

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Easement Agreement for Use of District Court Property for Cromwell Park Use
DEPARTMENT:	City Attorney; Parks, Recreation and Cultural Services
PRESENTED BY:	Ian Sievers, City Attorney

PROBLEM/ISSUE STATEMENT:

This easement agreement has been negotiated with King County for inclusion of the easterly portion of the Shoreline District Court parcel into the planned renovation of Cromwell Park. The City Council reviewed the use of this property as part of the Draft Master Site Plan for Cromwell Park on February 11, 2008 (Attachment A). The Master Plan includes natural stormwater detention that will be sized to replace the existing stormwater detention pond on the courthouse property.

FINANCIAL IMPACT:

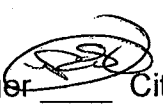
There are added costs of approximately \$57,000 for rerouting stormwater from the district court facilities to the new detention pond to be built in Cromwell Park and costs of the marginal increase in the size of that detention pond (.034%). The City receives the use of 37,180 square feet of property conservatively valued at \$555,400 (2009 assessment).

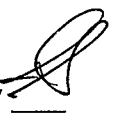
The \$1 million Cromwell Park redevelopment was approved as part of the 2006 Parks Bond Levy. This park funding will include the incremental cost of rerouting and detaining the District Court stormwater since the park is receiving the benefit of additional acreage for park use.

RECOMMENDATION:

Staff recommends the City Council authorize the City Manager to execute the Easement Agreement for Park Use Between King County and City of Shoreline (Attachment B).

Approved By:

City Manager 

City Attorney 

BACKGROUND:

As the Parks Department began its master plan for Cromwell Park, staff approached the County regarding the possibility of entering into a use easement for the easterly portion of the property used for the Shoreline District Court and courthouse parking on Meridian Ave. This land was devoted to a detention pond receiving storm drainage from the court buildings and parking surfaces. The City proposed to substitute use of a new detention area proposed to be constructed as part of the Cromwell Park renovations to alleviate flooding down stream in the Ronald Bog area. Cromwell is located in the upper portion of the 2,418 acre Thornton Creek watershed located within the Shoreline city limits. The Ronald bog sub basin plan includes detaining flows upstream of the Bog at Cromwell to reduce flooding immediately south of the Bog and further downstream (one to two acre-feet of storage). Cromwell already contains a wetlands between the north and south portions of the part. Detention includes a water quality treatment element to clean road runoff with bio-filtration swales. By sizing the park detention facility to handle stormwater from the adjacent District Court facilities, the detention pond on the County property can be removed and the land incorporated into the Cromwell Park trails and open space plan. This arrangement with the County results in a more efficient use of publicly owned lands.

The Use Easement (Attachment B) has been modeled after the use easement with King County for under-utilized portions of the Richmond Beach Pump Station. The Use Easement for a park at the Richmond Beach site was negotiated as mitigation for impacts to the City resulting from the County's Brightwater Project, particularly construction of the outfall at Point Wells. Consideration for the property use at Cromwell Park is the replacement of the on-site stormwater pond and assumption of future operation and maintenance responsibility for the county stormwater within Cromwell Park.

Use Agreement Terms.

The easement area is .85 acres and will be added to the north part of the 9 acre Cromwell Park. The property will be used for paths, landscaping and passive park use as shown on the Master Plan. The City will install signage at the County parking lot for after-hours and weekend parking acceptable to the County, adding the 100 spaces in this lot for peak hours of park use.

The term of the easement is perpetual, but similar to the Richmond Beach pump station easement, may be terminated if the property is needed by the County for the permanent expansion of the courthouse. This termination risk is seen as remote in the foreseeable future since the building is currently underutilized. The County also retains the right to surplus the entire district court property but must first give the City the opportunity to purchase the property at fair market value. If the City does not exercise this right of refusal the use easement terminates. Finally, the County may terminate without cause

upon 180 days notice but only after fifteen years of use. This period complies with park bond covenants and allows a reasonable return on the initial stormwater expenditures.

