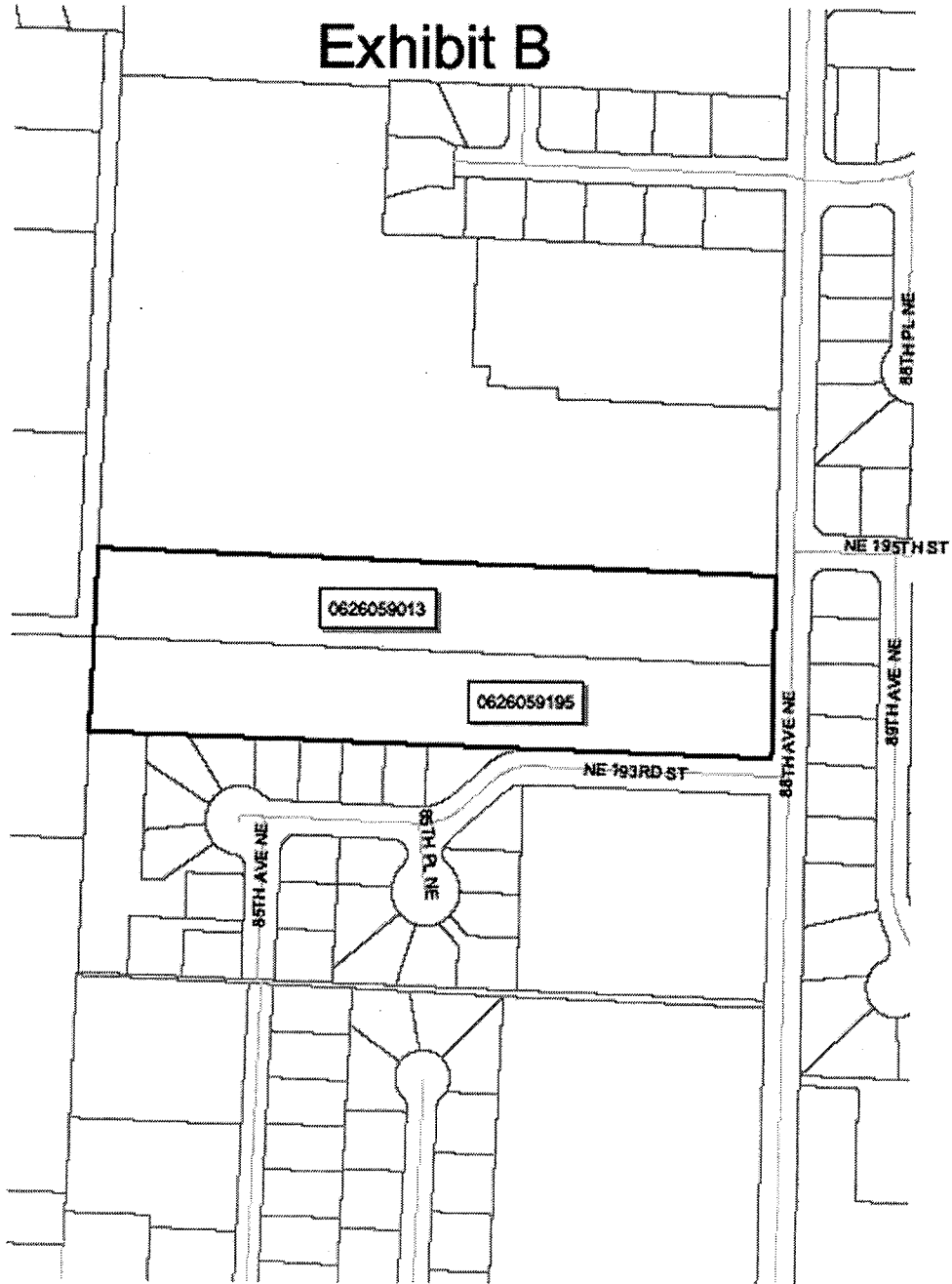


EXHIBIT C

County's Retained Utility Easement

FILED FOR RECORD AT REQUEST

AFTER RECORDING RETURN TO:
King County Real Estate Services Section
500 Fourth Avenue, Room 500
Seattle, WA 98104

Reference No: Utility Easement
Grantor: City of Bothell, Washington
Grantee: King County, Washington
Legal Des:
Tax ID No: 0626059013 and 0626059195.

