

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Surface Land Use Easement with King County for Richmond Beach Pump Station Park site
DEPARTMENT:	Parks, Recreation, and Cultural Services
PRESENTED BY:	Dick Deal, PRCS Director

PROBLEM/ISSUE STATEMENT:

In 2004, the City of Shoreline entered into an agreement entitled "Memorandum of Agreement between King County and the City of Shoreline Regarding Mitigation for the Brightwater Project". Paragraph 8 of that agreement allowed the City to use as parkland a portion of the property currently in active use as a pump station located at 2740 NE 198th Street, Shoreline. The agreement gives Shoreline permission to develop and maintain this site as a park.

Shoreline Parks staff have evaluated the site and determined that approximately 2.08 acres of the four acre site would be adequate for development into a neighborhood park. The balance of the site is wetland and contains the pump station facilities.

This easement agreement will allow us to continue with the planning and development of a park site to serve the Richmond Beach neighborhood. To date we have been working on the development of a master site plan for this park and our goal is to begin design development in the next few months and begin construction of the park in mid 2007. We anticipate the project being completed and dedicated in late 2007.

FINANCIAL IMPACT:

The agreement between the City and King County signed in 2004 provided \$750,000 in mitigation funds in addition to access to the pump station site for a neighborhood park. All design and construction costs for this project will be paid from the mitigation funds. We anticipate using approximately half of the mitigation funds for the development of this park site, and the balance to be used for other park improvements in the Richmond Beach area. There will be no general fund dollars spent on this project.

RECOMMENDATION

Staff recommends that the City Council approve the Surface Land Use Agreement between the City of Shoreline and King County that will allow staff to proceed with the development of a neighborhood park in the Richmond Bach community.

Approved By:

City Manager



City Attorney



RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
KING COUNTY
WASTEWATER TREATMENT DIVISION
MAILSTOP: KSC-NR-0503
201 SOUTH JACKSON STREET, SUITE 503
SEATTLE, WA 98104-3855

Document Title:	Surface Use Easement
Grantor(s):	King County
Grantee:	City of Shoreline
Abbreviated Legal Description:	Surface Use Easement on Portion of Parcels 1 through 7, book 58, page 135 recording number 8711209010 in Government Lots 1 and 2, section 2, Township 26 North, Range 3 East
Additional Legal Description is on Page:	Exhibit "A"
Assessor's Tax Parcel Number(s):	

Easement Agreement for Park Use
Between
King County
And
City of Shoreline

This Easement Agreement ("Easement" or "Agreement"), is dated for reference purposes _____, 2007, and is made by and between City of Shoreline, a Washington State Municipality, ("City") and King County, a political subdivision of the State of Washington, ("County") for the use, development and maintenance of a public use parkland area at the south portion of the Richmond Beach Pump Station, west of Richmond Beach Drive NW as described and depicted more particularly herein (hereinafter sometimes referred to as the "Site").

IN CONSIDERATION of the promises, covenants and other provisions set forth in this Agreement, the County and the City agree as follows:

1. RECITALS

- 1.1. King County, a home rule charter county and political subdivision of the State of Washington is the owner of the Site depicted as the cross-hatched area in Exhibit A and as described with greater particularity in Exhibit B to this Agreement.
- 1.2. On or about May 11, 2004, the County and the City entered into an agreement entitled Memorandum of Agreement between King County and the City of Shoreline Regarding Mitigation for the Brightwater Project (hereinafter “Brightwater Mitigation Agreement”). Pursuant to paragraph 8 of the Brightwater Mitigation Agreement, King County agrees to allow public use as a parkland on the Site by a non-exclusive Surface Use Easement to the City. The parties agree this Agreement satisfies this term of the Memorandum of Agreement.
- 1.3. The Site is defined as that certain surface portion of the Richmond Beach Pump Station (“RBPS”) property situated in the City of Shoreline, King County, Washington, at 2740 NW 198th St., King County, WA, comprising approximately 2.08 acres of the approximately 4 acre RBPS property as more particularly described and depicted in Exhibit A attached hereto (hereinafter referred to as the “Premises” or the “Site”) and as legally described in Exhibit B attached hereto.
- 1.4. King County Ordinance 14969 authorized the Department of Natural Resources and Parks, Wastewater Treatment Division to create a public recreation opportunity pursuant to the Brightwater Mitigation Agreement. Allowing the City to develop and maintain certain mutually agreed upon improvements to the Site by this Agreement will serve to implement the authority provided in Ordinance 14969.
- 1.5. King County Code Section 4.56.150(e) authorizes the Department of Natural Resources and Parks, to enter into agreements for the use of King County land by governmental agencies that provide a service to the public.

2. GRANT OF EASEMENT

- 2.1. King County grants to the City of Shoreline a non-exclusive, surface use easement on the Site for park use subject to the terms and conditions of this Agreement.
- 2.2. The RBPS property is a working pump station and part of the County’s regional wastewater treatment system. The County may need to expand, enlarge, alter, repair, replace, maintain, modify or re-configure the RBPS requiring the permanent use of all or a portion of the Site. If this becomes necessary, the County may terminate this Easement by providing the City with one-hundred eighty (180) days notice. The County may also terminate this Easement for cause. In the event that the County terminates this Easement, the City agrees to remove all facilities developed specifically for public use by the City, including but not limited to fencing, volleyball nets, picnic tables and benches, barbecues, restrooms, parking lot paving and paths,

and bear all costs of removing said improvements within one- hundred eighty (180) days from receipt of notice of termination by the County. The City shall deliver the Premises to the County in the same condition as it received the Premises from the County unless otherwise permitted in writing by the County. The City shall be liable for additional costs of construction that may occur due to its failure to timely deliver possession in accordance with such notice.

