



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

December 10, 2002

Ordinance 14533

Proposed No. 2002-0564.2

Sponsors McKenna and Edmonds

1 AN ORDINANCE authorizing the executive to enter into
2 an interlocal agreement between King County and the city
3 of Mercer Island for transfer to the city of Luther Burbank
4 park.

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STATEMENT OF FACTS:

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1. King County and the city of Mercer Island (city) have agreed to terms
9 for an interlocal agreement for the transfer of Luther Burbank park.

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2. The recitals in the agreement set forth relevant facts supporting and
11 explaining the terms of the transfer.

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3. The equipment and supplies being conveyed along with the park are
13 integral to the continued operation and maintenance of the park and are
14 surplus to the county's needs.

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4. King County and the city have agreed that the transfer will take place
16 December 31, 2002.

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17 5. Transfer of Luther Burbank park under the terms and conditions of the
18 attached agreement will serve an important county purpose by ensuring
19 that the park will remain open and available to all county residents.

20 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

21 SECTION 1. The King County executive is hereby authorized to enter into an
22 interlocal agreement, substantially in the form of the attached agreement, with the city of
23 Mercer Island relating to the transfer of Luther Burbank park.
24

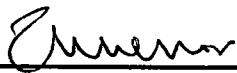
Ordinance 14533 was introduced on 11/25/2002 and passed by the Metropolitan King
County Council on 12/9/2002, by the following vote:

Yes: 13 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.
Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Pullen, Mr. Gossett,
Ms. Hague, Mr. Irons and Ms. Patterson
No: 0
Excused: 0

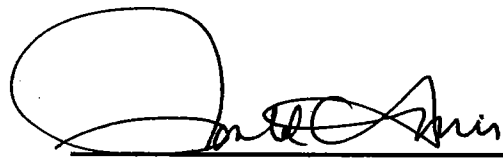
KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Cynthia Sullivan, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 12 day of December, 2002.


Ron Sims, County Executive

RECEIVED
2002 DEC 12 AM 9:56
KING COUNTY COUNCIL CLERK

Attachments A. Revised Intergovernmental Land Transfer Agreement Between King County and
the City of Mercer Island, dated December 4, 2002.

**Revised Intergovernmental Land Transfer Agreement Between
King County and the City of MERCER ISLAND**

Dated December 4, 2002

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 Mercer Island, 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 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, control 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, to the extent the City provides scholarships, reduced fees or other means of assuring access to parks and recreation 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 such programs on the same basis as provided for City residents regardless of residency; 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. At closing King County shall convey to the City by bargain and sale deed all its ownership interest, and/or, when possible, by assignment, any leasehold interest or shared use responsibility, in the park/recreation site(s) identified in Exhibit A, and described more fully in Exhibit B (the "Property").
- 1.2. The City has reviewed the Project Agreements for Project Nos. 72-062D and 74-508D, as amended ("Project Agreements"), between King County and the Washington State Interagency Committee for Outdoor Recreation ("IAC") for funding of the development of the Property. The City shall execute amendments to the Project Agreements that substitute the City for the County as the "Contracting Party" in the Project Agreements so that the City shall become the "Project Sponsor." In the alternative, the City may obtain from the IAC terminations of the Project Agreements. The City shall execute the amendments or obtain the terminations of the Project Agreements by closing.
- 1.3 All deeds 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 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 either be continued to be used for open space, park, or recreation and community facility purposes or other equivalent facilities within the County shall be conveyed to the county in exchange therefore."

"The City covenants that it shall abide by and enforce all terms, conditions and restrictions in King County Resolution 34571 to the extent required by the Resolution, including that the City covenants that the Property will continue to be used for the purposes contemplated by Resolution 34571, that the Property shall not be transferred or conveyed except by agreement providing that such lands shall continue to be used for the purposes contemplated by Resolution 34571, and that the Property shall not be converted to a different use unless other equivalent lands and facilities within the County or City shall be received in exchange therefore."

"The City covenants that it shall not use the Property in a manner that would cause the interest on County bonds related to the Property to no longer be exempt from federal income taxation."

"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."

