

Upon Recording, Please Return To:
City of Kenmore
PO Box 82607
Kenmore, WA 98028
Attn: City Clerk

Contract 17-C1814

**AMENDED AND RESTATED
INTERLOCAL AGREEMENT
FOR THE COOPERATIVE USE, MAINTENANCE AND DEVELOPMENT OF
MOORLANDS PARK**

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR THE COOPERATIVE USE, MAINTENANCE AND DEVELOPMENT OF MOORLANDS PARK ("Agreement"), is made this January 3, 2018, by and between Northshore School District No. 417, a Washington State school district ("District"), and the City of Kenmore, a Washington municipal corporation, successor in interest to King County ("City"). The District and the City are referenced herein individually as "Party" and collectively as the "Parties."

RECITALS

1. The District and the City are parties to that certain Interlocal Agreement for the Cooperative Use, Maintenance and Development of Moorlands Park, dated June 13, 1994, attached hereto as **Exhibit A** and incorporated herein by this reference ("1994 Interlocal Agreement"), amended by that certain Assignment of Interlocal Agreement and Consent to Assignment, mutually accepted on March 19, 2001, attached hereto as **Exhibit B** and incorporated herein by this reference (collectively, "Interlocal Agreement").

2. The City, successor in interest to King County, owns certain real property commonly known as Moorlands Park, located in the City of Kenmore, and legally described in **Exhibit C**, attached hereto and incorporated herein by this reference ("Moorlands Park"). The City acknowledges that funding assistance for the purpose of providing public outdoor recreation at this site has been provided by Washington State. Use of such funds shall be limited to the purposes authorized in executed funding agreements, including Recreation and Conservation Office Agreement #14-1290D.

3. The District owns certain real property commonly known as Moorlands Elementary School, located adjacent to Moorlands Park in the City, and legally described in **Exhibit D**,

attached hereto and incorporated herein by this reference ("Moorlands Elementary School."). The District maintained Moorlands Park until June 2017.

4. The Parties desire to amend and restate the Interlocal Agreement to provide for City improvements to Moorlands Park, transfer maintenance responsibilities for Moorlands Park from the District to the City, provide for both City and District use of Moorlands Park, and provide for City use of certain parking areas owned by the District at Moorlands Elementary School, all according to terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the mutual benefits to the District, the City, and the public, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the City and the District hereby agree as follows:

1. **AMENDMENT.** The terms of this Agreement shall supersede and replace the terms of the Interlocal Agreement in its entirety.
2. **AUTHORITY.** This Agreement is entered into pursuant to the following: Chapter 39.34 RCW, Interlocal Cooperation Act; RCW 39.33.010, Intergovernmental Disposition of Property Act; City action of November 27, 2017; and, District action of January 8, 2018.
3. **MOORLANDS PARK.** The City permits the District, upon and subject to the terms, covenants, provisions and conditions of this Agreement, to use the real property and improvements commonly known as Moorlands Park (hereafter, collectively "Moorlands Park"), and located approximately as depicted in **Exhibit E**, attached hereto and incorporated herein by this reference, subject to easements and encumbrances of record. Not included herein are any rights to remove any valuable materials including minerals, timber, water, or other materials, except as specifically granted herein.
4. **DISTRICT PARKING SPACES.** The District permits the City, upon and subject to the terms, covenants, provisions and conditions of this Agreement, to use twenty-three (23) parking spaces on the Moorlands Elementary School property, and located approximately as indicated and depicted on the map attached hereto as **Exhibit E**, subject to easements and encumbrances of record ("Parking Spaces").
5. **TERM.** The initial term of this Agreement shall be perpetual, commencing on January 1, 2018 ("Commencement Date") unless earlier terminated pursuant to any of the conditions or covenants of this Agreement or pursuant to law. Either Party may unilaterally terminate this Agreement upon providing at least one (1) year's prior written notice to the other Party.
6. **PARTICIPATION FEE AND OTHER PAYMENTS.**
 - 6.1 **Participation Fee.** In exchange for the benefits derived by the District and the public from use, operation and maintenance of Moorlands Park, the District agrees to pay to the City \$34,425 per year, in increments of \$2868 per month. The District is permitting the City to use the

parking spaces as partial consideration for the District's use of Moorlands Park. The District's monthly participation fee shall be paid to the City in advance on the first day of each calendar month during the term of this Agreement without notice or demand, and without any abatement, deduction or setoff for any reason whatsoever, except as may be expressly provided for in this Agreement. No District payment, or acceptance by the City, of an amount less than the correct participation fee shall be deemed to be other than a payment on account and shall not prejudice the City's right to recover any outstanding balance. The participation fee shall be paid by transmitting the fee as follows, or as the City may designate from time to time by written notice to the District:

Payment Instructions: Deliver to City of Kenmore, PO Box 82607, Kenmore, WA 98028.

6.2 Participation Fee Adjustment. At the beginning of each calendar year of this Agreement, the participation fee shall be increased by the Consumer Price Index (Urban) for the Seattle-Tacoma-Bremerton area over the preceding 12-month period ending June of the preceding year.

