



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**October 16, 2007**

**Ordinance 15928**

**Proposed No.** 2007-0433.1

**Sponsors** Phillips and Ferguson

1 AN ORDINANCE authorizing the executive to implement  
2 the terms of a mitigation agreement with the city of  
3 Kenmore through an intergovernmental land transfer  
4 agreement with the city of Kenmore and other appropriate  
5 measures.

6

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 **SECTION 1. Findings:**

9 A. In December 2003, after an extensive siting and environmental review  
10 process, King County approved and selected the Route 9 – 195th Street system for  
11 design, permitting and construction of the Brightwater regional wastewater treatment  
12 system.

13 B. The Brightwater regional wastewater treatment system includes the  
14 construction of a new regional wastewater treatment plant in unincorporated Snohomish  
15 county, deep tunnel conveyance facilities through several jurisdictions; a marine outfall  
16 in unincorporated Snohomish county and five primary portal sites in the cities of Bothell,  
17 Kenmore and Shoreline and in unincorporated Snohomish county. One of the primary

18 portals is the north Kenmore portal, also known as Portal 44, located within the city of  
19 Kenmore.

20 C. King County has been working with host jurisdictions and affected communities  
21 to develop mitigation measures for the environmental impacts created by the construction,  
22 maintenance and operation of the Brightwater facilities.

23 D. In conjunction with the permitting process for the north Kenmore portal, King  
24 County negotiated a mitigation agreement with the city of Kenmore to address the  
25 potential significant environmental impacts of the Brightwater project on the city of  
26 Kenmore and its residents. As part of the negotiated mitigation agreement King County  
27 agreed, subject to council approval, that real property acquired for the north Kenmore  
28 portal that is not needed by King County for the maintenance and operation of any portal  
29 conveyance or utility structures and facilities would be considered “surplus property” and  
30 would be transferred to the city of Kenmore after completion of the Brightwater  
31 construction. As part of the negotiated mitigation agreement, the wetland areas on the  
32 north Kenmore portal property would also be transferred to the city for ongoing use and  
33 maintenance consistent with federal and state laws and regulations and the federal and  
34 state permit conditions governing the Brightwater project.

35 E. On September 26, 2005, the Kenmore city council approved execution of the  
36 mitigation agreement with King County. The mitigation agreement was executed by the  
37 city of Kenmore on September 26, 2005, and by King County on October 31, 2005,  
38 before King County had acquired the real property needed for the north Kenmore portal.

39 F. The mitigation agreement is consistent with the county's environmental  
40 mitigation policies set forth in K.C.C. 28.86.140, the state Environmental Policy Act and

41 the Growth Management Act; it provides mitigation of the adverse environmental  
42 impacts identified in the Brightwater environmental review documents and complies with  
43 the various city of Kenmore permitting requirements for the north Kenmore portal.

44 G. On June 9, 2006, after a one-month condemnation trial, King County acquired  
45 the property for the north Kenmore portal for approximately \$7.61 million.

46 SECTION 2. The executive is authorized to implement the terms of the  
47 mitigation agreement through execution of a property transfer agreement with the city of  
48 Kenmore in substantially the form of Attachment A to this ordinance and through other  
49 measures necessary to implement the terms of the mitigation agreement. Any property  
50 transfer or other agreement with the city of Kenmore shall meet the following  
51 requirements:

52 A. The future use of the wetland properties being transferred shall remain  
53 consistent with the uses designated by federal and state law and by the federal and state  
54 permit conditions governing the Brightwater project at those wetland properties;

55 B. The future use of the surplus nonwetland property being transferred shall be  
56 open space, park or recreational uses, or any combination thereof;

57 C. Transfer of the wetland properties and surplus nonwetland property shall  
58 occur after the final construction of the Brightwater project;

59 D. The property transfer agreement will reserve to the county the rights and  
60 property interests needed to maintain, operate and access the north Kenmore portal  
61 facilities and structures and certain other needed or planned utility facilities, including,  
62 but not limited to, the wastewater conveyance tunnel, chemical injection and reclaimed  
63 water facilities and structures; and

64 E. The property transfer agreement shall not require the county to incur any  
65 unreimbursed expenditures above those provided for in the mitigation agreement.

