

MOTION NO. **8555**

A MOTION authorizing a joint development and cooperative use agreement between King County, Enumclaw School District No. 216 and the City of Enumclaw

WHEREAS, the Enumclaw School District No. 216 owns certain land and is willing to allow joint use and development of an undeveloped portion of the site, and

WHEREAS, the City of Enumclaw is willing to construct, operate and maintain a softball/baseball complex on the school district site, and

WHEREAS, King County is willing to provide development funds for a joint project, and

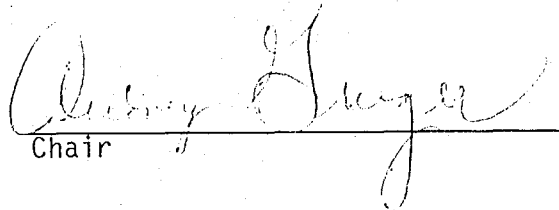
WHEREAS, King County believes that the joint use and development of this site would greatly enhance recreation opportunities in the Enumclaw area;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

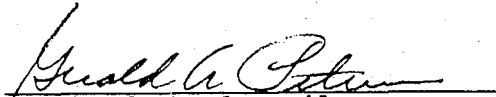
The King County executive is authorized to enter into the joint development and cooperative use agreement with the Enumclaw School District No. 216 and the City of Enumclaw shown in Exhibit A.

PASSED this 16<sup>th</sup> day of March, 1992.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

  
Chair

ATTEST:

  
Clerk of the Council

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**AGREEMENT FOR  
JOINT DEVELOPMENT AND COOPERATIVE USE  
ENUMCLAW BALLFIELD COMPLEX**

This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ 1991, by and between Enumclaw School District No. 216 (hereinafter "the District"), the City of Enumclaw (hereinafter "the City") and King County (hereinafter "the County"), collectively referred to herein as "parties to the agreement".

**RECITALS:**

A. The District owns certain real property known as Enumclaw Junior High School and the District has determined that a portion of the property is available to serve as the site of athletic field development as shown on Exhibit A (site map).

B. The City wishes to lease that portion of the School District property as shown on Exhibit A to construct a three or four lighted softball/baseball field complex.

C. The County wishes to assist in the development of the softball/baseball field complex in the Enumclaw area. The County assumes no rights or responsibilities of a lessee under the terms of this agreement including but not limited to any rights of succession.

D. The District, the City and the County have determined that the public interest would be best served with the least expenditure of public funds by a three party agreement permitting the City to design, construct and maintain the aforesaid athletic fields on the property as shown in the preliminary site plan attached as Exhibit A to this agreement, and the cooperative use of the athletic fields (the athletic field complex shall be referred to hereinafter as the "Facility"). The Facility shall be completed within five years from the date this agreement is signed.

E. The District, the City and the County therefore enter into this three part agreement; Part I Joint Development, Part II Cooperative Use, and Part III General Terms. Part I provides for the design and phased construction of the Facility (such improvement and construction shall be referred to hereinafter as "the Project"). Part II of this agreement provides for the cooperative use of the Facility by the District, County, and City.

F. It is the hope and intent of the parties to the agreement to renegotiate and extend the term of this agreement upon the conclusion of the initial 35 year term.

PART I  
JOINT DEVELOPMENT

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1. PROJECT FINANCING:

A. The District shall lease the land on which the Facility will be developed to the City; the estimated appraised minimum value of the land is \$ \$250,000.

B. The costs for project design and development, and facility maintenance and operation are to be borne by the City. The City will submit the final cost estimates for the project prior to implementation of the construction phase for the District's and County's review.

C. The County shall contribute to the Project in an amount of not more than \$200,000 to reimburse the City for the documented costs of developing four softball/baseball fields. Upon completion and final acceptance of the Project design phase, the City will submit an invoice of payment to the County for reimbursement in an amount not to exceed \$200,000.