- 1.4 In conveying the Property by deed, the County shall reserve an easement for a sewer trunk line in substantially the same form as that attached hereto as Exhibit ___.
- 1.5 The Property being conveyed includes certain equipment and supplies that are integral to the operation and maintenance of the park. The County will leave such equipment and supplies on site, which equipment and supplies will include the play structures and fall surfacing; garbage cans; picnic tables; signs; tennis court nets; benches; bike racks; float lines; throw rings; throw ropes; personal flotation devices; guard chairs; irrigation system drip lines, valve boxes, timers and spare parts; spare pipes and fittings; spare electrical parts; and the sand, gravel and bark on site. The City takes all equipment and supplies AS IS and WHERE IS and agrees that the County holds no future responsibility with regard to the equipment and supplies or any occurrence related to or resulting from use of the equipment and supplies.
- 1.6 Pursuant to paragraph 1.1 the County will assign to the City on or before Closing the Interagency Agreement for Use of State Owned Aquatic Lands Administered by the State Department of Natural Resources dated November 2, 1973. Notwithstanding anything to the contrary in the Use Agreement or any consent to assignment imposed by the State DNR, the assignment of the Use Agreement will convey all the rights and obligations of the County contained in the Use Agreement to the City, the City shall assume all the rights and obligations of the County contained in the Use Agreement, and the land subject to the Use Agreement, will be covered by the indemnification provisions in Section 8 of this Agreement.
- 1.7 The conveyance of the Property and the assignment of the Use Agreement provided for in paragraph 1.1 are contingent on receiving written approval of the assignment of the Use Agreement from the Washington State Department of Natural Resources. If such written approval is not obtained by Closing, the conveyance and assignment shall not be required until ten (10) days after such written approval is obtained.

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 identified in Exhibit C and/or in the deed of conveyance.

3. Closing

- 3.1 Closing Date.** The closing of the transfer of the Property shall occur on or before December 31, 2002 or at another time agreed to in writing by the parties. As used in this Agreement "closing" means the date on which all appropriate documents are recorded and title to the Property is conveyed to the City.

3.2 Closing Costs and Proration. All rents, interest, utilities and other liens and charges shall be prorated as of closing. The County shall pay real estate excise taxes (if any are due). The City will pay the premium (if any) for its title insurance policy. The parties will split the cost of any recording required by this Agreement and the Closing Agent's escrow fees.

3.3 Procedures for Closing: On or before Closing the County and the City shall deposit in escrow with the Closing Agent all instruments, documents and moneys necessary to complete the transfer in accordance with this Agreement. The Closing Agent shall be:

Chicago Title Insurance Company

Attn: _____

Fax No.: _____

Phone No.: _____

4. County's Representations and Warranties

4.1 No Leases. The County is unaware of any leases, tenancies or rights of persons in possession with respect to the Property, except for: Utility Use Permit No. U-6-99; Special Use Permit S-119-00, Special Use Permit S-80-00, Special Use Permit S-109-00, Utility Use Permit U-34-97 and Memorandum of Agreement dated 3/24/99 for use of the residence at the Property (MOU). The County agrees to provide lessee notice of termination of the MOU three (3) months prior to closing. The County further agrees to terminate all the above listed use permits, except for Special Use Permit S-109-00, which Permit will be assigned to the City.

4.2 Debris and Personal Property. Except as provided for in paragraph 1.5, the County will remove all debris and personal property prior to closing, located on the Property, if any, at the County's cost and expense.

5. Historical Designation and Art

5.1 The Property shall be transferred subject to the December 5, 1984 designation of the Luther Burbank School and Grounds as a Landmark, which designation is on file with the King County Records and Elections Division under recording number 8412110761 ("Historical Designation"). This Historical Designation shall be maintained in conformance with the Secretary of the Interior's Standards for Rehabilitation of historic structures, 36 CFR § 67.7 ("Standards for Rehabilitation"). This Historical Designation shall remain in force until such time as the City adopts its own landmark preservation ordinance, provided that the City is not required to comply with any procedural, process or other requirements of either the King County Code or any state or federal historic preservation standard in the development and imposition of its substitute landmark preservation ordinance, and provided further that the City's landmark preservation

ordinance shall at a minimum incorporate the Standards for Rehabilitation. At closing, the County shall deliver all fully executed documents necessary to remove the Historical Designation title exception and upon the City's adoption of its preservation ordinance, the City will record such County documents and remove the Historical Designation as an exception to title.