66

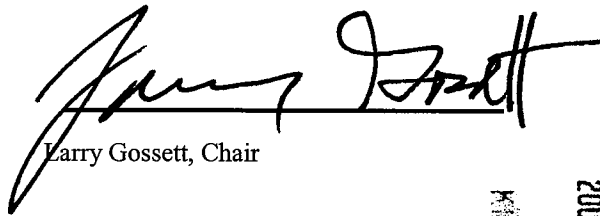
Ordinance 15928 was introduced on 8/27/2007 and passed by the Metropolitan King  
County Council on 10/15/2007, by the following vote:

Yes: 8 - Mr. Gossett, Ms. Patterson, Ms. Lambert, Mr. von Reichbauer, Mr.  
Ferguson, Mr. Phillips, Ms. Hague and Mr. Constantine

No: 0

Excused: 1 - Mr. Dunn

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

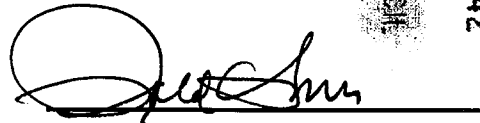
  
Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 23 day of OCTOBER, 2007.



Ron Sims, County Executive

RECEIVED  
2007 OCT 24 PM 2:42  
CLERK  
KING COUNTY COUNCIL

**Attachments** A. Intergovernmental Land Transfer Agreement Between King County and the City of  
Kenmore

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

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

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

WHEREAS the Brightwater regional wastewater treatment system, the "Brightwater Project" includes the construction of a new regional wastewater treatment plant in unincorporated Snohomish County; deep tunnel conveyance facilities through several jurisdictions; a marine outfall in unincorporated Snohomish County; and five primary portal sites in the cities of Bothell, Kenmore and Shoreline and in unincorporated Snohomish County. One of the primary portals is the "North Kenmore Portal," also known as Portal 44, located within the City of Kenmore.

WHEREAS the City and the County have executed a mitigation agreement to address the potential significant adverse environmental impacts of the Brightwater Project on the City of Kenmore and its residents. As part of the negotiated mitigation agreement King County agreed that real property acquired for the North Kenmore Portal that is not needed by King County for the maintenance, operation, repair, expansion or addition of any portal, conveyance or utility structures and facilities would be considered surplus property and would be transferred to the City of Kenmore after final acceptance by County of the construction at the North Kenmore Portal.

WHEREAS the surplus property to be transferred to the City of Kenmore, the "Transferred Property" is intended to serve in perpetuity as community mitigation in the form of wetlands, streams and riparian habitat, parkland, open space, and recreational space for the citizens of Kenmore, King County and the ratepayers of the King County regional wastewater service area.

WHEREAS as part of the negotiated mitigation agreement, the City and County agreed that the wetland properties on the North Kenmore Portal site would also be transferred to the City for ongoing use and maintenance consistent with federal and state laws and regulations and the federal and state permit conditions governing the Brightwater Project.

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. Division of the North Kenmore Portal Property into Legal Lots and Conveyance of Title**
  - 1.1. Prior to the final acceptance by County of the construction

at the North Kenmore Portal the City and County shall determine the legal descriptions for (1) the areas used and needed by the County for the Brightwater facilities and structures, including future facilities and structures that might be needed to maintain, operate, repair, or expand any portal, conveyance or utility structures and facilities (the "Brightwater Property") and (2) the remaining, surplus property, also known as the Transferred Property. The City and County shall divide the Brightwater Property and the Transferred Property into two or more legal lots, the number and configuration of which shall be acceptable to the County.

- 1.2 After final acceptance by County of the construction at the North Kenmore Portal, King County shall convey to the City by quit claim deed subject to the conditions and exceptions set forth in this Agreement and its Exhibits all its interest, in the legal lot(s) created for the Transferred Property pursuant to section 1.1.
- 1.3 The conveyance of the Transferred Property referenced in paragraph 1.1 is contingent on the County dividing the Brightwater Property and the Transferred Property through a municipal subdivision, boundary line adjustment, or other appropriate procedure and completing any survey required to support such division. If this contingency is not satisfied by the time for conveyance called for in Section 1.2, conveyance will be postponed until the contingency is satisfied.
- 1.4 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. 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 covenants that the Transferred Property shall be used in perpetuity for public park, recreation or open space purposes."

