

Terry D.
For file



RECEIVED
MAY - 4 1998

file
I-90

SEATTLE PARKS & RECREATION
SUPERINTENDENT

GM-1319

**OPEN SPACE AND RECREATION AREA
I-90 MAINTENANCE, REDEVELOPMENT AND LAND CONVEYANCE AGREEMENT
(SEATTLE)**

THIS AGREEMENT is entered into between THE CITY OF SEATTLE (hereinafter "the City") and the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (hereinafter "WSDOT").

WHEREAS, the WSDOT owns the areas marked in green on Exhibit 1 and, as such, is responsible for the maintenance of the landscaping and other improvements thereon; and

WHEREAS, WSDOT and the City, acting by and through the Department of Parks and Recreation, have agreed to execute concurrently with this Agreement a separate Airspace Lease, whereby the City will lease from WSDOT certain active recreation areas on the sites marked in blue on Exhibit 1, and WSDOT will transfer to the City the responsibility for the maintenance and operation of such areas under that separate Airspace Lease; and

WHEREAS, WSDOT and the City have agreed to execute concurrently with this Agreement a separate Ground Lease, whereby the City will lease from WSDOT the site illustrated in yellow on Exhibit 1, and WSDOT will transfer to the City the responsibility for the maintenance and operation of such area under that separate Ground Lease; and

WHEREAS, WSDOT and the City have agreed to execute concurrently with this Agreement a separate Airspace Lease, whereby the City will lease from WSDOT certain other land referred to as the Day Street Waterfront Area illustrated in blue with double hatchures on Exhibit 1, and WSDOT will transfer to the City the responsibility for the maintenance and operation of such area under that separate Airspace Lease; and

WHEREAS, WSDOT agrees to transfer to the City and the City agrees to accept certain property depicted in blue, shaded with single hatchures, on Exhibit 1 as replacement land for City park land acquired by WSDOT for the SR 90, Junction SR 5 to Vicinity Junction SR 405 Project, and the WSDOT agrees to execute separate Quitclaim Deeds transferring said property concurrently with or in advance of this Agreement; and

WHEREAS, the City is willing to assume and undertake, under certain terms and conditions, various maintenance responsibilities with respect to the landscaping and other improvements in the areas marked in green on Exhibit 1 for and on behalf of WSDOT, and WSDOT is willing to compensate the City for the City's performance of such work; and

WHEREAS, it is desirable that an agreement be entered into between the City and WSDOT concerning the maintenance of the landscaping and other improvements made to certain WSDOT owned property within the I-90 Corridor and defining the responsibilities of each of the parties hereto with respect to said landscaping and other improvements;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances described herein, IT IS MUTUALLY AGREED THAT:

1. IDENTIFICATION OF PROPERTY AFFECTED BY AGREEMENT.

This Agreement pertains to: (a) that approximately 38.77 Acres of land within the area known as the I-90 Corridor from I-5 to Lake Washington that is colored green on Exhibit 1 (which portion is hereinafter called the "Areas to be Maintained"); and (b) the three (3) parcels of land that contain, in the aggregate, approximately 7.22 Acres of land within the I-90 Corridor from I-5 to Lake Washington, that are colored blue, shaded with single hatchures, on Exhibit 1, and are to be conveyed by WSDOT to the City (which parcels are hereinafter collectively called the "Replacement Lands").

Other areas that are depicted in blue on Exhibit 1 that are outside of the Areas to be Maintained and the Replacement Lands but which are subject to the leases that the parties have agreed to execute concurrently with this Agreement, include the following (which may be referred to hereinafter by the definition specified in the second column below):

Blue	Active Recreation Areas (Airspace Lease)	Sturgus Artwork; Approx. 5.18 Acres Atlantic Street Park; Proposed Tennis Courts; Existing & Proposed Basketball Courts; Sportsfield; Tract 37 Screening Fence; Urban Peace Circle; Existing Tennis Courts; Children's Play Area; and East Portal Mt. Baker Ridge Viewpoint (on Lake Wn. Blvd. So.)
------	--	--