The City agrees to remove the existing stormwater detention pond behind the court house parcel and reroute storm mains from the courthouse facilities to the new detention facilities at Cromwell. Upon completion the City shall be responsible for maintenance of mains and detention on the park parcel, the County shall maintain the storm mains on the county parcel.

RECOMMENDATION:

Staff recommends the City Council authorize the City Manager to execute the Easement Agreement for Park Use Between King County and City of Shoreline.

ATTACHMENTS:

Attachment A – Draft Master Site Plan for Cromwell Park with Drainage sections

Attachment B – Easement Agreement for Park Use Between King County and City of Shoreline

City of Shoreline
Master Plan
Cromwell Park



Draft
Master Site Plan

LEGEND

- PEDESTRIAN PATH OR TRAIL (4'-4' MAINTENANCE ACCESS (10'))
- PLAY AREA OR COURT
- PICNIC TABLE BENCH
- MEADOW OR PLAYFIELD
- LANDSCAPE AREA (TREES, SHRUBS, GROUNDCOVER)
- DECIDUOUS TREE
- EVERGREEN TREE
- WETLAND AREA
- STORMWATER FACILITY

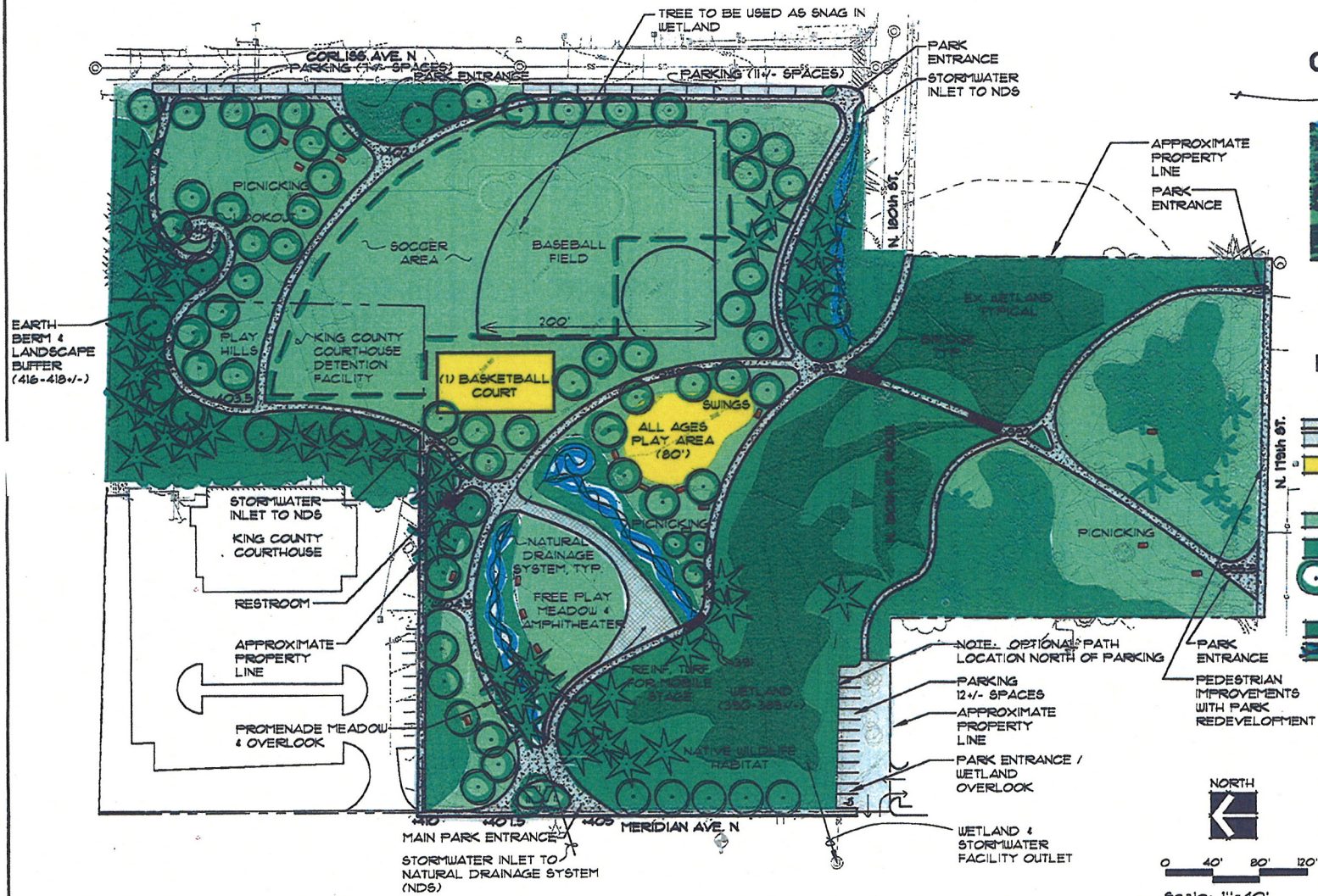


GAYNOR, Inc.



0 40' 80' 120'

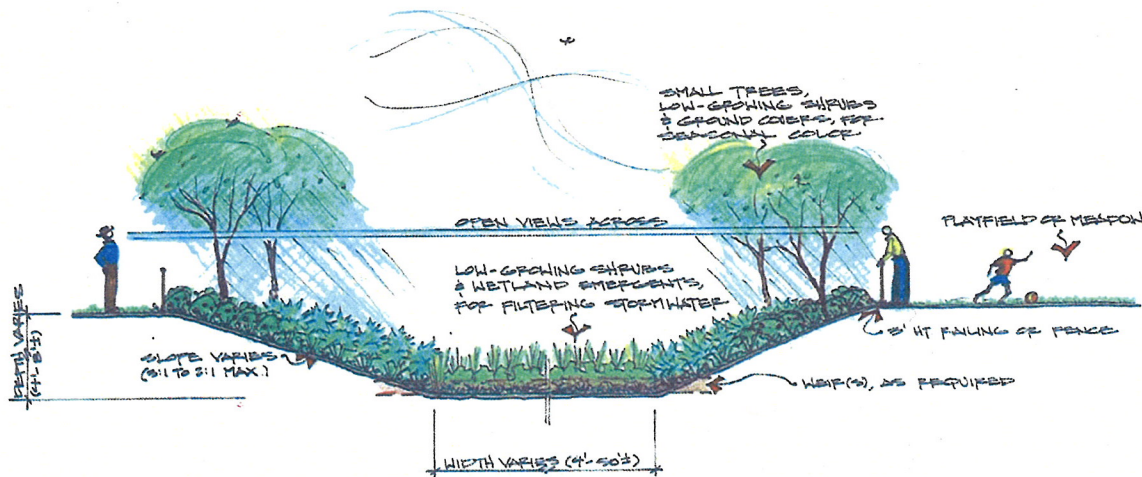
Scale: 1"=40'