5.2 The King County artwork titled "Handsome Bollards" currently located on the Property shall be deaccessioned by the King County Arts Commission and be conveyed by King County to the City at closing. The City agrees to make the Handsome Bollards a part of its Arts Council's public art collection.

5.3 The Property includes a piece of artwork titled "the Source," which is physically integrated with the Property in the manner of a fixture. The County agrees to perform its currently scheduled maintenance work on the Source prior to conveyance. The Source shall be deaccessioned by the King County Arts Commission and be conveyed by King County to the City at closing. The City agrees to make the Source a part of its Arts Council's public art collection upon the conveyance of the Property. In consideration of the County performing its currently scheduled maintenance work on the Source prior to conveyance, the City agrees to maintain the Source in the same condition as existed at the date of conveyance, reasonable wear and tear excepted for a period of at least eight (8) years from the date of conveyance. In addition, the City agrees to either accept assignment from King County of the Consultant Agreement dated May 7, 1980 (Consultant Agreement) between the County and artist John Hoge (Artist), or to enter into an agreement with the Artist on terms and conditions acceptable to the City and the Artist, which agreement shall contain a release and termination of the Consultant Agreement as between the Artist to the County. Upon termination of the Consultant Agreement, neither the County nor the City shall have any further obligations to comply with the Consultant Agreement, except as provided in this Section. If the City has not entered into a new agreement with the Artist as provided herein by closing, then the City shall accept assignment of the Consultant Agreement from the County at closing.

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

6.1 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 recreational services at, the Property.

6.2 Except as provided in section 4, 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.

- 6.3 The City acknowledges and agrees that except to the extent of the County's representations and warranties in section 4, and except as indicated in section 7, 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.

7. Environmental Liability

- 7.1 "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.
- 7.2 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
- 7.3 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 30 days after discovery. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.
- 7.4 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.
- 7.5 Should the County be required to perform any remediation following the conveyance of the Property, the City hereby grants the County a right of entry onto the Property to perform such work, including any soil and water sampling other environmental assessment activities, or other environmental clean up activities. The County shall provide the City reasonable notice prior to undertaking any such activity.

8. Indemnification and Hold Harmless

- 8.1 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 any negligent act or negligent omission to act of King

County, its officers, agents and employees in performing its obligations under 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 7 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.

- 8.2 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.
- 8.3 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 any negligent act or negligent omission to act of the City, 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 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 7 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.
- 8.4 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.
- 8.5 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.

8.6 These indemnification provisions shall survive the closing of the Property and any termination of this Agreement.

9. Audits and Inspections

9.1 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.

10. Waiver and Amendments

10.1 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.

11. Entire Agreement, Modifications, and Definition

11.1 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.

11.2 As used in this agreement, the phrase "the County is unaware" means that Joe Wilson, King County Department of Natural Resources and Parks ("DNRP") Property Management Coordinator, Robert Nunnenkamp, DNRP Property Agent, and Sharon Claussen, DNRP Project Manager without additional inquiry, have no actual knowledge of the identified condition.

12. Duration

12.1 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.

13. Notice

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

King County
Ron Sims

City of Mercer Island
Richard M. Conrad

King County Executive
King County Courthouse
516 Third Avenue
Seattle, Washington 98104

9611 SE 36th Street
Mercer Island, WA 98040

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

City of Mercer Island

King County Executive

Richard M. Conrad
City Manager

Date

Date

Approved as to Form:

Approved as to Form:

King County
Deputy Prosecuting Attorney

Londi K. Lindell, City Attorney

Date

Date

[INSERT NOTARY SIGNATURE BLOCKS]

EXHIBIT A
King County Parks transferring to the City of Mercer Island

Name of Park

Luther Burbank Park

Amenities/Facilities

Park

Boat Moorage

Swim Beach

Buildings

Children's Play Area

Tennis Courts

Earthworks Artwork

Handsome Bollards Artwork

EXHIBIT B
Legal Descriptions

LUTHER BURBANK PARK

Parcel A

The East 524.5 feet of Government Lot 1 in Section 1, Township 24 North, Range 4 East, W.M., in King County, Washington; EXCEPT that portion of the South 768.32 feet which lies West of the East 30 feet of said Lot 1; AND EXCEPT that portion of the East 30 feet of said Lot 1, which lies within Southeast 24th Street; TOGETHER WITH second class shore lands adjoining.