GM-1319

Blue with Day Street Double Waterfront Area Hatchures (Airspace Lease)	Open Space, Waterfront Access and Parking Lot	Approx. 3.96 Acres
Yellow Old Colman School Playground (Ground Lease)	Old Colman School Playground for Park & Recreation Use	Approx. 2.30 Acres

2. EXHIBITS TO AGREEMENT.

Exhibits attached to and made a part of this Agreement include:

Exhibit 1 - Maps depicting: a) Active Recreation by Airspace Lease;
b) Replacement Lands;
c) Ground Lease for Park & Recreation Use;
d) Areas to be Maintained; and
e) Waterfront Recreation by Airspace Lease.

Exhibit 2 - Chart titled LEVEL OF CARE For Maintenance Activities.

Exhibit 3 - Ground Lease

Exhibit 4 - Airspace Lease, Active Recreation Areas

Exhibit 5 - Airspace Lease, Day Street Waterfront Area

3. WSDOT REDEVELOPMENT OBLIGATIONS.

WSDOT has constructed landscaping on the Areas to be Maintained and on the Replacement Lands consistent with the standards set forth in the "I-90 Seattle Landscape Supplemental Design Report #1 - Part A, Washington State Department of Transportation", dated March 1986; the requirements of the Final Environmental Impact Statement that has been approved for the I-90 Project, both of which documents are incorporated herein by this reference; and as otherwise agreed to by the parties. WSDOT has given the City the opportunity to review and comment on the construction plans for the landscaping at the 90% stage and, wherever possible, has incorporated the City's comments in the final construction plans.

4. CITY ACCEPTANCE OF MAINTENANCE RESPONSIBILITIES.

For each landscape contract on the Areas to be Maintained and/or the Replacement Lands, not later than sixty (60) calendar days prior to the completion of Plant Establishment (one to three years after completion of landscape installation, as determined by the language of the landscape contract), WSDOT shall schedule and

conduct with the City a field review of that section of the Area to be Maintained and/or the Replacement Lands covered by that landscape contract. The field review will be for the purpose of mutually determining whether or not the landscaping has been installed and maintained in accordance with the approved contract plans and specifications and that Plant Establishment has been completed. The landscape area that is the subject of the review shall be free of litter and debris and all turf, ground cover plantings, shrub plantings and trees shall be healthy and vigorous. All infrastructure facilities such as irrigation and drainage systems shall be demonstrated to be in proper working order.

Any items found non-compliant with the contract plans and specifications shall be documented at the time of the field review for follow-up corrective action by WSDOT and/or its contractor. WSDOT will notify the City when such corrective work has been completed and a follow-up field review of the completed work will be scheduled and conducted, if requested by the City.

Upon joint determination that the landscaping is consistent with the contract plans and specifications and that Plant Establishment is complete, WSDOT shall certify the same in writing to the City. The City shall acknowledge and accept maintenance responsibilities for the area that is the subject of the review consistent with the provisions of this Agreement by the signing of the WSDOT certification by the Superintendent of Parks and Recreation. Provided, that if said certification is not signed by the Superintendent of Parks and Recreation by the fifteenth (15th) working day after receipt of the certification by the City, acknowledgement and acceptance of said maintenance responsibilities shall be deemed made.

5. CITY RESPONSIBILITIES ON AREAS TO BE MAINTAINED.

For each section of the Areas to be Maintained that the City accepts maintenance responsibilities, as set forth in paragraph 4 herein, the City shall assume responsibility for and shall undertake, on behalf of the WSDOT, maintenance responsibilities as follows:

- A. At a minimum, maintaining such areas to a level equal to or better than the "Medium Level of Care" as defined on Exhibit 2 and consistent with the following paragraphs.
- B. Performing grounds custodial work including but not limited to litter pick-up, garbage collection and disposal, cleaning of hard surfaces, sweeping of trails, keeping drainage structures clean and free of debris and disposing of materials collected in such activities; and performing all trail and sidewalk maintenance, except for structural overlays and work on the main trail from the western portal of the bicycle tunnel through Mount Baker Ridge, easterly through the tunnel and onto the Floating Bridge;

