

14552

Attachment A

2002-504

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

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

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

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

WHEREAS the County, under the authority of RCW 36.89.050, King County Resolution 34571 and other federal, state and county laws, has acquired and developed a substantial park, recreation and open space system that depends on the continued operation of its many individual properties and facilities in order to fully serve the needs of the residents of King County and the cities within it; and

WHEREAS the County desires to divest itself of ownership, management, and financial responsibility for parks, open space, recreational facilities and programs inside and near the City boundaries; and

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

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

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

WHEREAS, to the extent the City provides scholarships, reduced fees or other means of assuring access to parks and recreational programming for City residents, the City has a goal of ensuring that such scholarships or other needs-based rates and programs are available to all persons desiring to use the park and recreational programs regardless of residency, and

WHEREAS, the County's emergency response plan calls for use of the Property in an emergency for sheltering, staging and debris management, and the Property is an important part of the County's emergency response plan in the Sammamish area; and

WHEREAS, the parties agree that it is in the interest of public safety and health for the Property to continue to be used as contemplated by the County's emergency response plan after transfer of title of the Property to the City; and

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

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

1. Conveyance of Title

1.1. On January 2, 2003, King County shall convey to the City by deed all its ownership interest, and/or, when possible, by assignment, any leasehold interest or shared use responsibility, in the following listed park/recreation site(s), which are described more fully in Exhibits A and B (the "Property"):

Beaver Lake Park

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

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

"The City further covenants that it will not limit or restrict access to and use of the Property by non-city residents in any way that does not also apply to city residents. The City covenants that if differential fees for non-city residents are imposed, they will be reasonably related to the cost borne by city taxpayers to maintain, improve or operate the Property for parks and recreation purposes."

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

1.3 The City shall provide the County or its designee access to and use of the Property without charge during an emergency or disaster as defined by RCW 38.52, or proclaimed by the King County Executive or the City Manager. Such access and use is authorized to be carried out consistent with the County's emergency response plan. Such access and

use shall be for the purposes of sheltering or functioning as an operational and logistic staging area (including but not limited to emergency helicopter landing zones and temporary debris management sites).

The City shall provide for King County's use of the Property without charge for storage and maintenance of shelter supplies in containers.

King County shall clean up and return the Property to a condition suitable for parks use within 45 days of a return to normalcy following the County's use of the Property to respond to the disaster event. The period of use and time until cleanup may be extended in the case of major catastrophic events with broad, severe impact, such as major earthquakes and severe weather disasters.

2. Existing Restrictions, Agreements, Contracts or Permits

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

3. Protection of Landmark Designation and Art

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

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

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

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

4.3 The City acknowledges and agrees that except as indicated in paragraph 5.2, the County shall have no liability for, and that the City shall release and have no recourse against the

County for, any defect or deficiency of any kind whatsoever in the Property without regard to whether such defect or deficiency was known or discoverable by the City or the County.

5. Environmental Liability

- 5.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
- 5.2 Nothing in this agreement shall be deemed to waive any statutory claim for contribution that the City might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Property by the County during the County's period of ownership. The City may not, however, assert such a claim to the extent that the City creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the City performing construction activities on the Property, changing the configuration of the Property, or changing the use of the Property.
- 5.3 If the City discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall immediately notify the County in writing. Such notice shall in no event be provided more than 10 days after discovery. After notice is provided the parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement. If the City fails to provide timely notice as provided for herein it shall be prohibited from bringing a statutory claim for contribution against the County.
- 5.4 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

6. Indemnification and Hold Harmless

- 6.1 King County shall indemnify and hold harmless the City and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent action or omission of King County, its officers, agents and employees in performing its obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred prior to the effective date of conveyance of the Property to the City, except to the extent that indemnifying or holding the City harmless would be limited by Section 5 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against the City or the City and King County, King County shall defend the same at its sole cost and expense and, if final judgment be rendered against the City and its elected officials, officers, agents and employees or jointly against the City and King

County and their respective elected officials, officers, agents and employees, King County shall satisfy the same.