DEED FOR UTILITY EASEMENT

THIS UTILITY EASEMENT is granted this _____ day of _____, 2008, by the City of Bothell, a noncharter code city organized under Title 35A RCW, hereinafter called the GRANTOR to King County, a political subdivision of the State of Washington, hereinafter called the GRANTEE.

W I T N E S S E T H

The Grantor, for and in consideration of good and valuable consideration, receipt of which is hereby acknowledged, grants to the Grantee, its successors and assigns, a non-exclusive utility easement for subsurface utilities. The Grantor is granting an easement on a portion of the following described property ("the Property"):

The south 144.38 feet of Government Lot 5 and the North 152 feet of Government Lot 6; all in Section 6, Township 26 North, Range 5 East, W.M., in King County, Washington; EXCEPT the east 30 feet thereof conveyed to King County for road purposes by Deed recorded under Auditor's File No. 1595820 and 5039210.

The easement is more particularly described as follows:

Subsurface Utility Easement. An exclusive permanent subsurface easement (the "Easement") under the surface of and through portions of the Property.

This Easement is for the benefit of all property now owned or hereafter acquired by Grantee for all purposes necessary or incidental to the installation, construction, ownership, use, operation, maintenance, inspection, repair, replacement, renovation, improvement, removal and enhancement of one or more underground tunnels and pipelines, together with any and all related vaults, meters, monitoring equipment, conduits, wires and other necessary and convenient equipment and appurtenances, including, but not limited to, all utility lines or equipment servicing said pipelines and related equipment and appurtenances or located within the Easement Area (collectively, the “Easement Improvements”).

Purpose of Easement. King County shall have the right to use the Easement Area for all purposes necessary or incidental to King County’s installation, construction, ownership, use, operation, maintenance, inspection, repair, replacement, renovation, improvement, removal and enhancement of underground tunnels and pipelines and related Easement Improvements, including, but not limited to, the rights of ingress and egress across the surface of the Property to access the Easement Area from the surface; the right to install, construct, operate, maintain, modify, repair, replace, improve, remove and use said pipelines, pipeline supports and all utility lines or wires within said Easement Area for any related uses as King County may now or hereafter deem appropriate, including the addition, removal or replacement of same at King County’s election, either in whole or in part with either like or different size pipe; and the right to do the same with such additional pipelines, utilities and other facilities and equipment as may now or hereafter be installed in the Easement Area in association with the Brightwater Regional Wastewater Treatment System and related facilities. All Easement Improvements of any kind that are now or hereafter acquired, constructed or installed within the Easement Area shall be and shall at all times remain the property of King County.

Installation of Other Improvements. King County shall have the right, without payment of additional consideration to Grantor, to grant third parties all of the rights and privileges reserved to King County under this Easement, in order that such third parties may install and use electrical, fiber optic or other utilities or equipment (collectively, "Other Improvements") within the Easement Area, including Other Improvements that are not part of, and do not provide service to or from the Brightwater Regional Wastewater Treatment System and related facilities; PROVIDED THAT the County shall not permit third parties to put Other Improvements anywhere on the Property outside the boundaries of the Easement Area; and PROVIDED FURTHER, that all such Other Improvements shall be subject to all of the terms, covenants, conditions and limitations set forth in this Easement.

Grantor’s Use of Property With the Easement Rights reserved by King County. Grantor shall have all other rights to use the Property, so long as such use does not interfere with the easement rights granted herein to King County and do not obstruct or endanger the usefulness of any Easement Improvements or Other Improvements now or hereafter maintained by King County or third parties in the Easement Area.

Prior to any construction, work or any other activity by the Grantor that requires use of the subsurface of the Property within a distance of **twenty (20)** feet from the upper limit of the Easement Area, which is approximately **214** feet below the surface elevation of the Property, Grantor shall notify King County in writing and shall provide King County with a copy of all plans and specifications for such proposed construction activity for review at least thirty (30) days prior to the commencement of such construction. Grantor shall not commence such construction, work or activity unless and until it has received King County's prior written consent that Grantor's proposed construction, work or activity will not interfere with King County's rights under this Easement. King County's review and approval of Grantor's plans and specifications shall be strictly limited to the facilities and/or excavation shown on the plans and specifications submitted to King County and shall in no event constitute or be construed as a certification of the adequacy or sufficiency of Grantor's plans and specifications nor whether Grantor's construction, work or activity complies with other applicable laws, building codes and other governmental rules and regulations.