- C. Performing turf maintenance including but not limited to grass mowing, lawn irrigating, trimming, edging, and fertilizing and all other turf cultural practices;
- D. Performing planting bed and tree maintenance including but not limited to weeding, pruning, and fertilizing and irrigating;
- E. Notifying the water and electric utility of City acceptance of payment responsibilities and paying the cost of water used for irrigation purposes and the cost of electrical services;
- F. Performing normal maintenance of the irrigation system such as winter shut down, replacement of heads and risers and all other general maintenance and repairs necessary to keep the system operationally consistent with the standards set forth in Exhibit 2;
- G. Providing and maintaining a secure location for the installation of the irrigation control computer; and after such installation and training of City maintenance staff regarding such control computer, operating and maintaining the computer to control the irrigation systems;
- H. Notifying the telephone utility of City acceptance of payment responsibilities and being responsible for the ongoing cost of use and maintenance of the phone lines necessary to operate the irrigation control computer system, which computer system shall remain the property of WSDOT;
- I. Securing WSDOT written approval prior to making significant changes in the irrigation control computer system's hardware or software;
- J. Removing graffiti from the artwork located within the Urban Peace Circle and the Sturgus Artwork Area as illustrated in blue on page 1 of Exhibit 1;
- K. Removing graffiti on all horizontal surfaces including benches, trails, roadways, etc.; within the area up to ten feet (10') above the ground level on the vertical, public access side of retaining walls, raised planters, ventilation stacks, bridge columns, concrete slope protection structures; and on the artwork stones along the bikeway. Each year after the City has expended 100 workhours on graffiti removal as described in this subsection, the City shall provide the WSDOT Northwest Region Maintenance Engineer or such official's functional successor, with documentation showing the labor hours

expended and expenses incurred by the City on any such graffiti removal. Upon review and approval of said documentation by WSDOT, WSDOT and the City will equally share the costs of said graffiti removal in excess of said 100 workhours as part of the quarterly payments for maintenance as set forth in paragraph 8 herein;

- L. Because of the special free draining nature of the soils on the I-90 lid structure, being responsible for ensuring that the landscaping gets sufficient water to keep the landscaping alive; and if the necessary irrigation is not provided, being responsible for the replacement of landscaping that dies or is severely damaged due to lack of water;
- M. Informing City employees, agents, contractors, and permittees who, as such, have any City authorization to affect, or official function or responsibility with respect to, any portion of the special "soil system" on the top of the I-90 Project Lid regarding such system (which consists of a waterproof membrane, drainage systems, filter fabric, drain gravel, irrigation system and topsoil), and prohibiting the damaging of such system by any such person or entity;
- N. Prohibiting any excavation, drilling, or driving of any stake or other material into the special "soil system" by any City employee, agent, contractor, or permittee other than is necessary for the repair of the irrigation system or replacement planting of existing trees and other plants, unless the prior written approval of the WSDOT Northwest Region Maintenance Engineer has been secured with respect to such work;
- O. Being responsible for all trail maintenance other than that set forth in paragraph 6 herein, including but not limited to routine trail nonstructural maintenance, including patches, repairs and seal coats or overlays less than 0.72 inch in thickness;

6. WSDOT MAINTENANCE RESPONSIBILITIES.

For each section of the Areas to be Maintained that the City accepts maintenance responsibilities as set forth in paragraph 4 herein, WSDOT shall be responsible for the following maintenance work :

- A. Repaving all trails or other structural repairs and overlays greater than 0.72 inch in thickness, when required, the timing of which shall be jointly determined by WSDOT and the City;
- B. Maintaining and repairing the structural components of retaining walls, the bicycle tunnel, the lid structure,

the tunnel structure, overcrossings constructed as part of the I-90 Project, and the main trail from the west tunnel entrance eastwards;