- 2.3. The City may terminate this Easement by providing 180 days written notice. In the event the City terminates the City agrees to remove all facilities developed specifically for public use by the City, including but not limited to fencing, volleyball nets, picnic tables and benches, barbecues, restrooms, parking lot paving and paths, and bear all cost of removing said improvements within one-hundred eighty (180) days from providing notice to the County. The City shall deliver the Premises to the County in the same condition as it received the Premises from the County unless otherwise permitted in writing by the County. In the event that the City fails to tender possession of the Site to the County as provided herein, the County shall have the right at the City's expense to remove any alterations, additions or improvements, or to perform any other work necessary to put the Site in the same condition in which the City received the Site, and the City agrees to reimburse the County for all expenses thereof.

3. USE, MAINTENANCE, AND OPERATION OF PREMISES

- 3.1. **NON-EXCLUSIVE USE.** The City shall have a non-exclusive right to use the Site for public day use as a parkland as described in this Agreement and for no other activities or purpose without the written consent of the County. City agrees to provide for public access to the Site, as described herein. Public access to and use of the Site is a material consideration for King County's execution of this Agreement. The City may apply rules for public use applicable to its parks in similar use which do not conflict with the terms of this Agreement. The City shall not assign this Easement or authorize any use of the Site without the express written consent of the County which consent may be withheld in the County's sole and absolute discretion.
- 3.2. **AS-IS CONDITION.** The City has inspected and knows the condition of the Site, and agrees to accept the Site in its present **AS IS** condition.
- 3.3. **NO WARRANTIES.** 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 Site, and no official, employee, representative or agent of King County is authorized to represent otherwise.
- 3.4. **NO OBLIGATION OF COUNTY FUNDS.** King County is, and shall be, under no obligation directly or indirectly to pay for any labor, material, or improvements associated with the Site, except where said labor, material or improvements are directly related to King County's use of the Site as provided in Sections 3.6 and 3.7, and elsewhere in this Agreement.

- 3.5. COUNTY OWNERSHIP. King County shall retain ownership of the Site and the RBPS property, including all improvements, permanent fixtures and County-purchased equipment.
- 3.6. FUTURE WASTEWATER FACILITY CONSTRUCTION. The City shall allow the construction of future wastewater facilities on the Premises by the County. The County will make a reasonable attempt to minimize disruption of the Site by the County's construction and will provide the City at least 180 days notice prior to the start of such construction. The City shall allow the County access at all times to the Premises for the purpose of inspection, or for making repairs, additions or alterations to the Premises or any property owned by or under the control of the County, including underground facilities. The City shall provide the County keys to any installed locks and fencing for the Site. The County shall have the right to make repairs to the Premises while unaccompanied by the City. The County shall notify the City as soon as reasonably possible after the County's knowledge of the need for access and emergency repairs and minimize as far as possible disruption to any City-built improvements. The City reserves the right in its sole discretion to limit public access in the interest of public safety during County construction.
- 3.7. ACCESS AND ENTRY BY KING COUNTY. King County may enter the Site during the City's usage for any reason, including but not limited to performing routine maintenance, inspections, making repairs, additions or alterations to the Premises or any property owned by or under the control of the County, including underground facilities. Any person or persons who may have an interest in the purposes of King County's visit may accompany King County. The City shall provide the County keys to any installed locks and fencing for the Site. King County has the right to use any and all means that King County deems proper to open locks and gates to obtain entry to the Site. The County shall notify the City as soon as reasonably possible after the County's knowledge of the need for access and/or repairs and minimize as far as possible disruption to any City-built improvements. Provided, the County may enter the Site without prior notice for routine maintenance and inspection which typically occurs once weekly.
- 3.8. NO FEES/HOURS OF USE. The City shall not charge fees for the use of the Site by the public. The availability of recreational opportunities for King County's wastewater treatment division ratepayers is a material consideration for this Agreement. The City shall set and enforce hours of public use at the Site, limited to dawn to dusk operations.
- 3.9. LAWFUL USE. The City shall take reasonable precautions to secure the Site during use by the public, will insure that the Site is not used for any unlawful purposes and that it is not used or occupied in any manner which would constitute a public nuisance or otherwise violate federal, state or local laws.