2. CONTRACT DOCUMENTS AND BIDDING:

The City shall be primarily responsible for preparing the Master Plan and the specific project construction documents. The Master Plan is to be completed in the project design phase including estimated development costs, and will be subject to the review and approval of the District and the County. Upon their approval, the Master Plan will be attached to and become a part of this agreement as Exhibit B. The boundaries of the land covered under this agreement is shown on the Master Plan.

The County and the District shall review and approve the City's Project design to the City submitting the design for negotiated construction bids; which approval shall not be unreasonably withheld.

3. PROJECT CONSTRUCTION:

A. Supervision and Compliance: The City shall perform the duties of the "Owner" as defined in the contract documents and specifications approved by the County and the District. In the construction of the softball/baseball field complex, the City shall comply with all applicable laws, statutes, rules, regulations and ordinances applicable to the parties to the agreement, including, without limitation, obtaining all necessary governmental permits and approvals.

B. Progress Reports: The City shall make periodic reports to the County and the District on the progress of the construction of the Project. Representatives of each party shall be apprised of all meetings relating to Project construction and shall be entitled to attend all meetings,

whether regularly scheduled or not. The parties to the agreement retain the right to make inspection of the progress of the Project, including, without limitation, inspection of all Project documents at reasonable times and upon reasonable notice to the City.

C. Default by parties to the agreement: If at any time, in the reasonable judgment of the parties, any party fails to competently perform the duties stated herein, the other parties may demand remedy of such default. If the offending party shall have failed to commence any cure of such failure within twenty (20) calendar days following written demand, the other parties may, at their option, cure any default. The offending party shall pay the other parties the cost of such cure.

D. Approval of Contract Documents: All contract documents, including but not limited to contract change orders, shall be approved by the authorized representatives of the parties to the agreement, as required by law. The City will allow review of all documents by the County and the District upon request.

E. License to Enter Property: The District agrees to grant to the City and the County such licenses to enter upon their real property as may be necessary for the exercise of the rights and obligations set forth herein and for the implementation of the Project.

**PART II**  
**COOPERATIVE USE**

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1. **PURPOSE:**

The purpose of Part II of this agreement is to provide for the cooperative use of the Facility constructed and improved as provided in Part I. The parties to the agreement agree to use the Facility jointly and cooperatively according to the terms and conditions set forth below.

2. **OWNERSHIP OF THE FACILITY:**

All real property comprising those portions of the Facility located on District property shall be solely owned by the District, the improvements shall be owned and operated by the City subject to use by the District, the City and the County as provided herein.

3. **MAINTENANCE AND OPERATING COSTS:**

The City will provide general and routine clean-up, maintenance, repairs and field preparation for all facilities within the boundary of this land covered under this agreement. The City and the District shall meet prior to February 1st, each year, at a mutually agreed upon time, to outline the City's maintenance program and to coordinate any special needs the District may have. It is the intent of the parties that as partial consideration for its investment of \$200,000, the County shall not be responsible for the Facility's maintenance or operation costs over the life of this agreement or any extension herein contemplated.

4. **PRIORITIES FOR USE OF THE FACILITY:**

A. August 25 to June 15 (School year), 8:00 am to 5:00 pm  
Monday through Friday, except holidays, Enumclaw School District, except for scheduled games which may extend beyond 5:00 pm.

B. August 25 to June 15, weekdays after 5:00 pm to dusk, weekends and holidays 8:00 am to dusk  
First priority - City of Enumclaw/King County  
Second priority - Enumclaw School District  
Third priority - All other scheduled users  
Fourth priority - Unscheduled activities

C. June 15 to August 25, 8:00 am to dusk, daily  
First priority - City of Enumclaw/King County  
Second priority - Enumclaw School District  
Third priority - All other scheduled users  
Fourth priority - Unscheduled activities

The City shall have the sole responsibility to schedule and program all activities when the City is the First priority user. The City will set aside 30% of the available daytime and nighttime scheduling hours, in Monday through Thursday and Friday through Sunday blocks for use by the County. Under paragraph 4.C. above, the City will accommodate occasional school use for special activities such as jog-a-thons, school activity field events, etc., which may extend beyond the 5:00 pm time in accordance with a quarterly schedule submitted by the District's authorized representative.

