

June 23, 1993
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Introduced by: AUDREY GRUGER
Proposed No.: 93-508

MOTION NO. 9065

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A MOTION authorizing a change in scope on the Woodinville Ballfield Park CIP Project Number 316199 and authorizing the executive to enter into an interlocal agreement with the Northshore School District regarding athletic field development.

WHEREAS, participation in Northshore youth sports has grown rapidly over the past several years, and

WHEREAS, due to the lack of suitable park sites, the county has been unable to develop additional athletic fields to meet the increased demand for fields created by the greater number of players and teams participating in these sports, and

WHEREAS, the county council added \$505,132 to the 1990 Adopted Budget in a project called the Woodinville Ballfield Acquisition CIP Number 316199 for the acquisition of an athletic field site in the Northshore Community Planing area, and

WHEREAS, the county subsequently received \$87,656 from the State Interagency Committee for Outdoor Recreation for the development of ballfields at this site, and

WHEREAS, due to the lack of suitable development sites, the Parks Division has negotiated an agreement with the Northshore School District that would allow for the development of new athletic fields on property owned by the school district adjacent to Woodinville and Inglemoor High Schools, and;

WHEREAS, if the county provides partial funding for the development of athletic fields at Northshore high schools, the School District has agreed to allow the county to program these fields after school hours, on weekends and during the summer, and;

1 WHEREAS, this arrangement would provide a mutual and
2 offsetting benefit to the county and the school district and it
3 is therefore appropriate for the county to transfer the funds
4 currently budgeted in the Woodinville Ballfield Acquisition CIP
5 to the Northshore School District for the purpose of developing
6 athletic fields at Woodinville and Inglemoor High Schools.

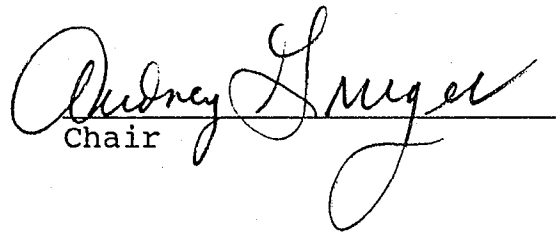
7 NOW, THEREFORE, BE IT MOVED by the Council of King County:
8 The scope of the Woodinville Ballfield Acquisition Project is
9 hereby changed to the development of ballfields at Woodinville
10 and Inglemoor High Schools and the executive is hereby
11 authorized to enter into an interlocal agreement with the
12 Northshore School District substantially in the form of
13 Attachment A for this purpose.

14 PASSED this 28th day of June, 1993

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KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


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Chair

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ATTEST:

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Clerk of the Council

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Attachments: Attachment A, Interlocal Agreement between King
County and the Northshore School District

INTERLOCAL AGREEMENT
FOR JOINT DEVELOPMENT AND COOPERATIVE USE OF
WOODINVILLE HIGH SCHOOL ATHLETIC FIELDS

THIS AGREEMENT is made on this _____ day of 1993, by NORTSHORE SCHOOL DISTRICT NO. 417 ["District"] and KING COUNTY ["County"], collectively referred to in this Agreement as "Parties" or "Parties to the Agreement."

RECITALS

1. The District owns certain real property known as Woodinville High School and the District has determined that portions of the site are available to serve in the development and improvement of athletic fields.
2. The District intends to make certain improvements to the athletic fields by reorienting, underdraining and irrigating the baseball field, and reorienting, enlarging, underdraining and irrigating the softball field.
3. The County wishes to make certain improvements to athletic fields and related facilities [hereinafter "Facilities"] to mutually agreed upon design standards. The County funded improvements include lighting the baseball field, enlarging and lighting the softball field, relocating two of the six existing tennis courts, and constructing a restroom/concession building central to the football stadium and athletic fields, and lighting pathways. If the field lighting is not permitted through the SEPA process, the funds would instead be used for redevelopment of a grass soccer field area.
4. The District and the County have determined that the public interest would be best served with the least expenditure of public funds by a two party agreement permitting the County and the District to jointly design, construct and cooperatively use the aforesaid Facilities as shown on the site map.
5. Nothing in this Agreement shall prohibit the District and the County from amending this Agreement for the purpose of joint development and use of additional future athletic facilities within the property shown on Exhibit A.
6. The District and the County therefore enter into this three part agreement; Part I General Terms, Part II Execution of Improvements and Part III Use of Improvements.
7. 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.