Parcel B

Government Lot 6 in Section 6, Township 24 North, Range 5 East, W.M., in King County, Washington; EXCEPT the South 30 feet thereof conveyed to King County for Road purposes by deed recorded under Auditor's File Number 1092750.

Parcel C

Government Lot 1 in Section 7, Township 24 North, Range 5 East, W.M., in King County, Washington; EXCEPT that portion thereof lying within Sunnybank, according to the plat thereof, recorded in Volume 29 of Plats, page 31, in King County, Washington; AND EXCEPT that portion thereof lying within Mercer Island Boulevard; AND EXCEPT that portion thereof conveyed to the State of Washington for highway purposes by Deed recorded under Recording No. 20020826002434; TOGETHER WITH second class shore lands adjoining and lying Northerly of the Northwesterly line of Lot 1, said Sunnybank Addition produced Northeasterly; ALSO, the West 750 feet of that portion of Government Lot 2 in Section 7, Township 24 North, Range 5 East, W.M., in King County, Washington, lying South of Mercer Island Boulevard; EXCEPT that portion thereof conveyed to the State of Washington for highway purposes, by Deed recorded under Auditor's File Number 3032006; AND EXCEPT that portion thereof conveyed to the State of Washington for highway purposes by Deed recorded under Recording No. 20020826002434; ALSO the West 500 feet of the North 320 feet of the Northwest 1/4 of the SW 1/4 of Section 7, Township 24 North, Range 5 East, W.M., in King County, Washington.

SUBJECT TO:

- 1) Easement and the terms and conditions thereof:
DISCLOSED BY: Deed
PURPOSE: Pipeline
AFFECTS: Portion of Parcel C
RECORDED: May 18, 1925
RECORDING NO: 2019646

- 2) Easement and the terms and conditions thereof:
 GRANTEE: Mercer Island Sewer District, a Municipal Corporation
 PURPOSE: Sewer Line
 AREA AFFECTED: Westerly portion of Parcel A
 RECORDED: January 18, 1956
 RECORDING NO: 4655713
- 3) Easement and the terms and conditions thereof:
 GRANTEE: Mercer Island Sewer District, a Municipal Corporation
 PURPOSE: Installing, constructing, maintaining, operating, repairing and replacing a sewer pipe line or lines and all necessary connections and appurtenances, together with the right of ingress and egress
 AREA AFFECTED: Portion of Parcel C lying within a strip of land 20 feet in width
 RECORDED: September 23, 1959
 AUDITOR'S NO.: 5083109
- 4) Easement and the terms and conditions thereof:
 GRANTEE: Mercer Island Sewer District, a Municipal Corporation
 PURPOSE: Installing, constructing, maintaining, operating, repairing and replacing a sewer pipe line or lines and all necessary connections and appurtenances, together with the right of ingress and egress
 AREA AFFECTED: Portion of Parcel C lying within a strip of land 20 feet in width
 RECORDED: April 20, 1960
 RECORDING NO: 5153316
- 5) Easement and the terms and conditions thereof:
 GRANTEE: Municipality of Metropolitan Seattle, its successors and assigns
 PURPOSE: Installing, constructing, operating, maintaining, removing, repairing, replacing and using a sewer trunk line with all connections, manholes and appurtenances thereto, together with the right of ingress and egress
 AREA AFFECTED: Portion of Parcel C lying within a strip of land 10 feet in width
 RECORDED: May 14, 1968
 RECORDING NO: 6348105

Said Easement was subordinated to the rights of the State of Washington for State Highway right of way by instrument:

RECORDED: July 14, 1983
 RECORDING NO: 8307140581.