- C. Maintaining all storm drainage facilities, other than cleaning, as necessary to protect the structural integrity of bridges, walls, and other structural features of the I-90 Project;
 - D. Replacing the irrigation system, including the computer control system, when required, the timing of which shall be jointly determined by WSDOT and the City based on the annual maintenance cost, the condition of the system and necessity;
 - E. Providing the complete computer control system that is necessary to operate the irrigation systems including hardware, phone lines, software, manuals and training in operation of the system;
 - F. Performing graffiti removal from the WSDOT control and ventilation buildings, the bicycle tunnel, the eastern tunnel portal and plazas, the superstructure of the floating bridges, the western portal for the bicycle tunnel and all portions of vertical surfaces that are ten feet (10') or more above the ground level;
 - G. Providing to the City a copy of all available pesticide application records prior to the City taking on the maintenance responsibilities as provided herein;
 - H. Providing to the City a copy of WSDOT contractor irrigation controller programming records, if any; and
 - I. If arranged by the City ahead of time, and with the concurrence of WSDOT, programming or arranging to have programmed by the WSDOT contractor the irrigation computer system for the WSDOT contractor's use and, if used, providing the City with said program at the time the City accepts maintenance responsibilities as provided herein.
7. OTHER APPLICABLE STANDARDS FOR MAINTENANCE WORK.
- A. Flammable/Hazardous Substances. Except as otherwise provided herein, the City shall not store, bring or allow to be brought onto the Areas to be Maintained any toxic or hazardous substances as defined under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA" or Federal Superfund) (42 U.S.C. § 9601 *et seq.*), or the Model Toxics Control Act [MTCA; RCW Ch. 70.10SD], or flammable substances including but not limited to explosives, petroleum products, paint, solvents, and resins, without the express written permission of WSDOT.

WSDOT hereby grants permission for the City to bring onto the Areas to be Maintained and to reasonably use toxic, hazardous or flammable substances deemed by the City to be necessary or appropriate to carry out its maintenance responsibilities under this Agreement. Pesticides may be used for landscape maintenance in accordance with manufacturer's directions at the City's risk.

The disposal of any and all toxic, hazardous and flammable substances stored or brought onto the Areas to be Maintained by the City, or allowed by the City to be brought onto said property shall be done in a legal manner by the City.

The City hereby agrees to indemnify WSDOT and hold WSDOT harmless for any costs or liabilities associated with the removal or remediation of any hazardous substances (including petroleum and gasoline product) that have been released or otherwise have come to be located on the site by the activities of the City or any of its employees, agents, contractors, or subcontractors. "Costs" shall include, but not be limited to, all response costs, disposal fees, investigation costs, monitoring cost, civil or criminal penalties, attorney fees, and other litigation costs incurred in complying with state or federal environmental laws, which shall include, but not be limited to, the aforementioned acts; the Clean Water Act, 33 USC Section 1251; the Clean Air Act, 42 USC Section 7401; and the Resource Conservation and Recovery Act, 42 USC Section 6901.

The City further agrees to retain any and all liabilities arising from the off-site disposal, handling, treatment, storage, or transportation of any toxic, hazardous or flammable substances, including petroleum products, removed from the Premises and that liabilities under this section (Flammable/Hazardous Substances) shall survive the expiration of this Agreement.

B. Utility Franchises.

(1) WSDOT will make best efforts to require utility franchise and permit holders to give the City 48 hours notice prior to entering upon the Areas to be Maintained for utility installation and maintenance purposes.

(2) The City shall not disturb permanent markers installed by a franchise/permit holder.

(3) Prior to tilling of the soil, or any other operation of the City in which earth, rock or other material on or below the ground is moved or otherwise displaced to a vertical depth of twelve (12) inches or greater, the City must provide notice to all owners of underground facilities by calling 1-800-424-5555 (or such other telephone number as designated). Furthermore, the City must comply with all

applicable provisions of Ch. 19.122 RCW relating to underground facilities.