"The City further acknowledges that a portion of the Transferred Property depicted in Exhibit A contains wetlands, streams and riparian habitat, and were purchased for wetland impact mitigation and the City covenants that it shall abide by and enforce all terms, conditions and restrictions contained in the County's federal Section 404 permit with the Army Corps of Engineers and the Hydraulic Project Approval with the State of Washington."

"The City covenants that the wetland portion of the Transferred Property will continue to be used in perpetuity for the purposes contemplated by the County's 404 permit, the Hydraulic Project Approval and the City's Final Mitigation Plan-Critical Areas approval, which prohibit both active recreation and motorized recreation unless modified by the City of Kenmore, Army Corp. of Engineers and the State of Washington.

"The City covenants that the Transferred Property shall not be transferred or

conveyed except by agreement providing that the Transferred Property shall continue to be used in perpetuity for the purposes contemplated by the County's permits, approvals and by this Agreement, and that the Transferred Property shall not be converted to a different use than allowed by this Agreement."

"The City further covenants that it will not limit or restrict access to and use of the Transferred 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 Transferred Property for parks recreation or open space purposes."

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

- 1.5 In conveying the Transferred Property by deed, the County shall reserve a Utility Easement within the Transferred Property in substantially the form of Exhibit C, attached hereto and made a part of this Agreement by reference.
- 1.6 In conveying the Transferred Property by deed as referenced in paragraph 1.1, the County shall also reserve easements for all County-owned utilities or other facilities currently located within the Transferred Property or currently planned for the Transferred Property, and for all easements previously granted to the County that were lost through merger when the County acquired the Property. Such easements will include rights of access to all such facilities. The current easements are described in the Fourth Title Report prepared for the North Kenmore Portal Property dated January 18, 2005, which may be updated from time to time. The County will notify the City of all easements it intends to reserve under this provision prior to the time of conveyance called for by paragraph 1.1 of this Agreement.

## 2. Existing Restrictions, Agreements, Contracts or Permits

The City shall abide by and enforce all terms, conditions, reservations, restrictions and covenants of title, as set forth in (a) the most recent title report provided to the City (the "Encumbrances") (b) the City's Final Mitigation Plan-Critical Areas approval for the North Kenmore Portal, (c) in the reserved Utility Easements described in Paragraphs 1.5 and 1.6 above and (d) in the deed of conveyance which will contain the provisions of Paragraph 1.4 above. These Encumbrances will be identified in the deed or as exceptions identified in the preliminary commitment for title insurance. The final verification of the legal description of the Transferred Property will be provided to the City prior to the time of conveyance called for by paragraph 1.1 of this Agreement.

### **3. Condition of Premises and Responsibility for Operations, Maintenance, Repairs, Improvements, and Recreation Services**

- 3.1 The City has inspected and knows the condition of the Transferred Property and agrees to accept the Transferred 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 Transferred Property.
- 3.2 King County acquired the Transferred Property by condemnation for the Brightwater Project and thus 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 Transferred Property, and no official, employee, representative or agent of King County is authorized to represent otherwise.
- 3.3 The City acknowledges and agrees that 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 Transferred Property without regard to whether such defect or deficiency was known or discoverable by the City or the County.

### **4. Environmental Liability**

- 4.1 "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.
- 4.2 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 Transferred 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 Transferred Property, changing the configuration of the Transferred Property, or changing the use of the Transferred Property.
- 4.3 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. The parties acknowledge that if hazardous materials on the Transferred Property pose an imminent threat to human health or the environment emergency response may be required before the parties can agree on the responsibility for remediation.



- 4.4 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.

## **5. Indemnification and Hold Harmless**

- 5.1 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 Transferred Property that occurred prior to the effective date of conveyance of the Transferred Property to the City, except to the extent that indemnifying or holding the City harmless would be limited by Section 4 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.
- 5.2 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.
- 5.3 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 Transferred Property that occurred on or after the effective date of conveyance of the Transferred Property to the City, except to the extent that indemnifying or holding the County harmless would be limited by Section 4 of this Agreement, and except to the extent that the occurrence is caused by or results from a negligent act or omission of King County, its officers, agents and employees occurring on or after the effective date of conveyance of the Transferred Property to the City. 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.

- 5.4 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 Transferred Property.
- 5.5 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.

#### **6. Audits and Inspections**

- 6.1 Until December 31, 2016, 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.

