

INTERLOCAL AGREEMENT BETWEEN THE CITY OF NORTH BEND AND SI VIEW METROPOLITAN PARK DISTRICT FOR DEVELOPMENT, MAINTENANCE, SCHEDULING AND OPERATIONS OF TOLLGATE PARK

THIS AGREEMENT is entered into this ____ day of _____ 2010 between the City of North Bend (City) and Si View Metropolitan Park District (District).

I. RECITALS

WHEREAS, the City is a municipal corporation of the State of Washington, organized and operating under the Optional Municipal Code, Title 35A RCW; and

WHEREAS, the District is a municipal corporation of the State of Washington, organized and operating under 35.61 RCW; and

WHEREAS, this Agreement is made under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW; and

WHEREAS, the District shall put a bond issue on the ballot to raise money for park amenities and parking on a certain 13.7-acre area identified for such use in the Tollgate Farm-Central Meadow Master Plan; and

WHEREAS, the District will be responsible for constructing park amenities and parking improvements within three years of voter bond approval; and

WHEREAS, the City and District are stewards of public lands in the City, and the parties recognize that through cooperation, these publicly-held lands can be used to meet broader community needs for recreation and open space than either party can provide separately.

NOW, THEREFORE, it is agreed by and between the City and the District as follows:

II. AGREEMENT

1. Scope and Purpose:

- a. The subject of this Agreement is the City's development, maintenance, scheduling and operations of trails, restrooms, picnic areas and parking lot(s) (hereafter "Improvements") on a certain 13.7-acre area ("Property") owned by the City identified for such use in the Tollgate Farm-Central Meadow Master Plan located within the City of North Bend. The Improvements and the Property are identified and depicted on the attached Exhibits A-1 and A-2.

b. The parties agree that during the time period covered by this Agreement, the trails, picnic areas and parking lot(s) are intended to be used jointly for recreation purposes for the benefit of the District and the City at large.

2. Scheduling and Use: Scheduling of all park amenities shall be managed by the District. City and District sponsored programs shall have first scheduling priority year around. To ensure the scheduling priority, the City or District shall be required to reserve at least 30 days prior to the event date. Nothing in this Agreement confers exclusive use of the property to the District.

3. Construction and Maintenance: The District shall construct the Improvements within three (3) years of the voter bond approval, now scheduled for the special election date of August 17, 2010; provided, however, if such bond levy fails to pass, this agreement shall terminate.

No construction activity shall occur upon the Property nor shall the Improvements, or any improvements of any kind, be erected or maintained without the advance written consent of, or issuance of necessary permits by, the City. Once the District has undertaken the Improvements authorized herein, the District shall become responsible for the regular and ongoing maintenance of the facilities and improvements, including but not limited to mowing, landscape maintenance and refuse collection. The District shall maintain all Improvements, except parking areas, which will be maintained by the City once constructed.

4. Fees and Charges: There shall be no user fees for the use of the Improvements, with the exception of the picnic shelters or for Special Events which require a permit from the City and/or District. However, the City and the District may charge rental/user fees to users of later constructed athletic facilities to cover administrative and maintenance costs the District or City may incur. The authority to construct such facilities and the fees authorized will be the subject of a later Interlocal Agreement or an amendment to this agreement.

5. Security: The District shall be responsible for the security of the parking areas and facilities, provided, however, the property shall continue to be patrolled by the City Police Department in the same manner patrols are maintained on all other City Parks.

6. Utility Expenses: During the term of this agreement, the District shall be responsible to pay any utility expenses associated with the Improvements.

7. City Contributions: To the extent that the City collects Park Impact Fees from developers during the term of this agreement and any portion of those Park Impact Fees are attributable to construction of the Improvements, the City shall transfer those impact fees to the District not less than one time per year and the District shall apply the full amount of any such transfer directly against the outstanding bond levy principal balance.

III. GENERAL PROVISIONS

1. Independent Contractors. Each party to this Agreement is an independent contractor with respect to the subject matter herein.

2. Indemnification.

2.1 The City shall indemnify, defend, and hold harmless the District, its agents, and employees from and against any and all liability arising from injury or death to persons or damage to property resulting in whole or in part from negligent acts or omissions of the City, its agents, servants, officers, or employees, irrespective of whether in connection with such act or omission it is alleged or claimed that an act of the District, its agents, or employees caused or contributed thereto. In the event that the District shall elect to defend itself against any claim or suit arising from such injury, death, or damage, the City shall, in addition to indemnifying and holding the District harmless from any liability, indemnify the District for any and all expenses incurred by the District in defending such claim or suit, including reasonable attorney's fees.

2.2 The District shall indemnify, defend, and hold harmless the City, its agents, and employees from and against any and all liability arising from injury or death to persons or damage to property resulting in whole or in part from negligent acts or omissions of the District, its agents, servants, officers, or employees, irrespective of whether in connection with such act or omission it is alleged or claimed that an act of the City, its agents, or employees caused or contributed thereto. In the event that the City shall elect to defend itself against any claim or suit arising from such injury, death, or damage, the District shall, in addition to indemnifying and holding the City harmless from any liability, indemnify the City for any and all expenses incurred by the City in defending such claim or suit, including reasonable attorney's fees.

3. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Any provisions of this Agreement that prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

4. Assignability. The rights, duties, and obligations of either party to this Agreement may not be assigned to any third party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

5. No Third-Party Rights. Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto and their successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of any nonperformance hereunder.

6. Entire Agreement and Modifications. This Agreement constitutes the entire Agreement between the Cities and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. Either party

may request changes in the Agreement. Proposed changes that are mutually agreed upon shall be incorporated by written amendment hereto.