8. WSDOT TO COMPENSATE CITY FOR PERFORMANCE OF MAINTENANCE WORK IN AREAS TO BE MAINTAINED.

WSDOT shall compensate the City costs for performing maintenance work in the Areas to be Maintained, as depicted in green on Exhibit 1, in the base amount of \$6,218.77 (1996 Dollars) per acre per year less the annual offset: (a) in the amount due WSDOT from the City for special events under the Active Recreation Areas Airspace Lease and the Day Street Waterfront Area Airspace Lease, which documents are executed concurrently with this Agreement and any amendments thereto, and which are attached hereto as Exhibits 4 and 5, respectively; and (b) in the amount due WSDOT from the City as consideration for, and for special events under the Ground Lease executed concurrently with this Agreement and any amendments thereto, which is attached hereto as Exhibit 3. This base amount shall be adjusted annually in July of each year by the percentage change that occurred during the preceding calendar year in the U.S. Consumer Price Index for All Urban Consumers ("U.S. CPI"), using the data as published by the Washington State Department of Revenue, Office of the Economic Forecast Council, or its successor; Provided, that in the event such index is discontinued, the parties hereto shall select and use for such adjustment purpose, another, similar index that reflects consumer price changes.

Quarterly payments of such compensation shall be made by WSDOT to the City within thirty (30) days of receipt and acceptance by WSDOT of: (a) a certification from the City that the maintenance services have been performed as required in this Agreement and in accordance with Exhibit 2 (Level of Care for Maintenance Activities) of this Agreement; (b) an invoice from the City for the amount to be paid based on per acre amount less credits as provided herein plus any payments due for graffiti removal as provided in paragraph 5.K. herein; and (c) a completed I-90 Maintenance Work Performed by the City of Seattle form, which shall be specified by the WSDOT Northwest Region Maintenance Engineer. The initial and final payment for less than a full quarter shall be prorated.

Upon receipt of these items WSDOT will field review the Areas to be Maintained. If such areas meet the level of care criteria as specified in Exhibit 2, payment will be made within 30 days. If, in the opinion of WSDOT, said areas have not been maintained to said level of care criteria, the City and WSDOT shall meet to discuss the areas of concern. If differences can not be resolved, WSDOT will withhold a portion of the payment as it deems appropriate.

9. MINOR IMPROVEMENTS TO THE AREAS TO BE MAINTAINED.

The parties acknowledge that WSDOT has given permission to the City to install and maintain certain City-owned improvements on the

Areas to be Maintained. These minor improvements include picnic tables, benches, bicycle stands, garbage cans and area illumination. Any additional minor improvements by the City shall require the prior written approval of WSDOT.

10. CITY ALLOWANCE OF EVENTS ON AREAS TO BE MAINTAINED.

No use other than passive recreation shall be permitted on the Areas to be Maintained without the prior written approval of WSDOT. Notwithstanding the foregoing, the City may issue event or use permits with the written concurrence of WSDOT for the use of all or a portion of the Areas to be Maintained, provided the minimum requirements listed below and any other requirements deemed reasonably necessary by WSDOT are met. Subject to the provisions herein, the City agrees to manage the use of the Areas to be Maintained for special events. Said management services is hereby deemed adequate consideration for the rental of the portion of the Area to be Maintained for the special event.

- A. The event or use does not affect or impact the traveled lanes or the operation of I-90 or its ramps, and is consistent with the park like atmosphere intended for the area;
- B. The event or use does not exceed the structural loading limits of the design of the I-90 lid for live loads;
- C. There is no charge by the City or the permittee for the use of the land;
- D. The City, in the case of a City produced event, warrants that it is self-insured and provides acceptable evidence of its self-insurance status to WSDOT or, if the City is not self-insured, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;
- E. The City-authorized group, in the case of other than City produced events, secures liability insurance in the form and amount reasonably determined necessary by WSDOT;
- F. The City, in the case of a City produced event, agrees to indemnify, save and hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out of the special event activity;
- G. The City in other than City produced events, shall require the permittee to indemnify, save and hold harmless and defend WSDOT and the Federal Highway Administration against all claims arising out the activities authorized by the permit;
- H. The City assumes responsibility for all clean up and repair of any damage resulting from the use or event.

