

**INTERGOVERNMENTAL LAND TRANSFER AGREEMENT
BY AND BETWEEN KING COUNTY AND CITY OF NORTH BEND**

Tollgate Farm Park

This interlocal land transfer agreement ("Agreement") is made and entered into this ____ day of _____, 2008, by and between the City of North Bend, Washington, hereafter referred to as the "City", and King County, Washington, hereafter referred to as the "County".

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

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

WHEREAS the County desires to divest itself of ownership, management, and financial responsibility for certain parks, open space and recreational facilities and programs inside City boundaries and within designated potential annexation areas; and

WHEREAS 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 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 is willing to transfer the portion of Tollgate Farm located within the City's boundaries; and

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

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

1. Conveyance of Title:

- 1.1 Within 30 days of the execution of this Agreement, King County shall convey to the City by deed all its ownership interest in the in-City portion of the property ("Property") known as Tollgate Farm, more particularly described in Exhibit "A" and as depicted in Exhibit "B," attached hereto and incorporated herein.
- 1.2 The deed shall contain the following specific covenants pertaining to use, which covenants shall run with the land for the benefit of the County and the County public park, recreation and open space system. The County and City agree that the County shall have standing to enforce these covenants, which shall be set forth as follows:
 - (a) "The City, as required by RCW 36.89.050, covenants that the Property shall continue to be used for open space, park, or recreational purposes; and the City further covenants that the Property shall not be converted to another use unless other equivalent land within the County is conveyed to the County in exchange therefore."
 - (b) "Any maintenance support facility to be built on the Property by the City shall be limited to supporting recreational activities and shall not be used to support general municipal functions."
 - (c) "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."
 - (d) "The City acknowledges that the Property, except for a 13.7 acre portion described in subsection (e) below, was purchased for open space purposes with Conservation Futures funds as authorized by King County Ordinances 10750 and 13717. The City covenants that it shall abide by and enforce all terms, conditions and restrictions in Ordinances 10750 and 13717, including the covenants that the Property will continue to be used for the purposes contemplated by these Ordinances, which prohibit both active recreation and motorized recreation (such as off-road recreational vehicles), except as to the 13.7 acres referenced above, but allow passive recreation, and in strict conformance with the uses authorized under RCW 84.34.230. The Property shall not be transferred or conveyed except by agreement providing that the Property shall continue to be used for the purposes contemplated by these Ordinances and in strict conformance with the uses authorized under RCW 84.34.230. The Property shall not be converted to a different use unless other equivalent lands and facilities within the County or the City are received in exchange therefore."

- (e) "The City covenants that no portion of the Property will be improved for active recreation, except for the 13.7-acre area identified for such use in the City's Tollgate Farm-Central Meadow Master Plan and preferred site plan for the Property, which plans were adopted by the City through Resolution 1098 on October 18, 2005."
- (f) 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.

2. **Existing Restrictions, Agreements, Contracts or Permits:** The City shall abide by and enforce all terms, conditions, reservations, restrictions, exceptions, encumbrances and covenants of title present at the time of conveyance. This provision does not, however, prevent the City from removing any terms, conditions, reservations, restrictions, exceptions, encumbrances, or covenants if the City modifies the use of any of the Property in a manner authorized by this Agreement, K.C.C. 26.12.010 (where applicable), and RCW 36.89.050.

3. **Protection of Historical Resources:**

- 3.1 The City agrees to abide by City of North Bend Municipal Code Ch. 19.20 as currently adopted or hereafter amended.

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, WHERE 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 address 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 90 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, (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 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, and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, (i) which are caused by or result from a negligent act or omission of the City, its officers, agents and employees in performing obligations pursuant to this Agreement, and/or (ii) arising from those occurrences related to the Property that occurred on or after the effective date of conveyance of the Property to the City, except to the extent that indemnifying or holding the County harmless would be limited by Section 4 or 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:** Until December 31, 2012, any of either party's records related to any matters covered by this Agreement not otherwise privileged shall be subject to inspection, review, and/or audit by either party at the requesting party's sole expense. Such records shall be made available for inspection during regular business hours within a reasonable time of the request.
8. **Waiver and Amendments:** 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:** This Agreement and its Exhibits sets forth the entire agreement between the parties with respect to the subject matter hereof. It may be supplemented by addenda or amendments, 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:** 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:** Any notice provided for herein shall be sent to the respective parties at:

KING COUNTY
Director, Department of
Natural Resources and Parks
King Street Center
201 S. Jackson Street, Ste 700
Seattle, WA 98104

CITY OF NORTH BEND
Attn: Mayor
PO Box 896
North Bend, WA 98045

IN WITNESS WHEREOF, the parties have executed this Agreement.

KING COUNTY

County Executive

CITY OF NORTH BEND

Mayor

Approved as to form:

Approved as to form:

Deputy Prosecuting Attorney

City Attorney