- 3.10. **SITE MAINTENANCE PLAN.** Once capital improvements are completed, the City shall prepare a Site Maintenance Plan (“SMP”), agreed to by the County. The SMP shall be developed in a manner as to ensure King County does not incur any new Operation & Maintenance costs requiring additional public funds by the County.
- 3.11. **LIMITED USE.** The City shall use the Site for no other business or purpose than as explicitly provided in this Agreement.
- 3.12. **RIGHT TO INSPECT.** King County at its discretion reserves the right to review and approve the City’s use of the Site and compliance with this Agreement. If King County does not approve of the City’s use and compliance, King County will timely notify the City in writing of the specific items that King County deems objectionable. The City agrees to undertake reasonable corrective action within a time period agreed to by the Parties, or if no time period is agreed, within sixty (60) days.
- 3.13. **SIGNS.** The City shall install a sign on the Site advising members of the public using the Site that the Site is the property of King County, Department of Natural Resources and Parks, Wastewater Treatment Division. This sign shall note that the Site is open to the public as community mitigation for the Brightwater Wastewater Treatment System. This sign shall be placed on the Site with the understanding and agreement that the City shall remove the sign at the termination of the Easement and repair any damage or injury to the Site caused thereby. If for any reason the City does not remove any sign placed by the City, then the County may have the sign(s) removed at the City’s expense. The City may propose to the County that the Site have a name other than the Richmond Beach Pump Station. Any name proposed by the City must be consistent with this paragraph. Only a name agreed to by the County may be used to reference the Site. Before any such name is displayed or referred to in official documents, the name must be approved in writing by King County, in the County’s sole discretion. The City may not sell naming rights or receive any gift or consideration for the naming of the Site.
- 3.13.1. The City may install signage stating hours of operation and public use rules of a size and format which is comparable to signs installed at City parks of a similar use. No other sign and no advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by the City or allowed by the City to be exhibited, inscribed, painted, or affixed on any part of the Site without the prior written approval of the County. If the City violates this provision, King County may remove the sign without any liability and may charge the expense incurred by such removal to the City. All signs erected or installed pursuant to King County’s prior written approval shall also comply with any applicable federal, state or local statutes, ordinances or regulations.
- 3.14. **FENCING.** The City shall install and maintain a fence between the Site and the RBPS property which is retained exclusively by the County. The City shall also retain and maintain the existing fence between the Premises and the Burlington Northern

Railroad right-of-way located to the west. The City shall install signs along the fence notifying the public of the railroad right-of-way and that no crossing of railroad right-of-way is allowed.

- 3.15. SOLICITING. Except as otherwise provided in this Agreement, canvassing, soliciting and distribution of handbills or any other written material, or peddling on the Site or in adjacent areas are each prohibited without the prior written approval from the County.
- 3.16. UTILITIES SERVICE. The City agrees to furnish and pay for all costs for all necessary electrical, sewer, water and other utilities as might be required for its use of the Site. The City is not authorized to use or connect to any existing County electrical, sewer or water connections for the Site without the County's written authorization, which may be withheld in the County's sole discretion. The County shall not be liable for the failure of any utility service on the Site.
 - 3.16.1. STORMWATER FACILITIES. The parties agree that the existing Stormwater facilities on the RBPS property are currently adequate for the current uses at the RBPS property (including the Site). As part of the Site Plan referred to in Section 4.2 herein the City shall identify any new stormwater facilities and/or any upgrades to the existing stormwater facilities that will be necessary to allow or support the City's use of the Site. The City agrees to pay for the construction, maintenance and operation of any new facilities and/or any upgrades to the existing facilities that are determined to be necessary as a result of the City's Site Plan, City modifications to the Site and/or the City's use of the Site.
 - 3.16.2. LANDSCAPING/IRRIGATION. The City acknowledges that the County has issued a Special Use Permit (No. S-223-04) dated October 29, 2004 to the property owner located at 19923 26th Avenue NW, Shoreline, WA for the limited purpose of pruning and maintaining the trees and vegetation along the west slope of Richmond Beach Drive in accordance with the terms of the Special Use Permit. The City agrees that Special Use Permit No. S-223-04 shall remain in full force and effect.
 - 3.16.3. As part of the Site Plan referred to in Section 4.2 herein, the City shall identify appropriate landscaping and irrigation improvements for the Site. The City agrees to pay for the construction, maintenance and operation of any irrigation facilities, including a separate water meter or meters, that are necessary as a result of the City's Site Plan, City's modifications to the Site and/or the City's use of the Site.
- 3.17. REPAIRS AND CARE OF PREMISES. The City shall permit no waste, damage or injury to the Premises or to the RBPS property. The City shall take no action which would interfere with the County's access to or use of the RBPS property. The City shall pick up, collect and dispose of garbage and trash from the Premises on a regular

basis. The City shall, at all times, use the Premises in accordance with, and comply with the laws of the State of Washington and ordinances of the City and in accordance with all directions, rules, and regulations of the health officer, fire marshal, building inspector of the City at the sole cost and expense of the City.

- 3.18. **NO LIENS.** The City shall keep the Premises free from any liens arising out of work performed, materials furnished or obligations incurred by the City. The City acknowledges and agrees that it has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of King County in the fee interest in the Site, or to charge fees for any claim in favor of any person or entity dealing with the City, including those who may furnish materials or perform labor for any construction or repairs. If any such liens are filed, King County may, without waiving its rights and remedies for breach, and without releasing the City from its obligations under this Agreement, require the City to post security in a form and an amount reasonably satisfactory to King County or to cause such liens to be released by any means King County deems proper, including payment upon satisfaction of the claim giving rise to the lien. The City will pay to King County upon demand any sum paid by King County to remove the liens. Further, the City agrees that it will save and hold King County harmless from any and all loss, cost, or expenses connected with or arising out of the asserted claims or liens, or claims asserted against the right, title and interest of King County in the Site or under the terms of this Agreement, including reasonable attorney's fees and costs incurred by King County to remove such liens, and in enforcing this paragraph. Additionally, it is mutually understood and agreed that this paragraph is intended to be a continuing provision applicable to future improvements after any initial improvements are made on the Site.