GENERAL TERMS

8. **AUTHORITY.** This Agreement is entered pursuant to Washington statute RCW Chapter 39.34 (Interlocal Cooperation Act).
9. **TIME PERIOD.** The term of this Agreement is thirty five (35) years. The Agreement shall be renewed automatically for succeeding periods of five (5) years

each. Either Party may dispense with renewal or further renewal by so notifying the other Party in writing. Such notices shall be delivered to the other Party not less than one hundred eighty (180) days before the date of the expiration of the Agreement.

10. OWNERSHIP. The real property and fixtures shall remain the property of the District according to their current ownership interests in the real property. Any personal property stored at the Facility (e.g., lawn mowers) will remain the property of the Party which supplied it.

11. REPRESENTATIVES. Each Party will designate one person to be its representative for this Agreement. The original designations shall be submitted by each signatory, in writing, to the other signatory within 20 days of execution of this Agreement. Each Party shall revise the designation to indicate any change as needed, including the replacement of the originally named representatives. Revisions shall be delivered to the other Party's representative. All designations shall state the name of the representative, his/her title, mailing address and phone number(s).

12. DISPUTE RESOLUTION. If either Party claims that the other Party has breached any term of this Agreement, the following procedures shall be followed if and when informal communications, such as telephone conversations, fail to satisfy the claiming Party:

12.1 The claiming Party's representative shall provide a written notice to the other Party's representative of the alleged breach. The notice shall identify the act or omission at issue and the specific term(s) of the Agreement which the complaining Party alleges was violated.

12.2 The responding Party representative shall respond to the notice in writing within seven (7) working days. The response shall state that Party's position as well as what, if any, corrective action the responding Party agrees to take.

12.3 The complaining Party shall reply in writing, indicating either satisfaction or dissatisfaction with the response. If satisfied, any corrective action shall be taken within 14 days of receipt of the responding Party's reply. If dissatisfied, the complaining Party shall call an in-person meeting. The meeting shall occur within a reasonable period of time and shall be attended by the designated representatives of each Party, and such others as they individually invite.

12.4 If the complaining Party remains dissatisfied with the results of the meeting, it may sue to enforce the terms of this Agreement. The Parties also may agree to an alternate dispute resolution process.

12.5 Termination for cause may be one consequence of a finding by the court, or alternate dispute resolution authority, that one Party has materially breached the term of this Agreement.

13. OPTION TO PURCHASE. Within the term of this Agreement and for two years thereafter, the County shall have an option to purchase the real property upon which any portion of the softball field, baseball field and tennis courts are located in accordance with Exhibit A. This option shall be exercised by the County within one

hundred twenty (120) days following written notice to the County of the District's intent to sell or otherwise dispose of such real property. The County shall exercise its option to purchase by delivering written notice to the District of the County's intent to purchase the property pursuant to the terms of this Agreement.

The County's option to purchase shall be contingent upon the District's Board of Directors having declared the real property surplus to the District's needs and the District's completion of all other legal requirements as may be applicable at that time to the District's decision to sell or otherwise dispose of the real property. The County's option to purchase also shall be contingent upon a determination of fair market value as set forth below and appropriation of sufficient funds by the King County Council to purchase the affected real property. For purposes of this Agreement, a transfer by the District of the real property to another governmental entity which will continue the use of the real property in connection with the operation of one or more public schools shall not constitute a disposition of the real property which would authorize the County to exercise its option to purchase.

The purchase price shall be the fair market value, determined as follows:

13.1 As agreed to by the Parties; or failing that,

13.2 The price found by at least the majority of three (3) appraisers. One appraiser will be designated by each Party. The designated appraisers will select a third appraiser or, if they are unable to agree, the Parties will seek a designation by the King County Superior Court. In establishing the value, the appraisers will not consider improvements executed pursuant to the Project. Appraisers must be members of the American Institute Of Real Estate Appraisers, the Society of Real Estate Appraisers or an equivalent body. Each appraiser also will be properly licensed according to the requirements then existing.