5. SCHEDULE OF USE

The District will submit an annual block schedule of desired use to the City, to be updated on a quarterly basis to reflect actual use and to return unused times to the City. However, the field will not be available for City use between 8:00 am to 5:00 pm from August 25 to June 15. Such a schedule shall list holidays, school vacations and any other days when students are not present. Special events requiring special considerations will be negotiated on a case-by-case basis.

The County will submit an annual block schedule of desired use to the City, to be updated on a quarterly basis to reflect actual use, and return all unused times to the City.

6. USER FEES:

Should the City decide to charge user fees to off-set maintenance and operating costs of the Facility, it is understood that City and County residents shall be charged the same fees. The District will be charged no user fees.

7. REPRESENTATIVE:

The parties to the agreement shall each appoint an authorized representative to oversee the administration of Part II of this agreement (Cooperative Use.)

**PART III**  
**GENERAL TERMS AND CONDITIONS**

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1. **TERM:**

The term of this agreement shall be for a period of 35 years (commencing on the date of final completion of the **Facility**) and shall be renewed automatically for five-year periods thereafter unless terminated by either party. The District may terminate the lease and recapture the property in accordance with the provisions of Chapter 28.A.335 of the R.C.W. or as it may hereafter be amended.

2. **DISPUTE RESOLUTION:**

Except as otherwise provided under Sections of this agreement, if field personnel from the parties are unable to resolve a dispute which arises concerning the performance of this agreement, the claimant will notify the other parties in writing, and all must meet within 10 days of receipt of written notice to resolve the dispute. The District Superintendent or designee will represent the District, the City of Enumclaw City Administrator or designee will represent the City, and the County Parks Division Manager or designee will represent the County in this level of the dispute resolution process.

3. **CORRECTIVE ACTION:**

If either party believes that a breach of contract has occurred, or that one or more parties has failed to comply with any terms or conditions herein, or has failed to provide in any manner the work services agreed to herein, and is not satisfied with the results of the Dispute Resolution procedure, the following sequential procedure will apply:

A. The aggrieved party will notify the other party or parties in writing of the nature of the breach;

B. The other party or parties shall respond in writing within seven (7) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the contract into compliance, which date shall not be more than fourteen (14) working days from the date of the other party's or parties' response;

C. The aggrieved party will notify the other party or parties in writing of the aggrieved party's determination as to the sufficiency of the other party's or parties' corrective action plan. The determination of the sufficiency of the other party's or parties' corrective action plan shall be at the sole discretion of the aggrieved party or parties;

D. In the event that the other party or parties do not respond within the appropriate time with a corrective action plan, or the other party's or parties' corrective action plan is determined by the aggrieved party to be insufficient, the aggrieved party may commence termination of this contract in whole or in part pursuant to Part III, Section 4.

4. TERMINATION:

A. Any party may terminate the agreement at the close of the initial thirty-five year term, or at the close of any subsequent five-year term by giving written notice of termination to the other parties. A party wishing to terminate the agreement must give the other parties notice in writing of intention to terminate at least 18 months prior to the expiration of the then-current term of Part III of this agreement. Provided the District may terminate the lease at any time and recapture the property in accordance with the provisions of Chapter 28.A.335 of the R.C.W. or as it may hereafter be amended.

B. Any party may terminate this agreement with cause upon ninety (90) days advance written notice in the event: 1) any party substantially breaches any duty, obligation, or service required pursuant to this contract, or 2) the duties, obligations, or services required herein become impossible, illegal, or not feasible.

C. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this contract or law that any party may have in the event that the obligations, terms and conditions set forth in this contract are breached by the other parties.

5. OPTION TO PURCHASE:

Should the District want to sell or trade all or a portion of the real property containing the Facility described above, within two years of termination of this agreement, the other parties shall have first option to purchase said real property at its fair market value.