4. MODIFICATIONS TO THE SITE BY THE CITY

- 4.1. **MODIFICATIONS.** Upon written approval by the County, the City shall design and construct fencing and signage as described in Sections 3.13 and 3.14. The City may also but is not obligated to design and construct certain other improvements on the Site specifically for public use, including but not limited to volleyball nets, picnic tables, benches, barbecues, restrooms, parking lot paving and paths.
- 4.2. **SITE PLAN REQUIRED.** Prior to its use of the Site the City shall provide to the County a site plan for all proposed improvements to the Site, in substantial compliance with the Conceptual Park Master Plan attached hereto as Exhibit C and incorporated herein by this reference.
- 4.3. **PARKING.** The County and the City agree that if the City wishes to provide parking for users of the Site, then the City may provide parking within the boundaries of the Site in a manner approved in advance, in writing by the County. Such parking shall not inhibit the County's access to the Richmond Beach Pump Station or to the Premises.

- 4.4. **RESTROOM FACILITIES.** The County and the City agree that the Premises are not equipped with public restroom facilities and if any such facilities are to be provided in the future, such facilities shall be provided at the City's sole cost and responsibility, and only upon prior written approval by the County.
- 4.5. **PRIOR CONSENT REQUIRED.** The City shall not make any alterations, additions or improvements to the Site without the prior written approval of the County, which consent shall not be unreasonably withheld. For any such approved alteration, addition or improvement to the Site, the City shall be solely responsible for the design, construction and permitting thereof. Any and all alterations, additions and improvements shall be made at the sole cost and expense of the City, and shall be the property of the City and shall be removed by the City at the termination of this Agreement as provided in Section 2. If the improvement work is approved by the County, then the City shall ensure that the work area is properly barricaded, and will ensure that signage is installed, directing unauthorized persons not to enter onto the construction site during any phase of development or construction. During any construction on the Site, a perimeter fence restricting public access to and across the adjacent railroad right-of-way shall be maintained at all times. Unless otherwise agreed by the Parties in writing, fencing will be placed around work areas. In addition, the construction areas will be kept clean and organized during construction of improvements. The City shall be responsible for site security, traffic and pedestrian warnings at the Site during any construction on the Site. In no event shall any construction work occur on or interfere with the RBPS Premises.
- 4.6. **INDEMNIFICATION AND HOLD HARMLESS DURING CONSTRUCTION.** In performing any work on the Site the City agrees to comply with all laws, ordinances, rules and regulations of the appropriate federal, state and local agencies. As set forth below, the City further agrees to defend, indemnify and save the County free and harmless from all costs, claims, damages, losses or expenses arising out of said work.
- 4.7. The City shall defend, indemnify and hold King County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees and costs, arising out of or in connection with the design, development and construction of any improvements on the Site, except for injuries and damages caused by the negligence of King County.
- 4.7.1. The City, shall require its construction contractors and subcontractors to defend, indemnify and hold King County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees and costs, arising out of or in connection with the design, development and construction of any improvements on the Site, except for injuries and damages caused by the negligence of King County.

- 4.8. **COMMERCIAL GENERAL LIABILITY INSURANCE DURING CONSTRUCTION OF IMPROVEMENTS.** The City shall require its construction contractors to procure and maintain, for the duration of construction of any improvements on the Site, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the work by the construction contractors and subcontractors, their agents, representatives, or employees. If the City performs such construction work using its own forces, then it shall procure and maintain such insurance or provide the County with comparable coverage. All said policies will name King County as an additional named insured and will include a provision prohibiting cancellation or reduction in the amount of said policies except upon 30 days prior written notice to King County. The City shall require its construction contractors to maintain minimum commercial general liability insurance limits of no less than \$1,000,000 each occurrence; \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit; business automobile coverage for a limit of not less than \$2,000,000 combined single limit per occurrence; and workers' compensation coverage as required by the Industrial Insurance Act of the State of Washington, statutory limit.
- 4.9. **BUILDERS RISK INSURANCE.** The City shall require its construction contractors to procure and maintain, for the duration of the construction of improvements on the Site, Builders Risk insurance covering the interests of King County and the construction contractor in the work. Builders Risk insurance will be on an all-risk policy form and will insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the construction contractor. Higher deductibles for flood and earthquake perils may be accepted by King County upon written request by the City and written acceptance by King County. Any increased deductibles accepted by King County will remain the responsibility of the construction contractor. The Builders Risk insurance will be maintained until final acceptance of the work by the City. The City will require its construction contractors to maintain Builders Risk insurance in the amount of the completed value of the improvements to the Site with no coinsurance provisions.
- 4.10. **SUBCONTRACTORS.** The City will require its construction contractors to include all subcontractors as insured under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the same insurance requirements as stated herein for the construction contractor.
- 4.11. **VERIFICATION OF COVERAGE.** The City shall furnish King County with original certificates and a copy of the endorsements, including, but not limited to the additional insured endorsement, evidencing the Commercial General Liability insurance of the construction contractor before commencement of the work. Before any exposure to

loss may occur, the City shall file with King County a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to work under this Agreement.

4.12. ACCEPTABILITY OF INSURERS. Unless otherwise approved by King County, the following provisions apply during any construction on the Site:

4.12.1. Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investor Service.

4.12.2. If at any time any of the foregoing policies fail to meet the above minimum standards, then the City shall, upon notice to that effect from King County, promptly obtain a new policy, and submit the same to King County with certificates and endorsements, for approvals.

4.13. WAIVER OF SUBROGATION. The City shall cause its contractors and subcontractors and their insurance carriers to release and waive all rights of subrogation against King County during the construction to the extent a loss is covered by property insurance in force. The City hereby releases from liability and waives all right of recovery against King County for any loss from perils insured against or under the respective fire insurance policies of its contractors, subcontractors, or any of them, including any extended coverage endorsements thereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of the City or King County.