City of Shoreline
Master Plan
Cromwell Park

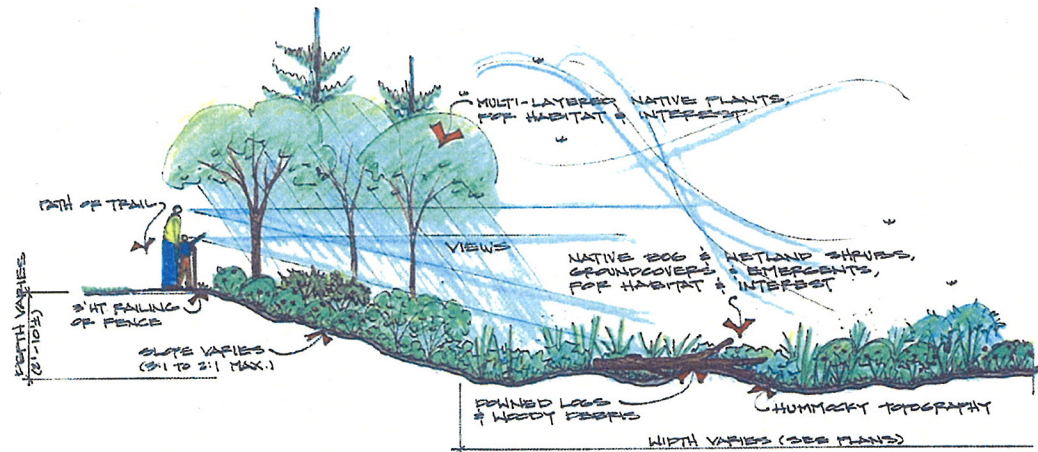


Sections



TYPICAL NATURAL DRAINAGE SYSTEM:
SECTION & LANDSCAPE

1/4" = 1'-0"



TYPICAL WETLAND: SECTION & LANDSCAPE

1/4" = 1'-0"

Sept. 26, 2007



GAYNOR, Inc.

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
KING COUNTY
FACILITIES MANAGEMENT DIVISION
REAL ESTATE SERVICES SECTION
MAILSTOP: ADM-ES-0500
500 FOURTH AVE, ROOM 500
SEATTLE, WA 98104

Document Title:	Surface Use Easement
Grantor(s):	King County
Grantee:	City of Shoreline
Abbreviated Legal Description:	Echo Lake Garden TRS 4 th Div
Additional Legal Description is on Page:	Page 2
Assessor's Tax Parcel Number(s):	2224700075

**Easement Agreement for Park Use Between
King County and City of Shoreline**

This Easement Agreement ("Easement" or "Agreement"), is dated for reference purposes December , 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 parkland use on King County property located at 18050 Meridian Ave. N., Shoreline, WA 98133 as described and depicted more particularly herein.

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 Shoreline District Court (SDC) property depicted as in Exhibit A, situated in the City of Shoreline, King County, Washington, at 18050 Meridian Ave. N., Shoreline, WA 98133, King County, WA, comprising approximately 2.81 acres.
- 1.2. City of Shoreline, operates an extensive system of parks and open spaces. Cromwell Park is located in the central portion of the City in the Meridian Park neighborhood.

The park is composed of two separate parcels. The northern portion is a large, open area. The southern portion is a small, heavily wooded area lacking significant development. The Shoreline District Court property is located on the north and west boundary of the park.

- 1.3 King County Code Section 4.56.115 and 4.56.140 authorize the County to convey easements to governmental agencies to provide utility service to County property, and 4.56.150(E) authorizes the County to enter into agreements for the use of King County land by governmental agencies that provide a service to the public.
- 1.4 This easement will allow public use of a portion of the SDC now devoted to stormwater detention as an integrated part of Shoreline's redevelopment of Cromwell Park while preserving the use of the property for future County needs.
- 1.5 In consideration of the easements granted herein, Shoreline will, at its sole expense, remove and replace the existing stormwater detention facilities on the SDC property and construct new stormwater detention facilities within Cromwell Park to provide stormwater detention and drainage from the SDC property as provided herein, and develop and operate Cromwell Park for the term of the Easement.

2. GRANT OF EASEMENT

- 2.1. King County grants to the City of Shoreline a temporary, non-exclusive, surface use easement for park purposes, subject to completion of all appropriate regulatory permitting for the SDC stormwater detention function transfer, on the eastern portion of the SDC property located 18050 Meridian Ave. N., Shoreline, WA 98133 consisting of 130 feet by 286 feet, approximately .85 acre as depicted in Exhibit A attached hereto and more fully described below (hereafter "Site"), subject to the terms and conditions of this Agreement:

The eastern 130 feet, of the north 286 feet of the west 428 feet of Lot 3, Echo Lake Garden Tracks Division No. 4, according to plat recorded in Volume 12, page 19, records of King County, WA.

- 2.2. King County also grants to the City of Shoreline a temporary, non-exclusive, sub-surface construction easement for the purpose of replacing the stormwater detention and drainage facilities on the SDC property by installing, constructing, operating, maintaining, removing, re-constructing, and repairing, a stormwater drainage system that will be incorporated into the detention and drainage facilities to be constructed for Cromwell Park on the eastern portion of the SDC property, as more fully described in Exhibit C attached hereto (hereafter "Site"), subject to the terms and conditions of this Agreement. This temporary construction easement will terminate upon completion and conveyance of the new drainage system on the SDC property to the County under Section 3.14.