7. Term and Termination. The term of this Agreement shall commence on the date first shown above and shall be in effect for a period of 30 years. This agreement may be terminated by either party upon providing a written notice at least 12 months prior to the proposed termination date.

8. Filing with Auditor and Interlocal Cooperation Act Compliance. This Agreement shall be filed with the King County Auditor or listed by subject on the City's website or other electronically retrievable public source, pursuant to RCW 39.34.040. No separate legal entity has been created pursuant to this Agreement, and the City and District do not intend to acquire, hold, or dispose of real or personal property for the purposes of this Agreement.

9. Insurance.

9.1 The City shall maintain in full force throughout the duration of this Agreement comprehensive general liability insurance with a minimum coverage of \$1,000,000 per occurrence/aggregate for personal injury and property damage, and name the District as an additional insured thereon. This requirement shall be deemed satisfied by evidence of the City's membership in a municipal self-insurance pool, including evidence of limits of coverage, exclusions, and limits of liability satisfactory to the District.

9.2 The District shall maintain in full force throughout the duration of this Agreement comprehensive general liability insurance with a minimum coverage of \$1,000,000 per occurrence/aggregate for personal injury and property damage, and name the City as an additional insured thereon. This requirement shall be deemed satisfied by evidence of the District's membership in a municipal self-insurance pool including evidence of limits of coverage, exclusions, and limits of liability satisfactory to the City.

10. Dispute Resolution.

10.1 If a dispute arises between the parties concerning the performance of any provision of this Agreement or the interpretation thereof, the parties agree to follow the procedure set forth herein. It is the goal of the parties to resolve differences as early in this step-process as possible.

10.2 Step One – Informal Discussions. Each party shall designate a representative, who shall meet and attempt to resolve the dispute. This may involve more than one meeting.

10.3 Step Two – Written Notification and Resolution. If informal discussions are not successful, then the aggrieved party shall mail, via certified mail, written notice of dispute to the other party's address shown in Section 13 of this Agreement. The notice shall set forth the nature of the dispute and the desired outcome. A written response shall be provided by the recipient of the notice within ten (10) days' receipt of the certified, mailed notice. The

response to the notice shall include the respondent's version of the dispute and a proposed resolution. The parties shall meet within then (10) business days following respondent's answer to determine whether the dispute can be resolved amicably. If the dispute is amicably resolved, the parties shall sign a memorandum of understanding with regards thereto.

10.4 Step Three – Mediation. If the parties are unable to resolve their differences at Step Two, the parties will endeavor to settle the dispute by mediation under such mediation rules as shall be agreeable to the parties. Such mediation will be non-binding but a condition precedent to having the dispute resolved pursuant to Litigation, below. Mediation shall commence, unless otherwise agreed, within thirty (30) days of a party's written request to the other party for mediation of a dispute. Any resolution of the dispute at this stage shall be reduced to writing and, if the resolution involves an interpretation of the Agreement herein, the Agreement herein shall be amended to include the interpretation.

10.5 Step Four – Arbitration. If the parties are unable to resolve their differences at Step Three, the dispute will be resolved by arbitration. A written notice requesting arbitration must be delivered to the other parties. The parties will select an arbitrator by mutual agreement. If the parties cannot agree on an arbitrator within 10 working days after the arbitration request notice has been received, then the dispute will be referred to Judicial Arbitration and Mediation Services, Inc., and an arbitrator will be selected either by mutual agreement of the parties or at random.

11. Discrimination Prohibited. Neither party shall discriminate against any employee or any person seeking service under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, marital status, or the presence of any sensory, mental or physical handicap.

12. Applicable Law, Venue, and Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event of any suit, arbitration, or other proceeding instituted to enforce any term of this Agreement, the venue shall be exclusively in the Superior Court for King County, Washington, and the substantially prevailing party shall be entitled, in addition to any other relief, to an award of attorney's fees, expert witness fees, and costs of suit.

13. Administrator. The Administrators listed below or their successors shall be

//

//

//

//

//

//

responsible for and shall be the contact persons for all communications regarding the performance of this Agreement.

CITY OF NORTH BEND

SI VIEW M.P.D.

Duncan Wilson
City Administrator
PO Box 896
North Bend, WA 98045

Travis Stombaugh
Executive Director
PO Box 346
North Bend, WA 98045

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below.

CITY OF NORTH BEND

SI VIEW METROPOLITAN PARK DISTRICT

By: _____
Mayor, Kenneth G. Hearing

By: _____
Executive Director, Travis Stombaugh

Date: _____

Date: _____

Attest: _____
Cheryl A. Proffitt, City Clerk

Attest: _____

Approved As To Form:

Approved As To Form:

Michael R. Kenyon, City Attorney

Bruce Disend, District Attorney

Exhibit A-1

A general description of amenities to be constructed/created for Tollgate Farm Park includes:

- parking area with trees and approximately 90 spaces
- restroom and equipment storage structure
- 2 picnic shelters - 11 tables total
- children's play structure
- internal gravel trails 6-8 feet wide
- improved vegetation screening
- trail connections to Meadowbrook Farm
- perimeter gravel trail 6-8 feet wide
- recreation trail and cattle path through SR 202 underpass
- gravel trail along historic wagon road and new footbridge
- small foot bridges in wet areas
- perimeter gravel trail 6-8 feet wide
- Heirloom apple tree rehabilitation along North Bend Way,
- View shed of pasture and Mount Si preserved
- fencing to restrict cattle
- water and power to buildings
- invasive species removal and native plant re-vegetation
- trails and boardwalk

Exhibit A-2