4.14. INSURANCE PROVISIONS ARE MATERIAL TERMS. Failure by the City, its agents, employees, officers, and/or subcontractors to comply with these insurance requirements shall constitute a material breach of this Agreement.

5. GENERAL CONDITIONS

5.1. INDEMNIFICATION AND HOLD HARMLESS. The City shall defend, indemnify and hold harmless the County from and against any and all costs (including attorneys fees and costs), claims, demands, judgments, damages or liability of any kind including but not limited to personal injury or damages to property which arise out of or in any way result from or are connected to the City's use of the Premises, or from any work or things done, permitted by or suffered by the City in or about the Premises and shall further defend, indemnify and hold harmless the County from and against any and all claims, demands, judgments, damages or liability of any kind arising out of or resulting from any breach or default in the performance of any obligation on the City's part to be performed under the terms of this Agreement, or arising from any negligence of the City or any of the City's officers, officials, agents, contractors and

employees. The City's obligations under this section shall include, but not be limited to:

- 5.1.1. The duty to promptly accept tender of defense and provide defense to the King County at the City's expense for claims that fall within this section;
- 5.1.2. Indemnification of claims, including those made by the City's own employees and/or agents for this purpose, for claims that fall within this section;
- 5.1.3. In the event King County incurs any judgment, award and/or cost arising from claims that fall within this section, including attorney's fees to successfully enforce the section, all such fees, expenses, and costs shall be recoverable from the City.
- 5.1.4. The City expressly and specifically 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, the City, hereby expressly and specifically waives, with respect to King County 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 King County.
- 5.1.5. The provisions contained in this section shall survive the termination of this Agreement, for any reason.

5.2. LIABILITY POLICIES

MINIMUM SCOPE OF INSURANCE FOR THE CITY. In addition to the insurance requirements set forth in Section 4 that are applicable to the construction of improvements on the Site, the City shall at a minimum maintain insurance that covers the City's and public's activities and usage of the Site as follows:

- 5.2.1. Commercial General Liability insurance (Insurance Services Office form number (CG00 001), covering Commercial General Liability with a limit of not less than \$1,000,000 combined single limit per occurrence; \$5,000,000 aggregate.
- 5.2.2. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by King County. The deductible and/or self-insured retention of the policies will not limit or apply to King County and will be the sole responsibility of the City.

- 5.3. OTHER INSURANCE PROVISIONS. The insurance policies required by Section 5.2 shall also contain or be endorsed to contain the following provisions where applicable:

- 5.3.1. King County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities and usage by the City and the public of the Site.
- 5.3.2. The City's comprehensive general liability insurance coverage will be primary insurance as respects King County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by King County, its officers, officials, employees or agents will not contribute with the City's insurance or benefit the City in any way.
- 5.3.3. Coverage will not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limits by claims paid, until after forty-five (45) days' prior written notice has been given to the City and King County.
- 5.4. ACCEPTABILITY OF INSURERS. Unless otherwise approved by King County, the following provisions apply exclusively to the City's and public's activities and usage of the Site after the construction of any improvements on the Site:
 - 5.4.1. Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investor Service.
 - 5.4.2. If at any time any of the foregoing policies fail to meet the above minimum standards, then the City will, upon notice to that effect from King County, promptly obtain a new policy, and submit the same to King County with certificates and endorsements, for approvals.
 - 5.4.3. The City and its insurance carriers will release and waive all rights of subrogation against King County. The City hereby releases from liability and waives all right of recovery against King County for any loss from perils insured against or under their respective fire insurance policies, including any extended coverage endorsements thereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of the City or King County.
- 5.5. OTHER INSURANCE MATTERS.
 - 5.5.1. Each insurance policy will be written on an "occurrence" basis.
 - 5.5.2. By requiring such minimum insurance as specified herein, neither party is deemed to, or construed to, have assessed the risks that may be applicable to the other party to this Agreement. The City will assess its own risks and, if it

deems appropriate or prudent, or both, maintain greater limits or broader coverage.

- 5.5.3. The City will furnish King County with certificates of insurance and endorsements as required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for the City's insurance are to be on forms approved by King County and are to be received and approved by King County prior to the Effective Date of this Agreement. King County reserves the right to require complete certified copies of all required policies at any time.
- 5.5.4. The insurance coverage required of the City under Sections 5.2-5.5 may be provided by comparable insurance risk pool coverage, and a coverage letter from the risk pool administrator shall be provided by the City to the County annually in lieu of a certificate of insurance.
- 5.6. NON-WAIVER OF BREACH. The failure of either the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment thereof, or any other covenants or agreements, but the same shall be and remain in full force and effect.
- 5.7. NOTICE. Any notice required to be given by either party to the other pursuant to the provisions of this Agreement or any law, present or future, shall be in writing and shall be deemed to have been duly given or sent if either delivered personally or deposited in the United States Mail, postage prepaid, registered or certified, return receipt requested, addressed to the:

City of Shoreline
Director, Department of Parks, Recreation and Cultural Services
17544 Midvale Avenue North
Shoreline, WA 98133

King County
Right-of-Way and Permitting Supervisor
Department of Natural Resources and Parks
Wastewater Treatment Division,
Major Capital Improvement Program
201 South Jackson Street, Suite 503
Seattle, Washington 98104-3855

Or, to such other person or address as is hereafter designated in writing by either party to the other.