- 2.3 The SDC property is developed with a District Court and associated stormwater detention pond. The County may need to expand, enlarge, alter, repair, replace, maintain, modify or re-configure the SDC requiring the permanent use of all or a portion of the Site. If this becomes necessary, the County may terminate this Easement, including both the surface easement in Sec. 2.1 and the subsurface easement in Sec. 2.2, above by providing the City with one-hundred eighty (180) days notice. The County may also terminate this Easement for cause. The City may terminate this Easement by providing 180 days written notice.

3. USE, MAINTENANCE, AND OPERATION OF SITE

- 3.1. **NON-EXCLUSIVE USE.** The City shall have a non-exclusive right to use the Site 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, but to limit its public parkland use to daytime hours. 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.
- 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 elsewhere in this Agreement.
- 3.5. **COUNTY OWNERSHIP.** King County shall retain ownership of the Site and the SDC property, including all improvements, permanent fixtures and County-purchased equipment.
- 3.6. **NO FEES/HOURS OF USE.** The City shall not charge fees for the use of the Site by the public. The City shall set and enforce hours of public use at the Site, limited to dawn to dusk operations.
- 3.7. **LAWFUL USE.** The City shall take reasonable precautions to 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.

- 3.8. LIMITED USE. The City shall use the Site for no other business or purpose than as explicitly provided in this Agreement.
- 3.9. 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.
- 3.10. SIGNS. The City shall install a sign within Cromwell Park advising members of the public using the Site that the Site is the property of King County. If located on the Site, 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.
- 3.10.1. 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. Additionally, with County mutual agreement, City will install adequate signage in the SDC parking lot indicating hours for acceptable park parking. 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.
- 3.11. FENCING. The City shall install and maintain a fence between the Site and the SDC property which is not included in the Site and is retained exclusively by the County.
- 3.12. SOLICITING. Except as otherwise provided in this Agreement, canvassing, soliciting and distribution of handbills or any other written material, or peddling on the Site are each prohibited without the prior written approval of the County.
- 3.13. 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.

- 3.14 **STORMWATER FACILITIES.** The City agrees that it will, at its sole expense, remove the existing stormwater detention facilities on the Site serving the improvement on the SDC property and replace them with new stormwater detention facilities serving the SDC property to be constructed and incorporated within Cromwell Park property owned by the City. Stormwater mains may be located within the Site connecting these new detention facilities to SDC improvements. The City shall bear the cost of removing the existing detention facilities, constructing replacement detention facilities in Cromwell Park and constructing, removing or relocating stormwater mains connecting the SDC improvements to the new detention facilities. Upon completion, the City shall deliver as-built plans of the new or relocated stormwater mains on the SDC property and convey new mains by bill of sale to the County. The City shall bear the cost and responsibility of providing adequate stormwater capacity for the existing SDC structure. All stormwater facilities within the City's property shall be maintained and operated at City expense. Maintenance and repair of stormwater mains that are located on the SDC property shall remain the responsibility of the County. The relocation of stormwater detention facilities from the SDC property is a material consideration for King County's execution of this Agreement. As part of the Site Plan referred to in Section 4.1 herein the City shall identify any new stormwater facilities and/or any upgrades to the existing stormwater facilities on the SDC property.
- 3.15. **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 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. 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.
- 3.16. **REPAIRS AND CARE OF SITE.** The City shall permit no waste, damage or injury to the Site or to the SDC property. The City shall pick up, collect and dispose of garbage and trash from the Site on a regular basis. The City shall, at all times, use the Site 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.
- 3.17. **NO LIENS.** The City shall keep the Site 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.** 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 and 100 year flood plan which are attached hereto as Exhibits C and D, respectively and incorporated herein by this reference, or in compliance with any amended Park Master Plan which has been approved by the County. 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. 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 SDC Site.