A. Fair Market Value Defined:

For all purposes required under this agreement, "Fair Market Value" is defined as: The amount in the competitive market that a well-informed and willing seller, who desires but is not required to sell, would accept, and which a well-informed and willing purchaser, who desires but is not required to purchase, would pay for the premises, after due consideration of all the elements reasonably affecting value.



fourth party claims, actions or causes of action which are a consequence of the sole fault, negligence or causation of a party to this agreement, such party shall have the duty to defend, save and hold the other harmless, and upon failure to do so shall pay reasonable fees, costs and expenses incurred by the other parties to this agreement in defense of any such fourth party claims or actions.

7. **MINORITY/WOMEN'S BUSINESS ENTERPRISES:**

The provisions of the King County Minority and Women's Business Enterprise (MWBE) Ordinance shall apply to all construction made available by this agreement. For purposes of this agreement, the utilization requirements to be fulfilled are 25% for combined minority businesses and women's businesses. The County agrees to monitor compliance with these requirements.

8. **ANTI-DISCRIMINATION POLICY:**

In all hiring or employment made possible or resulting from this agreement, the parties to the agreement agree that:

A. There shall be no discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status, sexual orientation or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

B. No person shall be denied, or subjected to discrimination in receipt of the benefit of any services of activities made possible by or resulting from this agreement on the ground of sex, race, color, creed, national origin, age, except minimum age and retirement provisions, marital status, sexual orientation or the presence of any sensory, mental or physical handicap.

C. Any violation of this provision shall be considered a violation of a material provision of this agreement and shall be grounds for cancellation, termination or suspension in whole or in part, of the agreement by the parties and may result in ineligibility for further agreements.

D. All parties to the agreement shall comply with all applicable anti-discrimination and affirmative action ordinances, laws and statutes, including but not limited to King County Code Chapter 12.16.

9. **ASSIGNMENT:**

The City or the District shall not assign and sublet usage, or otherwise dispose of their respective property rights without the written authorization of the other two parties to this agreement. Such written authorization shall not be unreasonably withheld.

10. **SEVERABILITY:**

If any term or provision of this agreement or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this agreement, or the application of the term or provision or persons or circumstances other than those as to which it is held invalid, or unenforceable, will not be affected and will continue in full force.

11. **PERFORMANCE OF TERMS:**

Failure of the parties to the agreement to insist on strict performance of the terms, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of the other parties right thereafter to enforce any such term, agreement, or condition, but the same shall continue in full force and effect.

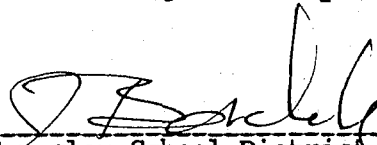
12. **INTEGRATION CLAUSE:**

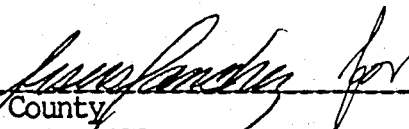
This agreement contains the entire agreement between the District, the City and the County and there are no promises, conditions, terms, obligations, statements, or guarantees other than those contained herein. No modifications or amendments shall be valid unless in writing and fully executed by all parties.


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12. INTEGRATION CLAUSE:

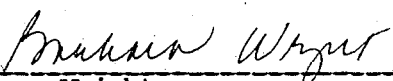
This agreement contains the entire agreement between the District, the City and the County and there are no promises, conditions, terms, obligations, statements, or guarantees other than those contained herein. No modifications or amendments shall be valid unless in writing and fully executed by all parties.

  
Enumclaw School District  
By: James Barchek  
Its: Superintendent  
Date: 10/23/91

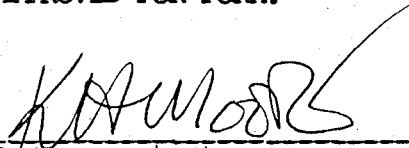
  
King County  
By: Tim Hill  
Its: County Executive  
Date: 12/10/91

  
City of Enumclaw  
By: Keith Blackburn  
Its: Mayor  
Date: October 29, 1991

APPROVED FOR ENTRY:

  
Barbara Wright  
Manager  
Parks Division  
Date: 11.21.91

APPROVED FOR FORM:

  
By: Kendall H. Moore  
Deputy Prosecuting Attorney  
Date: 12/4/91