5.8. NONDISCRIMINATION.

5.8.1. EMPLOYMENT. The City does not anticipate hiring any employees to develop and maintain the Site or otherwise perform its obligations under this Agreement. If the City should elect to do so, however, the City agrees not to discriminate against any employee or applicant for employment because of sex, age, race, color, creed, national origin, sexual orientation, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bonafide occupational qualification. This requirement shall apply without limitation to all aspects of employment (including lay-offs or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship) and advertisement.

5.8.2. SERVICES AND ACTIVITIES. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, sexual orientation, age (except minimum age and retirement provisions), marital status, or the presence of any sensory, mental, or physical handicap. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for termination or suspension in whole or in part of this Agreement by King County and may result in ineligibility for further King County agreements.

5.8.3. OTHER NONDISCRIMINATION LAWS. The City shall also comply with all applicable anti-discrimination laws or requirements of any and all jurisdictions having authority.

5.9. ASSIGNMENT. The City may not assign this Easement or any interest therein without King County's prior written approval.

5.10. TRANSFER OF OWNERSHIP OR OPERATIONS OF PREMISES BY COUNTY. King County shall have the right to sell or otherwise transfer or dispose of the Site, or to assign this Agreement or any interest of the County hereunder. In the event of a sale or other means of transfer of ownership, operations, or disposition of any part of the Premises, either by operation of law or other means, the County shall be and is hereby relieved of all liability under any and all of its covenants and obligations contained in or derived from this Agreement arising out of any act, occurrence or omission occurring after the consummation of such sale or other means of transfer of ownership, operations, or disposition, and the purchaser, owner, or operator, at such transfer or any subsequent transfer of the Premises, shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and such transferee, purchaser or operator, to have assumed and agreed to carry out any and all of the covenants and obligations of the County under this Agreement.

5.11. POWERS OF THE COUNTY. Nothing contained in this Agreement will be considered to diminish the governmental or police powers of King County.

- 5.12. **FORCE MAJEURE.** The performance of this Agreement by either party is subject to acts of God, war, government regulation or advisory, disasters, fire, accidents or other casualty, strikes or threat of strikes, civil disorder, acts and/or threats of terrorism, or curtailment of transportation services or facilities, cost or availability of power, or similar causes beyond the control of either party making it illegal, impossible or impracticable to perform. Either party may terminate or suspend its obligations under this Agreement if such obligations are prevented by any of the above events to the extent such events are beyond the reasonable control of the party whose reasonable performance is prevented.
- 5.13. **AGREEMENT IS PUBLIC DOCUMENT.** This Agreement will be considered a public document and will be available for inspection and copying by the public.
- 5.14. **TAXES.** The City agrees to pay on a current basis all applicable taxes or assessments levied on its activities, if any; PROVIDED, however, that nothing contained herein will modify the City's right to contest any such tax, and the City will not be deemed to be in default as long as it will, in good faith, be contesting the validity or amount of any such taxes.
- 5.15. **RECORDS, AUDITS AND INSPECTIONS.** During the Term of this Agreement, and any extension thereof, the City's books, records and other materials related to any matters covered by this Agreement and not otherwise privileged shall be subject to inspection, review, and/or audit by King County at King County's sole expense. Such books, records and other materials shall be made available for inspection during regular business hours within a reasonable time of the request.
- 5.16. **COMPLIANCE WITH ALL LAWS AND REGULATIONS.** In using the Site, the City and members of the public shall comply with all applicable laws, ordinances and regulations from any and all authorities having jurisdiction and, specifically, the requirements of the Washington Industrial Safety and Health Act (WISHA). The City specifically agrees to comply and pay all costs associated with achieving such compliance without notice from the County, and further agrees that the County does not waive this provision by giving notice of demand for compliance in any instance.
- 5.17. **INTERPRETATION OF COUNTY CODE AND RULES.** If there is any question regarding the interpretation of any provision of King County Code or any King County rule or regulation, King County's decision will govern and will be binding upon the City.
- 5.18. **PERMITS AND LICENSES.** The City will obtain and maintain, at its own costs and expense, all necessary permits, licenses and approvals required for the activities contemplated under this Agreement.
- 5.19. **RISK OF LOSS.** All property of any kind or description whatsoever placed or moved onto the Site by the City shall be at the City's sole risk, and King County shall not be liable for any damage done to, or loss of, such property.

5.20. ENVIRONMENTAL LIABILITY.

- 5.20.1. The City covenants and warrants that the City, its employees, contractors, agents or invitees shall not use the Premises in a manner which violates any applicable federal, state or local law, regulation or ordinance governing the handling, transportation, storage, treatment, usage or disposal of toxic or hazardous substances, wastes or materials.
- 5.20.2. The City shall not, without first obtaining King County's written approval, apply, store, deposit, transport, release or dispose of any hazardous substances, petroleum products, sewage, medicinal, bacteriological, or toxic materials, or pollutants, on the Site. All approved application, storage, deposit, transportation, release and disposal shall be done safely and in compliance with applicable laws.
- 5.20.3..The City shall immediately notify the County of any and all spills or releases of any toxic or hazardous substances, wastes, or materials, all failures to comply with any federal, state, or local law, regulation or ordinance, all inspections of the Site by any regulatory entity concerning the same, all regulatory orders or fines, and all response or interim cleanup action taken by or proposed to be taken by an government entity or private party on the Premises.
- 5.20.4. The City shall indemnify, defend, and hold harmless the County from any claims, judgments, damages, penalties, fines, expenses, liabilities (including sums paid in settlements of claims) or loss arising out of or in any way relating to a breach of the environmental warranty made by the City above. Such indemnity shall include, without limitation, attorneys' fees, consultants' fees, and expert fees, as well as costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision.
- 5.20.5. For the purposes of this section, "toxic or hazardous substances, wastes and materials" or "toxic substance" includes but is not limited to any material or substance which is (1) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Liability and Compensation Act, 42 U.S.C. 9601(14); (2) defined as a "hazardous Waste" pursuant to Section 1004 or Section 3001 of the Resource, Conservation and Recovery Act, 42 U.S.C. 6903, 42 U.S.C. 6921; (3) included on the toxic pollutant list under Section 307(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1317(a); (4) defined as a "hazardous Substance" pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. 1321; (5) defined as a "hazardous air pollutant" under Section 112 of the Clean Air Act, 42 U.S.C.