4.1.1 **PRIOR CONSENT REQUIRED.** The City shall not make any alterations, additions or improvements to the Site without prior written approval of the County, which consent shall not be unreasonably withheld.

- 4.2. **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. 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.

4.2.1. 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

- 4.3. **COMMERCIAL GENERAL LIABILITY INSURANCE DURING CONSTRUCTION OF IMPROVEMENTS.** 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 including products-completed operations; Commercial automobile coverage for a limit of not less than \$1,000,000 combined single limit per occurrence; Employers Liability/Stop Gap \$1,000,000 Limit. Workers' compensation coverage as required by the Industrial Insurance Act of the State of Washington, statutory limit. 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.
- 4.4. **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.
- 4.5. **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.
- 4.6. **ACCEPTABILITY OF INSURERS.** Unless otherwise approved by King County, the following provisions apply during any construction on the Site:
 - 4.6.1. 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.
 - 4.6.2. 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.
- 4.7. **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.

- 4.8. 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 Site, or from any work or things done, permitted by or suffered by the City in or about the Site 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. INSURANCE 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; \$2,000,000 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 commercial 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 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
Real Estate Services Supervisor
Department of Executive Services
Facilities Management Division,
Real Estate Services Section
500 Fourth Avenue, Room 500
Seattle, Washington 98104

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 SITE 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 Site, 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 Site, 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. 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.

- 5.15. 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.
- 5.16. 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.
- 5.17. 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.
- 5.18. 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.
- 5.19. ENVIRONMENTAL LIABILITY.
 - 5.19.1. The City covenants and warrants that the City, its employees, contractors, agents or invitees shall not use the Site 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.
 - 5.19.2. 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.
 - 5.19.3. 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 Site.

5.19.4. 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.

5.19.5. 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.

5.19.6. The covenants and warranties in this Section 5.21 shall survive the termination of this Easement.

5.20. 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.

5.21. 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.

5.22. 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.

5.23. DEFAULT.

5.23.1. 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.

5.23.2. 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.

5.24. TERMINATION

5.24.1. TERMINATION FOR DEFAULT. This Easement may be terminated for any default set forth in Section 5.23 upon written notice to the defaulting party as provided in that section.

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

5.24.3. 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) SALE OF THE SITE. In the event the County elects to abandon any County use of the SDC property 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 SDC 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 SDC at said fair market value then the County shall have no further obligation of any kind to the City under this Agreement.

(3) After a period of fifteen (15) years from the effective date of this Easement, the County may terminate this Easement for any reason upon one hundred eighty (180) days notice in writing to City.

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

5.24.5. 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 2.3 or 5.24.3 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 5.24.2(?) of this easement has occurred, or (c) delivery of written notice from County to City that an event of default set forth in Section 5.23 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.

- 5.25. **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 Site 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.
- 5.25. **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.
- 5.26. **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.
- 5.27. **DESTRUCTION OF SITE AND USE OF INSURANCE PROCEEDS.**
- 5.27.1. 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 5.24.2 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.

- 5.28. 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.
- 5.28.1. 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.
- 5.28.2. 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.
- 5.29. 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.
- 5.30. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Washington.
- 5.31. 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.
- 5.32. 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.

5.33. 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.

5.34. EXHIBITS.

- A. Map of Site
- B. Legal Description of Site
- C. Conceptual Park Master Plan

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the date set forth below.

KING COUNTY

CITY OF SHORELINE

By: _____

By: Robert Olander

Wayne Richardson

TITLE: __ Manager Real Estate Services _

TITLE: City Manager

DATED: _____

DATED: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Don Woodworth, Prosecuting Attorney

Ian Sievers, Shoreline City Attorney

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

I hereby certify that I know or have satisfactory evidence that Wayne Richardson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath state that he is authorized to execute the instrument and acknowledged it as the of King County to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: _____

My Commission Expires:_____

I hereby certify that I know or have satisfactory evidence that Robert Olander is the person who appeared before me, and said person acknowledged that he signed this instrument, on 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.

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

My Commission Expires: _____

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