13.3 If a majority of the appraisers cannot agree on the value, the Parties shall refer the question to the King County Superior Court. In no case, however, shall the fair market value be determined using improvements executed pursuant to the Project.

13.4 CLOSING. Closing shall be within ninety (90) days of the establishment of the price. Unless agreed to otherwise, payment shall be cash in full.

13.5 TITLE. Conveyance shall be by statutory warranty deed transferring fee simple absolute with only such conditions as are accepted by a typical buyer.

14. INDEMNIFICATION. Both Parties to the Agreement agree in the case of all third party claims, actions or causes of actions of whatsoever kind or nature made or asserted against either or all of them and arising out of the joint development, use of operation of the property, each will be liable to the other only to the extent of each Party's fault or causation and shall indemnify the other for such amount. As to all such third 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 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 third party claims or actions.

15. **MINORITY/WOMEN'S BUSINESS ENTERPRISES.** The provisions of the King County Minority and Women's Business Enterprise (MWBE) Ordinance shall apply to the District for all construction funded by King County pursuant to 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 shall be responsible for administering and enforcing its MWBE Ordinance and agrees to defend and hold District harmless against any and all claims which may arise out the application of enforcement of said ordinance pursuant to this Agreement.

16. **ASSIGNMENT.** Neither Party will assign or sublet its rights or responsibilities under this Agreement without the written authorization of the other Party. Written authorization shall not be withheld unreasonably.

17. **SEVERABILITY.** If any term of this Agreement is held invalid or unenforceable, the remainder of the Agreement will not be affected but continue in full force.

18. **TERMINATION.** Pursuant to the terms and conditions herein, this Agreement may be terminated either (a) by mutual agreement of the parties, or (b) unilaterally if the terminating party gives one hundred eighty (180) days notice to the other and one of the following occurs:

18.1. If the Agreement is terminated by the County prior to the completion of the improvements covered by paragraphs 23 through 25, infra, the County shall be obligated to pay the District the amount necessary to satisfy all contract obligations created by the District's compliance with the terms of this Agreement which would otherwise have been paid by the County, provided the District shall make a good faith effort to minimize the extent of the County's obligation for such reimbursement.

18.2. If the District terminates this Agreement prior to the completion of the improvements covered by paragraphs 23 through 25, infra, the District shall be obligated to purchase the improvements paid for by the County at the full amount of their cost to the County.

18.3. If the District terminates this Agreement after the completion of the improvements covered by the paragraphs 23 through 25, infra, the District shall be obligated to purchase the improvements paid for by the County at the depreciated value of said improvements. In calculating the depreciated value, the useful life of the improvements shall be considered to be the initial 35 year term of this Agreement. The depreciated value of the said improvements shall be determined in the manner set forth in paragraph 13, infra.

18.4. If the County terminates this Agreement after the completion of the improvements covered by paragraphs 23 through 25, infra, the District shall be entitled to retain the improvements paid for by the County at no cost.

19. **NON-WAIVER.** Failure of either Party to insist upon the strict performance of any term of this Agreement will not constitute a waiver or relinquishment of any Party's right to thereafter enforce such term.

20. INTEGRATION. This writing contains all terms of this Agreement. It replaces all prior negotiations and agreements. Modifications must be in writing and be signed by each Party's representative.

21. FILING OF INTERLOCAL AGREEMENT. This Agreement will be filed pursuant to RCW 39.34.040.

22. RECORDATION. This Agreement shall be filed with the King County Records and Election Division.

EXECUTION OF IMPROVEMENTS

23. PROJECT FINANCING: The District is already in the process of developing certain athletic and recreational improvements on the subject project. The County desires and has agreed to contribute \$571,213, which includes sales tax for construction and other costs normally associated with construction such as fees, inspections, insurance and bonds, to the Project in order to allow the District to make certain additions to the scope of the project as described in paragraph 3, infra, of this Agreement. The County shall be responsible for its administrative costs for the project. Upon the execution of the Agreement, the District shall take the steps necessary to modify the scope of its project to include the County funded improvements described above. The construction to be funded by the County shall be bid as individual items in the District's bidding process. The parties shall agree on the cost of the County funded improvements using the bids, the design engineer's cost estimate and such other information as is available. In the event the parties cannot agree, the parties agree to equally share the costs in retaining the services of a mutually acceptable independent consultant to determine such costs. The consultant's determination shall be final.