6.3 Late Payments. Late payments shall accrue a late penalty of three percent (3%) of the amount due if paid more than thirty (30) days after the due date, and late interest at the rate of five percent (5%) per annum until paid in full.

7. USE OF MOORLANDS PARK

7.1 Permitted Use. The District may use Moorlands Park for recreation, education, and related activities and for no other purpose without the prior written consent of the City. The District agrees to abide by rules, regulations and policies regarding use and operation of Moorlands Park, as set forth in **Exhibit F**, attached hereto and incorporated herein by this reference, which rules, regulations and policies may be amended by the City, in its reasonable discretion, from time to time. The District must obtain permission in advance from the City to use loudspeakers or amplification devices, or to hold group assemblies, in Moorlands Park.

7.2 Hours. The right of the District to occupy and use Moorlands Park shall be limited to (1) school hours, (2) Curriculum Night, Track and Field Days and Community Partners Day, and (3) such additional occupancy and use as the District may request and the City may consent to from time to time, in the sole discretion of the City. The City may amend this occupancy and use, and the hours and priority of thereof, in its reasonable discretion from time to time by amendments to the Permitted Use and Operation of Moorlands Park exhibit, attached hereto as **Exhibit F**; provided that any such amendment shall not materially alter the District's priority use of the ballfield as set forth in **Exhibit F**.

7.3 Easements. The City reserves the right to grant easements, permits, licenses and other rights ("Easements") over, under, above, and across Moorlands Park, and to authorize Easement holders to enter upon Moorlands Park at all reasonable times, including during school hours, to inspect, maintain, repair, and install improvements and facilities in Moorlands Park. Such rights shall be exercised in such a manner so as to minimize any disruption to the District.

7.4 Public Use. As set forth in Section 20 of the 1994 Interlocal Agreement, Moorlands Park shall remain open and available to the public for recreational purposes at all times during normal park hours from dawn to dusk. The athletic field shall be available for scheduled reserved use described in 20.2, 20.3 and 20.4 except that field scheduling shall be controlled by the City according to Section 1.4 of Exhibit F.

7.5 Access. The City reserves the right to enter, inspect, operate, maintain, repair, and improve Moorlands Park at all reasonable times, including during school hours, for the purpose of determining and securing compliance with the terms of this Agreement and exercising its rights. The City reserves the right to prohibit use of portions of Moorlands Park, including the ballfield, during school hours for the purpose exercising its rights. Such rights shall be exercised in such a manner so as to minimize any disruption to the District.

7.6 Rules and Regulations. The District shall comply with all governmental laws, ordinances and rules, including the City's rules and policies, as set forth in **Exhibit F** and as amended from time to time, relating to the use and occupancy of Moorlands Park. The District shall not permit any objectionable action which would constitute a nuisance or commit any waste upon Moorlands Park.

7.7 Maintenance. The City shall maintain Moorlands Park in good condition and repair including, without limitation, control of noxious weeds, litter, dust, and erosion, and provision of janitorial services, including regular removal of all garbage and recycling from Moorlands Park.

7.8 Improvements. The District shall not make any alterations to Moorlands Park without the prior written consent of the City. All improvements left by the District upon Moorlands Park after termination of this Agreement shall become the sole property of the City, or if not accepted by the City, may either be removed by the City at the District's expense or required by the City of the District to be removed by the District at the District's expense. All personal property shall remain the property of the Party which supplied it.

7.9 Cooperation with Grants. The District agrees to cooperate with the City to support the City's efforts to obtain State grants or other public or private funding to assist in financing any improvements to Moorlands Park.

7.10 Relocation Assistance. The District acknowledges that this Agreement does not at any time entitle the District to assistance under the Uniform Relocation and Real Property Acquisition Policy pursuant to Chapter 8.26 RCW.

8. USE OF PARKING SPACES

8.1 Permitted Use. The City and the public may use the Parking Spaces on a non-exclusive basis for daytime parking and for no other purpose without the prior written consent of the District.

8.2 Hours. The right of the City and the public to occupy and use the Parking Spaces shall be limited to off-school hours, and to such additional time as the City may request and the District may consent to from time to time at the sole discretion of the District.

8.3 Easements. The District reserves the right to grant easements, permits, licenses, and other rights ("Easements") over, under, above, and across the Parking Spaces and to authorize Easement holders to enter upon the Parking Spaces at all reasonable times to inspect, maintain, repair, and install improvements and facilities. Such rights shall be exercised in such a manner so as to minimize any disruption to the City or the public.

8.4 Access. The District reserves the right to enter, inspect, maintain, repair and improve the Parking Spaces at all reasonable times for the purpose of determining and securing compliance with the terms of this Agreement and exercising its rights. The District reserves the right to prohibit use of portions of the Parking Spaces for the purpose of exercising its rights. Such rights shall be exercised in such a manner so as to minimize any disruption to the City or the public.