- 6.2 In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.
- 6.3 The City shall indemnify and hold harmless King County and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent act or omission of the City, its officers, agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred on or after the effective date of conveyance of the Property to the City, except to the extent that indemnifying or holding the County harmless would be limited by Section 5 of this Agreement. In the event that any suit based upon such a claim, action, loss or damage is brought against King County or King County and the City, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against King County and its officers, agents and employees or jointly against King County and the City and their respective officers, agents and employees, the City shall satisfy the same.
- 6.4 Each Party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to the Property.
- 6.5 Each party agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

7. Audits and Inspections

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

8. Waiver and Amendments

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

9. Entire Agreement and Modifications

9.1 This Intergovernmental Agreement and its Exhibits sets forth the entire agreement between the parties with respect to the subject matter hereof. It may be supplemented by addenda or amendments, which have been agreed upon by both parties in writing. Copies of such addenda and amendments shall be attached hereto and by this reference made part of this contract as though fully set forth herein.

10. Duration and Authority

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

11. Notice

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

King County
Ron Sims
516 Third Avenue
Seattle, WA 98104

City of Sammamish
Ben Yazici
486 228th Northeast
Sammamish, WA 98074

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

City of Sammamish

King County Executive

City Manager

Date

Date

Approved as to Form:

Approved as to Form:

 King County
 Deputy Prosecuting Attorney

 City Attorney

 Date

 Date

STATE OF WASHINGTON)
) SS
 COUNTY OF KING)

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

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

Notary Public in and for the
 State of Washington, residing

at _____
 City and State

My appointment expires _____

STATE OF WASHINGTON)
) SS
 COUNTY OF KING)

On this _____ day of _____, 2002, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared, to me known to be the individual described in and who executed the forgoing instrument, and acknowledged to me that _____ signed and sealed the said

instrument as _____ free and voluntary act and deed for the uses and purposed therein mentioned.

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

Notary Public in and for the
State of Washington, residing

at _____
City and State

My appointment expires _____

EXHIBIT A
King County Parks Transferring to the City of Sammamish

Name of park

Amenities/facilities

Beaver Lake Park

Beaver Lake Issaquah Lodge
Ball Fields
Maintenance Facility
All other built facilities

EXHIBIT B
Legal Descriptions

BEAVER LAKE PARK

PARCEL 1

The South 80 feet of Government Lot 3 in Section 2, Township 24 North, Range 6 East, W.M.; EXCEPT that portion conveyed to King County by deed recorded under Recording No. 4799394; AND EXCEPT the East 10 feet of the West 40 feet of the South 80 feet also conveyed to King County for 252nd Avenue S.E. by deed recorded under Recording No. 5720794.

PARCEL 2

That portion of Government Lot 3 in Section 11, Township 24 North, Range 6 East, W.M., lying North of the channel connecting Beaver Lake with Swamp Lake to the Southwest, being approximately the Northerly 700 feet of said Lot 3.

PARCEL 3

The NE 1/4 of the NW 1/4 of Section 11, Township 24 North, Range 6 East, W.M.;

EXCEPT that portion of said subdivision described as follows:

Beginning at a point 750 feet East of the SW corner of said NE 1/4 of the NW 1/4; thence North 57-58-00 East 140 feet, more or less, to the shore of Swamp Lake; thence Southeasterly along the shore of said lake to its intersection with the South line of said subdivision; thence West to the point of beginning;

AND EXCEPT that portion of said subdivision described as follows:

Beginning at the SE corner of said NE 1/4 of the NW 1/4; thence North 258 feet, more or less, to the shore of Swamp Lake; thence Southwesterly to its intersection with the South line of said subdivision; thence East to beginning.

PARCEL 4

The NW 1/4 of the NW 1/4 of Section 11, Township 24 North, Range 6 East, W.M.; EXCEPT the West 30 feet thereof as conveyed to King County for 244th Avenue S.E. by deed recorded under Recording No. 5454980.

All situate in the County of King, State of Washington.