In the event that the cost of the County funded improvements is less than \$571,213, the County's contribution to the project may be reduced accordingly. In the event that, for any reason, the cost of the County funded improvements exceeds \$571,213, the County shall have the option, after consulting with District, to reduce the scope of additional work so as to bring the project within the County's budget.

The District shall, on a monthly basis, issue an invoice for the documented costs, to the County for the amount the District has been charged by its contractor toward completion of the County's portion of the project. The County shall reimburse the District for such amounts within 30 days. The County shall indemnify District for late and/or non-payment, provided District gives County the specified 30 day invoice notice.

24. CONTRACT DOCUMENTS AND BIDDING: The District shall be responsible for preparing and submitting all of the required information necessary for obtaining any and all required Facility permits. The District shall be identified as the lead agency/owner for the purpose of obtaining permits.

The District shall be primarily responsible for preparing the Facility Site Plan and the Facility drawings and specifications. The Site Plan is to be completed in the Facility design phase including estimated development costs, and will be subject to the review and approval of the County. Upon its approval, the Site Plan will be attached to and become a part of this Agreement as Exhibit A.

The County shall have the right to review and approve the District's Facility proposal prior to submission of the proposal for competitive construction bids which approval shall not be unreasonably withheld.

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25. PROJECT CONSTRUCTION:

25.1. Supervision and Compliance: The District shall perform the duties of the "Owner" as defined in the contract documents and specifications. In the construction of the Facility, the District shall comply with all applicable laws, statutes, rules, regulations and ordinances applicable to the parties to the Agreement, including, without limitation, all necessary governmental permits and approvals.

25.2. Progress Reports: The District shall make periodic reports to the County on the progress of the construction of the Facility. The County shall be apprised of all meetings relating to Facility construction and shall be entitled to attend all meetings, whether regularly scheduled or not. The County retains the right to make inspection of the progress of the Facility, including, without limitation, inspection of all Facility documents at reasonable times and upon reasonable notice to the District.

25.3. Default by parties to the agreement: If at any time, in the reasonable judgment of the parties, either party fails to competently perform the duties stated herein, the other party 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 party may, at their option, cure any default. The offending party shall pay the other party the cost of such cure.

25.4. Approval of Contract Documents: All contract documents, including any change orders, affecting the County's portion of the project in any manner, shall be submitted to the County for review and approval, which shall not be unreasonably withheld. In the event that the County does not notify the District of any objections or proposed changes in such documents within ten working days of their delivery to the County, they shall be deemed to have been approved by the County. The County shall have the right to review all documents of the District related to the project upon request.

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

USE OF IMPROVEMENTS

26. PRIORITIES OF USE.

26.1 During the regular school term, weekdays from approximately August 25 to June 15, 8 a.m. to 6 p.m., except school holidays, the District shall have first priority. "Use of District" means use by the District's students, personnel and guests at school sponsored activities within the time reserved for the District.

26.2 At all other times priorities shall be: scheduled School District extracurricular activities which involve contests with other school districts, the County, other scheduled users and finally unscheduled users. Such use and user groups shall be controlled by the District.

26.3 The District shall provide reasonably appropriate access for scheduled use of the Facilities by the County and the public.

27. USER FEES. The District may charge field use, light fees and other regular charges for the use of the Facilities in the same amounts and manner for District and County residents, as are established by the District from time to time.

28. MAINTENANCE. The District shall be responsible for on-going costs of maintenance and operation of the Facilities.

29. NOTICE: All notices pursuant to this Agreement shall be in writing and mailed to the following addresses, unless either party notifies the other in writing of a change of address.

District
18315 Bothell Way N.E.
Bothell, Washington 98011-1983

King County Parks Division
2040 84th Avenue S.E.
Mercer Island, Washington 98040

NORTHSHORE SCHOOL DISTRICT

By:

Dennis A. Ray
Dennis A. Ray

TITLE: Superintendent

KING COUNTY

By:

Tim Hill

TITLE County Executive

APPROVED FOR ENTRY

By:

Linda Dougherty, Manager
Parks Division

APPROVED FOR FORM

Deputy Prosecuting Attorney