#### **7. Waiver and Amendments**

- 7.1 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.

#### **8. Entire Agreement and Modifications**

- 8.1 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.

#### **9. Duration and Authority**

- 9.1 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.

#### **10. Notice**

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

King County  
Department Director  
Department of Natural Resources and Parks  
Wastewater Treatment Division,  
Major Capital Improvement Program  
201 South Jackson Street, Suite 503  
Seattle, Washington 98104-3855

City:

**11. Exhibits**

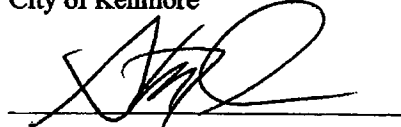
11.1 The following Exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference:

- Exhibit A                                      General Description of Brightwater Property and Transferred Property
- Exhibit B                                      Legal Description of Brightwater Property and Transferred Property (to be created pursuant to section 1.3)
- Exhibit C                                      Reservation of Utility Easement

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

City of Kenmore



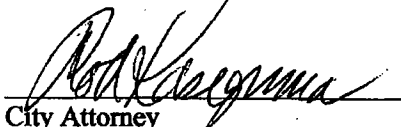
\_\_\_\_\_  
King County

\_\_\_\_\_  
May 7, 2007  
Date

\_\_\_\_\_  
Date

Approved as to Form:

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
King County  
Deputy Prosecuting Attorney

\_\_\_\_\_  
May 7, 2007  
Date

\_\_\_\_\_  
Date



2007-0433

**EXHIBIT "A"**

**[LEGAL DESCRIPTION FOR TRANSFERRED PROPERTY AS SET FORTH IN EXHIBIT B TO  
TRANSFER AGREEMENT]**

2007-0433

**EXHIBIT B**

**Servient Property:**

**Easement:**

**ALSO, a permanent easement over, across, along, in, upon and under**

**EXHIBIT C**

Recording Requested By And  
When Recorded Mail To:  
Pam Elardo, Manager of Real Property and Permitting  
King County  
Department of Natural Resources  
Wastewater Treatment Division  
MS KSC-NR-600  
201 South Jackson Street  
Seattle, WA 98104-3855

Grantor: City of Kenmore, a municipal corporation  
Grantee: King County, a political subdivision of the State of Washington  
Abbreviated Legal Description:  
Assessor's Tax Parcel Nos.:  
Project: Brightwater/North Kenmore Portal  
Parcel No.:

**RESERVATION OF UTILITY EASEMENT**

THIS RESERVATION OF UTILITY EASEMENT is made and effective as of \_\_\_\_\_, 2007, between King County, a political subdivision of the State of Washington, its successors and assigns (hereinafter together referred to as "County") and City of Kenmore, a municipal corporation in the State of Washington, its successors and assigns (hereinafter together referred to as "City").

**RECITALS**

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").

The County owns Utility facilities located on and under the Property. **Explain if there has been a merger of any easement.**

The County's agreement to convey the Property to the City is conditioned upon the County's reservation of permanent utility easements.

The City and County, by accepting and recording this Reservation of Utility Easement, hereby mutually covenant and agree as follows:

The County hereby reserves, for the purposes stated below, permanent utility easements over, across, along, in, upon and under the property more particularly described in Exhibit B, attached hereto and incorporated herein by reference ("Utility Easement" Area):

The Utility Easement being granted herein is for the purpose of installing, constructing, operating, maintaining, removing, re-constructing, repairing, replacing and using sewer pipeline or pipelines with all connections, manholes and appurtenances thereto, including fiber optic or communications lines used in conjunction with a sewer pipeline (hereinafter collectively referred to as "facilities"), within the Utility Easement Area, together with the right of ingress to and egress from said described property for the foregoing purposes.

The term of the utility easement shall be perpetual, and shall be appurtenant to, be binding upon, and run with the Property.

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.

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 said County, its officers, agents, or employees' errors or omissions in the performance of activities related to this easement, provided, however, that County's obligation to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole 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.

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 said City, its officers, agents, or employees' acts, errors or omissions on the Property, both inside and outside the Utility Easement Area, provided, however, that City's obligation to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole 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





COUNTY OF KING ) SS  
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On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, 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 \_\_\_\_\_

\_\_\_\_\_