11. INSURANCE.

City warrants that it is self-insured, and agrees to provide acceptable evidence in the form of a certification of its self-insured status to WSDOT or, if the City is not self-insured, to secure liability insurance in the form and amount reasonably determined necessary by WSDOT; Provided, that WSDOT may reasonably adjust said coverage requirements from time to time based on risk factors and the adequacy of the stated policy limits.

12. HOLD HARMLESS/INDEMNIFICATION.

- A. City's Indemnification: The City shall protect, save, and hold harmless and defend the WSDOT, its officers, employees or agents and the Federal Highway Administration from all claims, actions, costs, damages, and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees and costs) arising out of any act or omission of the City or any of its officers, employees, agents, contractors, or the contractor's subcontractors, on the Areas to be Maintained under this Agreement.
- B. WSDOT's Indemnification: WSDOT shall protect, save and hold harmless and defend the City and its officers, employees and agents from all claims, actions, costs, damages or expenses of any nature whatsoever (including but not limited to reasonable attorney's fees and costs) arising out of any act or omission of WSDOT or any of its employees, officers, agents, contractors (other than the City) or contractor's subcontractors on the Areas to be Maintained under this Agreement; Provided, that nothing herein shall be deemed to obligate WSDOT to indemnify, hold harmless or defend the City for the acts or omissions of the Federal Highway Administration or utility franchise and permit holders.
- C. Concurrent Negligence or Actions Covered by RCW 4.24.115: If the claims or damages are caused by or result from the concurrent negligence of (i) the WSDOT, or any of its officers, employees, agents, contractors (other than the City) or the contractor's subcontractors and (ii) the City or any of its officers, employees, agents, contractors or the contractor's subcontractor, or involves any action covered by RCW 4.24.115, a party's indemnification obligation hereunder shall be valid and enforceable only to the extent of the negligence of such party or any of its officers, employees, agents, contractors or contractor's subcontractors, as appropriate.

13. NONDISCRIMINATION.

The City, as a part of the consideration hereof, does hereby

covenant and agree that no person, on the grounds of race, color, creed, national origin, marital status, age, sex or the presence of any sensory, mental or physical handicap shall be unlawfully excluded from participation in, be unlawfully denied the benefits of, or be otherwise unlawfully subjected to discrimination in the use of the Areas to be Maintained under this Agreement, that in connection with the City's performance of maintenance services hereunder, no such unlawful discrimination shall be practiced in the selection of employees or contractors, or by contractors in the selection and retention of their subcontractors, that such unlawful discrimination shall not be practiced against the public in their access to and use of the Areas to be Maintained. The breach of any of the above nondiscrimination covenants shall be a material act of default entitling the WSDOT to terminate this Agreement in accordance with the procedures set forth herein.

14. TERMINATION FOR CONVENIENCE.

This agreement may be terminated for reasons other than non-performance by either party on six (6) months prior written notice to the non-terminating party.

15. DEFAULT & BREACH.

Upon the default and material breach of this Agreement by either party hereto, the other party may give to the party allegedly in breach notice specifying the nature of such breach, the period of time within which such breach must be cured, and at the option of the party giving such notice, such party's intention to declare a default and to terminate this Agreement in the event such breach is not cured within the specified cure period. Neither party shall be in default unless it fails to cure the breach within thirty (30) days from the giving of such notice of default, except that if the nature of the obligation is such that more than thirty (30) days is required for performance or cure, then the party allegedly in breach shall not be in default if such party commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. After the expiration of thirty (30) days from the giving of such notice of default or the time period otherwise provided herein, if one or more of the breaches remains unremedied, this Agreement shall terminate without further notice. The non-breaching party may in writing, at its option, extend the above cure period if, in the judgment of the non-breaching party, an extension is justified.