- 6) Easement and the terms and conditions thereof:
 GRANTEE: Municipality of Metropolitan Seattle, its successors and assigns
 PURPOSE: Installing, constructing, operating, maintaining, removing, repairing, replacing and using a sewer trunk line with all connections, manholes and appurtenances thereto, together with the right of ingress and egress
 AREA AFFECTED: Portion of Parcel C lying within a strip of land 10 feet in width

RECORDED: January 21, 1970
RECORDING NO: 6611546

- 7) Underground Utility Easement and the terms and conditions thereof:
GRANTEE: Puget Sound Power & Light Company, a Washington Corporation
PURPOSE: Electric transmission and/or distribution system
AREA AFFECTED: Portion of Parcel B lying within a strip of land 10 feet in width
RECORDED: September 3, 1976
RECORDING NO: 7609030609

Contains Covenant prohibiting structures over said easement or other activities which might endanger the underground system.

- 8) Covenants, conditions and restrictions contained in Landmark Designation Report:
RECORDED: December 11, 1984
RECORDING NO: 8412110761

- 9) Agreement and the terms and conditions thereof:
BETWEEN: King County
AND: City of Mercer Island
RECORDED: January 17, 1978
RECORDING NO: 7801170847
REGARDING: Use of County Property

- 10) Agreement and the terms and conditions thereof:
 BETWEEN: King County
 AND: State of Washington
 RECORDED: December 11, 1984
 RECORDING NO: 8412110837
 REGARDING: Possession and use of a portion of Parcel C of said premises
- 11) Agreement and the terms and conditions thereof:
 BETWEEN: King County
 AND: State of Washington
 RECORDED: December 11, 1984
 RECORDING NO: 8412110838
 REGARDING: Possession and use of a portion of Parcel C of said premises
- 12) Agreement and the terms and conditions thereof:
 BETWEEN: State of Washington Department of Natural Resources
 AND: King County
 RECORDED: March 25, 1986
 RECORDING NO: 8603250837
 REGARDING: Property Line
- 13) Relinquishment of access to State Highway and of light, view and air, by Deed to the State of Washington
 RECORDED October 18, 1955
 RECORDING NO: 4627732
- 14) Easement and the terms and conditions thereof:
 GRANTEE: State of Washington and its assigns
 PURPOSE: For placing personnel, machinery and equipment to construct, operate and maintain drainage facilities, and to maintain highway slopes in excavation and/or embankment
 AREA AFFECTED: Portion of Parcel C
 RECORDED: August 26, 2002
 RECORDING NO: 20020826002435
- 15) Easement and the terms and conditions thereof:
 GRANTEE: State of Washington and its assigns
 PURPOSE: For placing personnel, machinery and equipment to construct and maintain highway slopes in excavation and/or embankment
 AREA AFFECTED: Portion of Parcel C
 RECORDED: August 26, 2002
 RECORDING NO: 20020826002436
- 16) Easement and the terms and conditions thereof:
 GRANTEE: State of Washington and its assigns

PURPOSE: For placing personnel, machinery and equipment to
construct, operate and maintain highway slopes in
excavation and/or embankment
AREA AFFECTED: Portion of Parcel C
RECORDED: August 26, 2002
RECORDING NO: 20020826002437

- 17) Question of location of lateral boundaries of said second class tidelands or shorelands.

EXHIBIT C
Permitted Exceptions/Title Report

Those general and special exceptions listed on Chicago Title Insurance Company Commitment for Title Insurance No. 1037109 dated May 7, 2002, that certain Quitclaim Deed granted by the County to the State of Washington dated June 30, 1999 and recorded with the King County Division of Records and Elections under number 20020826002434, that certain Easement granted by the County to the State of Washington dated June 30, 1999 and recorded with the King County Division of Records and Elections under number 20020826002435, that certain Easement granted by the County to the State of Washington dated June 30, 1999 and recorded with the King County Division of Records and Elections under number 20020826002436, and that certain Easement granted by the County to the State of Washington dated June 30, 1999 and recorded with the King County Division of Records and Elections under number 20020826002437.