7412; (6) defined as a “hazardous substance” under Washington’s Hazardous Waste Cleanup Act, RCW 70.105B.020; (7) defined as a “hazardous substance” pursuant to the hazardous waste site cleanup law, the Model Toxics Control Act ((initiative 97). “Toxic or hazardous substances, wastes and materials” specifically includes, but is not limited to, asbestos, polychlorinated biphenyls (PCBs), petroleum and petroleum products, and urea formaldehyde.

- 5.20.6. The covenants and warranties in this Section 5.21 shall survive the termination of this Easement.
- 5.21. **NO EMPLOYMENT RELATIONSHIP.** In providing services under this Agreement, the City is an independent Contractor, and neither it nor its officers, agents, employees, or subcontractors are employees of King County for any purpose. The City shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law. King County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of the City, its employees, subcontractors and/or others by reason of this Agreement.
- 5.22. **RECORDATION OF MEMORANDUM OF AGREEMENT.** This Agreement may be recorded at either party’s request. If this Easement is recorded then upon termination both parties shall execute, acknowledge, and deliver to the other any instrument reasonably requested by either party for purposes of providing record notice of a termination.
- 5.23. **OBLIGATION TO PERFORM.** Nothing herein shall imply any duty upon King County to do any work required to be performed by the City in this Agreement, and the performance thereof by King County will not constitute a waiver of the City’s default. King County will not in any event be liable for inconvenience, annoyance, and disturbance in its activities on the Site.
- 5.24. **PAYMENTS TO OTHER PARTIES.** Except as expressly provided hereunder, all obligations of the City under this Agreement will be performed by the City at the City’s sole cost and expense. If the City fails to pay any sum of money owed to any party other than King County for which the City is liable hereunder, or if the City fails to perform any other act on its part to be performed hereunder, and such failure continues for ten days after notice thereof by King County, King County may, without waiving or releasing the City from its obligations, make any such payment or perform any such other act to be made or performed by the City. The City will pay King County, on demand, all sums so paid by King County and all necessary incidental costs, together with interest thereon at the lesser of 1 percent per month or the maximum rate permissible by law, from the date of such payment by King County.

5.25. DEFAULT.

5.25.1. KING COUNTY'S DEFAULT. King County will not be in default unless King County fails to perform an obligation within sixty (60) days after notice by the City, which notice must specify the alleged breach; provided that if the nature of King County's breach is such that more than sixty (60) days are reasonably required for cure, then King County will not be in default if King County commences to cure within sixty (60) days of the City's notice and thereafter diligently pursues completion and completes performance within a reasonable time.

5.25.2. THE CITY'S DEFAULT. The occurrence of any one or more of the following events constitutes a default by the City under this Agreement:

- (1) The City fails to provide for and/or maintain insurance as set forth in Sections 4 and 5 of this Agreement and such breach is not cured within 3 days after notice from the County to the City.
- (2) The City will be in default of the performance of any covenants, conditions, or provisions of this Agreement, where such failure continues for a period of thirty (30) days after written notice is given by King County; or
- (3) The City will be adjudged a bankrupt, make a general assignment for the benefit of creditors, or take the benefit of any insolvency act, or if a permanent receiver and trustee in bankruptcy is appointed for the City's estate and such appointment is not vacated within sixty (60) days; or
- (4) If this Agreement is assigned or the Site is used by the City for activities other than in accordance with the terms of this Agreement, and such default is not cured within thirty (30) days after written notice from King County to the City; or
- (5) The City fails to make any payment when due, or fails to make any other payment required hereunder when due, when that failure is not cured within thirty (30) days after mailing of written notice thereof by King County.

5.26. TERMINATION

5.26.1. TERMINATION FOR DEFAULT. This Easement may be terminated for any default set forth in Section 5.25 upon written notice to the defaulting party as provided in that section.

5.26.2. OTHER CITY TERMINATION. The City may terminate this Easement for any reason upon one hundred eighty (180) days notice in writing to King County.

5.26.3. OTHER KING COUNTY TERMINATION.

(1) NUISANCE. The County may terminate this Easement upon thirty (30) days written notice to the City for suffering, permitting or maintaining a nuisance in or on the Site; provided however that if the City commences to abate the nuisance within thirty (30) days of King County's notice and thereafter diligently pursues completion of the abatement and completes abatement of the nuisance within a reasonable time, then King County will not terminate the Easement.