At any time after the occurrence of a default or defaults under this Agreement and if, in WSDOT's determination, an emergency exists, or the default cure period provided for herein has expired, and while any such default remains unremedied, WSDOT shall have the option of giving verbal notice if an emergency exists, or notice in writing for non-emergent defaults, of its intention to cure such default by itself or through use of agents or contractors. The City agrees to reimburse WSDOT promptly for resultant direct costs WSDOT incurs in curing such default or, in the alternative, that

WSDOT may, at its sole discretion, withhold compensation otherwise due the City under this Agreement in an amount equal to the costs incurred in curing such default.

16. CONVEYANCE OF "STURGUS PARK" REPLACEMENT LANDS.

WSDOT shall convey to the City and the City shall accept a total of 157,874 square feet of land between Wall 7 and Sturgus Avenue South (the "Sturgus Replacement Lands" as shown in Exhibit 1) as compensation for the taking of City park land known as Sturgus Park for the construction of I-90. This land transfer shall be by quit claim deed executed concurrently with this Agreement, and upon such conveyance, the land will become the property of the City subject to certain restrictions shown in the deed.

17. CONVEYANCE OF "JUDKINS PLAYGROUND" REPLACEMENT LANDS (Tracts 16 and 37).

WSDOT shall convey to the City and the City shall accept a total of 3.6 acres of land as compensation for the taking of land in the Judkins Park vicinity for the construction of I-90. The areas to be deeded are:

- A. A parcel containing approximately 2.73 acres lying immediately east of Martin Luther King Jr. Way South and north of I-90 ("Tract 37" as shown on Exhibit 1); and
- B. A parcel containing approximately 0.87 acres lying between South Judkins Street and the I-90 right of way in the vicinity of 22nd Avenue South ("Tract 16" as shown on Exhibit 1)

These tracts shall be transferred by quit claim deed executed concurrently with or in advance of this Agreement, and upon such conveyance, the land will become the property of the City subject to certain restrictions shown in the deed.

18. CITY RESPONSIBILITY FOR REPLACEMENT LANDS MAINTENANCE.

The City shall be responsible for maintaining the Replacement Lands listed in paragraphs 16 and 17 hereof immediately upon the signing of the deeds by WSDOT or upon completion of the Plant Establishment period applicable thereto under the WSDOT's separate landscaping contract, whichever is later, unless the parties agree to an earlier assumption of the maintenance responsibilities by the City; Provided, that if the property transfer is completed prior to the completion of the Plant Establishment period applicable thereto, WSDOT or its contractors, as necessary, shall enter onto such portion(s) of Replacement Lands and construct thereon the required landscaping and maintain the landscaping until the expiration of the Plant Establishment Period. Nothing herein establishes any minimum level of care to be provided to the Replacement Lands after their conveyance to the City.

GM-1319

19. ASSIGNMENT.

Neither this Agreement nor any rights created by it may be assigned, provided that nothing herein shall prohibit the City from subcontracting with a third party to perform the maintenance work agreed to herein with the prior written approval of WSDOT, which shall not be unreasonably withheld. Any such subcontract shall not relieve the City of its obligation to maintain the Areas to be Maintained as agreed herein.

20. RECORD REQUIREMENTS.

The City shall keep accurate and current at all times records and documents that document work performed by the City and support claims for compensation made under this Agreement. Said records and documents shall be available for review by WSDOT during normal City business hours and shall be retained by the City for a minimum of three (3) years after the payment of compensation. WSDOT reserves the right to inspect, audit and copy any or all said records and documents that relate to this Agreement.

21. AMENDMENTS.

No addition to, deletion from, or other modification of any of the provisions hereof shall be valid unless made in writing and signed by an authorized representative of each of the parties hereto.