Notices. Any notices required or permitted under this Easement shall be personally delivered or sent by certified mail, return receipt requested and shall be deemed given three (3) days following the date when mailed or one (1) business day following personal delivery. All notices shall be sent to the following addresses:

To King County:

King County
Wastewater Treatment Division
Right-of-Way and Permitting
Mailstop: KSC-NR-0503
201 South Jackson Street, Suite 503
Seattle, WA 98104-3855

To Grantor:

Either party may change the address to which notice is sent by notice to the other party.

Miscellaneous Provisions

1. **Binding Effect.** This Easement is appurtenant to and shall run with all real property and real property interests and easements now owned or hereafter acquired by King County as part of the Brightwater treatment facility, which Grantor acknowledges will include underground tunnels, pipelines, pump stations to and from the Brightwater Regional Wastewater Treatment System and related facilities operated by King County for sewage treatment, water pollution abatement and water reuse purposes; and shall inure to the benefit of King County, its successors and assigns and shall be binding upon the Property and the Grantor, and its heirs, legal, representatives, successors and assigns. King County shall have the right to assign its rights under this Easement, in whole or in part.

2. **Hazardous Materials:**
 - 2.1 "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.

 - 2.2 Nothing in this Deed shall be deemed to waive any statutory claim for contribution that the Grantee might have against the Grantor under federal or state environmental statutes that arises from Hazardous Materials deposited or released on the Easement Area by the Grantor. The Grantee may not, however, assert such a claim to the extent that the Grantee's acts or omissions create the need for or exacerbate the cost of remediation upon which a statutory claim for contribution is based.

 - 2.3 If the Grantee discovers the presence of Hazardous Materials on or in the Easement Area at levels that could give rise to a statutory claim for contribution against the Grantor, then the Grantee shall promptly notify the Grantor 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 Deed prior to undertaking any remediation. In no event shall the Grantor be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

3. **Dispute Resolution.** The Grantee and the Grantor ("the parties") agree to use their best efforts to resolve disputes regarding this Deed in an economic and time efficient manner to advance the purposes of this Deed. In the event that a dispute arises between the parties, they shall attempt to resolve such dispute as expeditiously as possible and will cooperate so that the express purposes of this Deed are not frustrated, and so that any design, planning, construction, or use of the Easement Area is not delayed or interrupted. If the parties are unable to resolve the dispute between themselves within one hundred twenty (120) calendar days from the date the aggrieved party first notified the other party, then the parties shall attempt to mediate the dispute. The parties shall each pay one half (Grantor-50%; Grantee-50%) of the cost of such mediation. If such mediation shall fail then nothing in this Section 3 shall otherwise limit the parties' legal, equitable, or other rights or remedies.

4. **Litigation.** The exclusive jurisdiction and venue for any disputes arising under or related to this Deed and not otherwise resolved by the dispute resolution required in Section 3, including matters of construction, validity, and performance, shall be in the Superior Court for King County in Seattle, Washington.
5. **Headings.** The headings in this Deed are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Deed or the easement that it embodies.
6. **Neutral Authorship.** Each party has been represented by counsel in connection with the negotiation, execution and delivery of this Deed. Each of the provisions of this Deed has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Deed in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Deed.
7. **Governing Law.** The laws of the State of Washington shall govern the interpretation and enforcement of this Deed.
8. **Severability.** If any provision of this Deed shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable unless striking such provision materially alters the intention of the parties. If a court finds that any provision of this Deed is invalid or unenforceable, but that by limiting such provisions it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
9. **Non-Waiver.** The failure of either party to enforce any provision of this Deed shall not be construed as a waiver or limitation of that party's right subsequently to enforce and compel strict compliance with every provision of this Deed.
10. **Entire Agreement.** This Deed contains the entire agreement of the parties as to the Easement and there are no other promises or conditions whether oral or written. This Deed supersedes any prior written or oral agreements between the parties.

DATED this _____ day of _____, 2008.

KING COUNTY, WASHINGTON

APPROVED AS TO FORM:

Wayne Richardson, Manager
Real Estate Services Section

Prosecuting Attorney

DATED: _____

DATED: _____