EXHIBIT D
Reservation of Sewer Easement

Recording Requested By And
When Recorded Mail To:

King County
Department of Natural Resources
Wastewater Treatment Division
MS KSC-NR-600
201 South Jackson Street
Seattle, WA 98104-3855

Grantor: City of Mercer Island, a municipal corporation
Grantee: King County, a political subdivision of the State of Washington
Abbreviated Legal Description: Portion of Government Lot 1 in Section 1-24-4; Portion of Government Lot 6 in Section 6-24-5; Portions of Government Lots 1 and 2, and the Northwest Quarter of the Southwest Quarter of Section 7-24-5.
Assessor's Tax Parcel Nos.: 012404-9002-06, 062405-9014-06 and 072405-9054-06
Project: Luther Burbank Park Transfer
Parcel No.:

THIS RESERVATION OF SEWER EASEMENT is made and effective as of _____, 2002, between King County, a political subdivision of the State of Washington, its successors and assigns (hereinafter together referred to as "County") and City of Mercer Island, a municipal corporation in the State of Washington, its successors and assigns (hereinafter together referred to as "City").

RECITALS

- A. City has agreed to acquire from the County and the County has agreed to convey to the City, for and in consideration of the terms and conditions of that certain inter-local transfer agreement, dated _____, _____, by and between City and County, and other valuable considerations, the receipt of which is hereby acknowledged, and hereby agree to the reservation for the benefit of County, of a permanent easement over, across, along, in, upon and under, the legally described property on Exhibit A attached hereto ("Property").
- B. The County owns sewer trunk line facilities located on and under the Property. An easement for these sewer facilities had been granted to Municipality of Metropolitan Seattle (hereinafter "Metro") by documents dated January 7, 1967, recorded under King County Recorder's number 6611546, and document dated April 24, 1968, recorded under King County Recorder's number 6348105 ("Metro Easements"). Since the granting of the Metro Easements, the County purchased the Property, and the County and Metro merged, thereby causing a merger of title between the Property and the Metro Easements. This Reservation of Easement shall supercede and replace the language of the Metro Easements.

- c. The County's agreement to convey the Property to the City is conditioned upon the County's reservation of a permanent utility easement.

The City and County, by accepting and recording this utility easement reservation, hereby mutually covenant and agree as follows:

1. The County hereby reserves, for the purposes stated below, a permanent sewer easement over, across, along, in, upon and under the Property more particularly described in Exhibit B, attached hereto and incorporated herein by reference ("Sewer Easement" Area).
2. The Sewer Easement being granted herein is for the purpose of installing, constructing, operating, maintaining, removing, re-constructing, repairing, replacing and using a sewer trunk line, sewer pipeline, or pipeline with all connections, manholes and appurtenances thereto, including fibre optic or communications lines used in conjunction with a sewer pipeline (hereinafter collectively referred to as "facilities"), within the Sewer Easement Area, together with the right of ingress to and egress from the Property for the foregoing purposes.
3. The term of the sewer easement shall be perpetual, and shall be appurtenant to, be binding upon, and run with the Property.
4. County shall, if the above described Property is disturbed by the maintenance, removal, repair or replacement of the facilities specified herein, restore the surface of the above described Property as nearly as possible to the condition in which it existed at the commencement of said maintenance, removal, repair or replacement.
5. County shall indemnify, defend and hold harmless City, its elected officials, staff, officers, agents and employees, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including costs and attorneys fees in defense and costs on appeal thereof, for injuries, sickness or death of persons or damage to property, which is caused by or arises out of acts or omissions of said County, its officers, agents, or employees related to this easement and the facilities within it, provided, however, that County's obligation to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage to the extent they are caused by or result from the negligence of City, its elected officials, officers, agents or employees. County 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, County by mutual negotiation, hereby waives as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
6. City shall indemnify, defend and hold harmless County, its elected officials, staff, officers, agents and employees, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including costs and attorneys fees in defense and costs on appeal thereof, for injuries, sickness or death of persons or damage to property, which is caused by or arises out of the negligent acts or omissions of said City, its officers, agents, or employees in the performance of activities related to this easement and the facilities within it, provided, however, that City's obligation to indemnify, defend and hold harmless shall not extend to injuries sickness, death or damage to the extent they are caused by or result from the negligence of County, its elected officials, officers, agents or employees. City 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 its agents. For this purpose, City, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

- 7. All right, title, and interest that may be used and enjoyed without interfering with the Reservation of Sewer Easement rights are reserved to the City. Except as otherwise provided herein, and after the date of this agreement, the construction, installation, or maintenance of any temporary or permanent structures, shall be absolutely prohibited within the above described permanent easement area and shall be deemed an unreasonable interference with County's easement rights unless specifically approved in writing by the County. Moreover, as to such non-approved structures, the provisions of paragraph 4 and 5 above, shall not apply.