(2) DESTRUCTION OF THE PREMISES. In the event the RBPS is damaged or destroyed (even though the Site is not damaged thereby) to such an extent that in the opinion of the County it shall not be practicable to repair or rebuild, or the County elects to abandon the pump station and surplus the property, then, consistent with the King County Code provisions regarding surplus County property, the City shall be given a right of first refusal to purchase the entire RBPS property to be exercised within 60 days of a determination of fair market value established by an appraiser mutually acceptable to both parties. If the City does not agree to purchase the entire RBPS at said fair market value then the County shall follow applicable federal, state and local laws regarding surplus County property, without further obligation of any kind to the City.

5.26.4. Upon termination for any reason, the City shall not be entitled to any compensation or damages from King County for improvements or otherwise.

5.26.5. This Easement and all rights to use the property granted City hereunder shall automatically terminate upon either: (a) delivery of written notice from County to City stating that one or more of the conditions set forth in Section 2.2 or 5.26.3 of this Easement has occurred, or (b) delivery of written notice from City to County stating that one or more of the conditions set forth in Section 2.3 or 5.26.2 of this easement has occurred, or (c) delivery of written notice from County to City that an event of default set forth in Section 5.25 of this Easement has occurred which default was not cured within the period of time, if any, provided for cure herein. City authorizes County, without further notice to or approval by City, to record a termination of this Easement in the real property records of King County, Washington, to confirm of record that the easement rights granted City under this Easement have terminated and are of no further force and effect. If requested by County, City agrees to join in the execution of the termination of Easement and will execute or furnish such documents and further assurances to King County, the title company or to

other public officials as may be necessary to carry out the transactions contemplated by this Easement.

- 5.27. **REMOVAL OF PROPERTY.** In the event of default by the City and re-entry by the County, the County shall have the right, but not the obligation, to remove from the Premises all personal property located therein, and may store the same in any place selected by the County, including but not limited to a public warehouse, at the expense and risk of the City, with the right to sell such stored property, without notice to the City, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from the City to the County under any of the terms hereof, the balance if any to be paid to the City.
- 5.28. **DUTIES UPON TERMINATION.** Upon termination of this Easement and unless otherwise arranged, the City will remove from the Site all its personal property, goods, and effects. If the City fails to perform this duty at termination, King County may cause such removal to be made and the City's personal property, goods and effects to be stored, the cost and expense to be paid by the City. It is understood and agreed that the real property constituting the Site is the real property of King County and that all improvements to that real property will continue to belong to King County upon termination of this Easement.
- 5.29. **REMEDIES ARE CUMULATIVE.** Remedies under this Agreement are cumulative; the failure to exercise any right on any occasion will not operate to forfeit such remedy.
- 5.30. **DESTRUCTION OF PREMISES AND USE OF INSURANCE PROCEEDS.**
- 5.30.1. Unless otherwise mutually agreed by the Parties, if the Site is destroyed or damaged by fire, earthquake, or other casualty, then the City may terminate the Easement as set forth in section 5.26.2 or shall proceed to rebuild and restore the Site, or such part thereof as may be damaged or destroyed. In the event of any loss covered by the insurance policies described and required under this Agreement, unless this Agreement is terminated as provided herein, the City will use the proceeds of such insurance policies first to restore the Site and replace the improvements, fixtures, and equipment, which may be damaged or destroyed by such casualty.
- 5.31. **EMINENT DOMAIN.** The following rules will govern the rights and duties of the Parties in the event of interference with the City's design, construction, or use of the Site as a result of the exercise of eminent domain or private purchase in lieu thereof.
- 5.31.1. **RIGHT OF TERMINATION.** If the whole of the Site is taken for any public or quasi-public use under any statute or by right of eminent domain, or by

private purchase in lieu thereof, then this Agreement will automatically terminate as of the date that title is taken. If more than twenty-five percent (25%) of the Site is so taken and if the taking renders the remainder thereof unusable for the purposes contemplated under this Agreement, then the City and King County will each have the right to terminate this Agreement on thirty (30) days notice to the other, given within ninety (90) days after the date of such taking.

- 5.31.2. **COMPENSATION.** The compensation awarded or paid upon a total or partial taking of the Site, will belong to King County as owner of the Site. The City may prosecute any claim directly against the condemning authority for the costs of improvements and of removal of the personal property, if any, belonging to the City. King County will have no claim to condemnation proceeds attributable to the City's improvements and personal property on the Site. The City shall have no interest in King County's condemnation proceeds, if any.
- 5.32. **HEADINGS NOT PART OF AGREEMENT.** The headings in this Agreement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.
- 5.33. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Washington.
- 5.34. **JURISDICTION AND VENUE.** The exclusive jurisdiction and venue for any disputes arising under this Agreement, including matters of construction, validity and performance, shall be in the Superior Court for King County in Seattle, Washington.
- 5.35. **ENTIRE AGREEMENT.** This agreement and any and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between King County and the City. There are no promises, agreements, conditions, understandings, inducements, warranties, or representations, oral or written, expressed or implied, other than what is expressly set forth in this Agreement. This Agreement shall not be modified in any manner except by an instrument in writing and executed by the parties.
- 5.36. **SEVERABILITY.** Should any provision of this Agreement be found to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision shall be stricken and the remainder of this Agreement shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the Parties.
- 5.37. **EXHIBITS.**
A. Map of Site
B. Legal Description of Site

oath state that he is authorized to execute the instrument and acknowledged it as the City Manager of the City of Shoreline to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: _____

NOTARY PUBLIC in and for the State of
Washington, residing at _____

My Commission Expires: _____

Exhibits and Attachments:

City site plan, parcel map, legal description, MOA

This page intentionally left blank