22. INTERPRETATION.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Agreement are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

23. CUMULATIVE REMEDIES.

All remedies available at law or in equity to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

24. NO WAIVER.

No action other than a written notice by one party to the other specifically stating that such notice has the effect of a waiver, shall constitute a waiver of any particular breach or default of such other party. No such notice shall waive a party's failure to fully comply with any other term, condition, or provision of this Agreement, irrespective of any knowledge any officer, employee, or agent of the other party may have of any breach or default of, or noncompliance with, such other term, condition, or provision. No

waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement. The performance or acceptance of maintenance services for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

25. SUPERSESION OF PRIOR AGREEMENTS.

This Agreement represents the entire agreement of the parties with regard to the subject matter hereof and supersedes any prior agreement not incorporated herein. In the event of any inconsistency between this Agreement and any prior agreement, whether written or oral, the terms of this Agreement shall prevail.

26. NOTICES.

Wherever in this Agreement a written notice is to be given or made, it shall be sent by certified mail addressed to the party at the address listed below, or personally served on the party at the address listed below, unless such party has designated, by written notice previously delivered to the other party, a different address:

WSDOT: ATTN: Northwest Region Maintenance Engineer
 DEPARTMENT OF TRANSPORTATION
 P. O. Box 330310
 15700 Dayton Avenue North
 Seattle, WA 98133-9710

CITY: Superintendent of Parks & Recreation
 THE CITY OF SEATTLE
 Administration Building
 100 Dexter Avenue North
 Seattle, WA 98109

Said notices shall be effective upon receipt of notice in the manner described above.

27. NEGOTIATED AGREEMENT.

The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

28. EFFECTIVE DATE OF AGREEMENT.

This Agreement is effective upon its full execution by the parties hereto.

GM-1319

IN WITNESS WHEREOF, the parties hereto have had their respective representatives sign their names in the spaces below:

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: Joachim Pestinger
JOACHIM PESTINGER DIRECTOR, REAL ESTATE SERVICES
(Print or type name and title of signer)

Dated: 4/18/97

THE CITY OF SEATTLE

By: Kath R B S
Superintendent Poles & Reception
(Print or type name and title of signer)

Dated: April 4, 1997

APPROVED AS TO FORM ONLY:

February 13, 1997
By: Roy A Brown
Assistant Attorney General

STATE OF WASHINGTON)
) ss. (WSDOT ACKNOWLEDGMENT)
COUNTY OF Thurston)

On this 18th day of April, 1997, before me personally appeared Joaquin Pestinger, to me known to be the duly appointed Director, Real Estate Services, Washington State Department of Transportation, who stated, on oath, that he executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein set forth, and that he was authorized to execute said instrument.

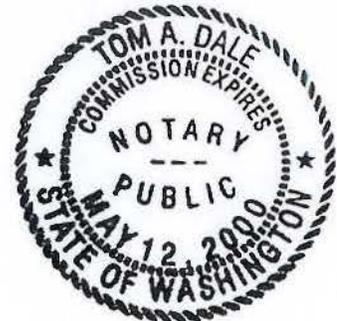
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the 18th day of April, 1997.

Tom A. Dale
Signature

Tom A Dale
(Print or type name of notary)

Notary Public in and for the State Washington, residing at _____

Elma
My commission expires 5/12/00



STATE OF WASHINGTON)
) ss. (CITY ACKNOWLEDGMENT)
THE COUNTY OF KING)

On this 25th day of APRIL, 1997, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CYRIL S.B. JENNINGS for KENNETH BOUNDS to me known to be the ACTING SUPERINTENDENT OF PARKS & RECREATION of The City of Seattle, who on oath stated that HE executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of The City of Seattle for the uses and purposes herein mentioned, and that He was authorized to execute the said instrument for and on behalf of The City of Seattle.

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

John C Richter
Signature

JOHN C. RICHTER
(Print or type name of notary)

Notary Public in and for the State Washington, residing at _____

LYNNWOOD
My commission expires 8-8-98



GM 1319