WITNESSETH, the City has hereunto signed the day and year first above written.

GRANTOR:

By: _____

Its _____

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 _____ of the City of _____, a Washington political subdivision of the State of Washington, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said _____ for the uses and purposes therein mentioned and on oath stated that s/he was authorized to execute the said instrument.

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

Dated: _____

Notary Public in and for the State of Washington,
residing at _____
My appointment expires _____

ACCEPTED AND APPROVED:

KING COUNTY

By: _____
 Pam Bissonnette, Director
 Department of Natural Resources

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 Pam Bissonnette, to me known to be the Director of the Department of Natural Resources of the County of King, a political subdivision of the State of Washington, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said County for the uses and purposes therein mentioned and on oath stated that she was authorized to execute the said instrument.

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

Dated: _____

 Notary Public in and for the State of Washington,
 residing at _____
 My appointment expires _____

[LEGAL DESCRIPTION OF PARK AS SET FORTH IN EXHIBIT B TO TRANSFER
AGREEMENT]

Exhibit "B"

EASEMENT 1

Servient Property:

That portion of Government Lot I In Section 7, Township 24 North, Range 5 East, W.M., King County, Washington. described as follows: Beginning at the southwest corner of Tract 1, Sunnybank Addition, according to Plat thereof recorded in Volume 29 of Plats, page 31, records of King County, thence northeasterly along the northwesterly margin of said Tract 1 a distance of 457 feet, more or less, to intersection with the shoreline of Lake Washington; thence northerly along said shoreline a distance of 150 feet; thence West 150 feet; thence South to intersection with a line 60 feet northwesterly and parallel with said northwesterly margin of Tract 1, Sunnybank Addition; thence southwesterly along said parallel line to the northeasterly boundary of Mercer Way; thence southeasterly along said northeasterly boundary of Mercer Way to the Point of Beginning.

Easement: A permanent easement over, across, along, in, upon and under the following described portion of the above described property:

A strip of land 10 feet in width lying 5 feet on each side of the following described center line:

Beginning on the southeasterly margin of the above described tract of land distant North 42°39'00" East 353.41 feet from the southeast corner of said tract; thence North 77°25'59" West to intersection with the northwesterly margin of the above described tract of land: the southerly margin of the above described easement being also the northerly margin of that certain easement granted by the County of King to the Mercer Island Sewer District by Instrument recorded as Auditor's File No. 5179424, records of King County.

EASEMENT 2

Servient parcel:

Government Lot 1, in Section 7, Township 24 North, Range 5 East, W.M., King County, Washington, together with the shorelands adjoining EXCEPT that portion of said Government Lot 1 platted as Sunnybank, in Volume 29 of Plats, page 31, records of King County, ALSO EXCEPT that portion of said Government Lot 1 deeded to King County for park purposes under the terms of that certain instrument recorded as Auditor's File No. 3834154, ALSO EXCEPT any portion of said Government Lot 1 lying south of the center line of Mercer Island Boulevard (North Mercer Way);

Easement: A permanent easement over, across, along, in, upon and under the following described portion of the above described property:

A strip of land 10 feet in width lying 5 feet on each side of the following described center line: Beginning at a point on the west line of said Section 7, Township 24 North, Range 5 East, W.M., distant 915.103 feet southerly along said west line from the northwest corner of said Section 7; thence South $77^{\circ}25'59''$ East 395 feet more or less to intersection with the west line of that certain tract of land deeded to King County under the terms of that certain instrument recorded as Auditor's File No. 3834154, said 10-foot easement lying northerly of and adjoining that certain easement granted to the Mercer Island Sewer District under the terms of that certain instrument recorded as Auditor's File No. 5083109, records of King County;