8.5 Rules and Regulations. The City shall comply with all governmental laws, ordinances and rules, including the District's rules and policies, relating to the use and occupancy of the Parking Spaces. The City shall not permit any objectionable action which would constitute a nuisance or commit any waste upon the Parking Spaces.

8.6 Maintenance. The District shall maintain the Parking Spaces in good condition and repair at its sole cost.

8.7 Improvements. The City shall not make any alterations to the Parking Spaces without the prior written consent of the District. All improvements left by the City upon the Parking Spaces after termination of this Agreement shall become the sole property of the District, or if not accepted by the District, may either be removed by the District at the City's expense or required by the District of the City to be removed by the City at the City's expense. All personal property shall remain the property of the Party which supplied it.

8.8 Relocation Assistance. The City acknowledges that this Agreement does not at any time entitle the City to assistance under the Uniform Relocation and Real Property Acquisition Policy pursuant to Chapter 8.26 RCW.

9. DISTRICT AND CITY INDEMNIFICATION AND INSURANCE

9.1 District Indemnification. The District shall protect, save harmless, indemnify and defend, at its own expense, the City, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever brought by any third party, but only to the extent such loss or claim results from the failure to comply by the District, its employees or its agents with any duty or obligation undertaken by them under this Agreement, or any negligence or willful misconduct of the District, its employees or agents in carrying out their duties and obligations under this Agreement.

9.2 City Indemnification. The City shall protect, save harmless, indemnify and defend, at its own expense, the District, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever brought by any third party, but only to the extent such loss or claim results from the failure to comply by the City, its employees or its agents with any duty or obligation undertaken by them under this Agreement, or any negligence or willful misconduct of the City, its employees or agents in carrying out their duties and obligations under this Agreement.

9.3 Agreement Liability. No liability shall be attached to either party by reason of entering into or performing this Agreement except as otherwise expressly provided herein.

9.4 Waiver of Immunity. It is further specifically and expressly understood that each party's indemnification provided herein constitutes each party's waiver of immunity under the Industrial Insurance Act, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

9.5 Survival. The provisions of sections 9.1 through 9.5 shall survive the expiration or termination of this Agreement.

9.6 District's Insurance Requirements. The District shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire term of this Agreement, the insurance described in this Section 9, issued by an insurance company or companies licensed to do business in the state of Washington and deemed satisfactory by the City. The District shall procure and maintain the following:

a Commercial General Liability Insurance. Insurance written under Insurance Services Office (ISO) Form CG0001 or its equivalent including contractual liability covering all claims with respect to injuries or damages to persons or property sustained in, or about the Moorlands Park, and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, with the City named as an additional insured. Such insurance must have liability limits of not less than \$5,000,000 in respect to injury or death to any one person, not less than \$5,000,000 in respect to any one occurrence or accident, and not less than \$500,000 for property damage, with a maximum deductible amount of \$5,000. Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 9 for Moorlands Park.

b Worker's Compensation Insurance. The District must maintain State of Washington worker's compensation insurance, as applicable, with respect to any work by District employees on or about Moorlands Park.

9.7 Insurance Certificates. On or before the Commencement Date, the District shall provide the City with certificates evidencing the aforesaid insurance coverage, and renewal certificates must be furnished to the City at least thirty (30) days prior to the expiration date of each policy for which a certificate was theretofore furnished.

9.8 District Pool Membership. The City acknowledges that the District is a member of the Washington Schools District Risk Management Pool, a self-insured governmental risk pool. Such membership satisfies all conditions set forth in this Section 9.

9.9 City's Insurance Requirements. The City shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 9, issued by an insurance company or companies licensed to do business in the state of Washington and deemed satisfactory by the District. The City shall procure and maintain the following:

a. Commercial General Liability Insurance. Insurance written under Insurance Services Office (ISO) Form CG0001 or its equivalent including contractual liability covering all claims with respect to injuries or damages to persons or property sustained in, or about the Parking Spaces, and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, with the District named as an additional insured. Such insurance must have liability limits of not less than \$5,000,000 in respect to injury or death to any one person, not less than \$5,000,000 in respect to any one occurrence or accident, and not less than \$500,000 for property damage, with a maximum deductible amount of \$5,000. Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 9 for the Parking Spaces.

b. Worker's Compensation Insurance. The City must maintain State of Washington worker's compensation insurance, as applicable, with respect to any work by City employees on or about the Parking Spaces.

9.10 Insurance Certificates. On or before the Commencement Date, the City shall provide the District with certificates evidencing the aforesaid insurance coverage, and renewal certificates must be furnished to City at least thirty (30) days prior to the expiration date of each policy for which a certificate was theretofore furnished.

9.11 City Pool Membership. The District acknowledges that the City is a member of the Washington Cities Insurance Authority, a self-insured governmental risk pool. Such membership satisfies all conditions set forth in this Section 9.

10. SUBROGATION. Each Party agrees to have included in its insurance policy a waiver of the insurer's right of subrogation against the other Party during the term of this Agreement or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives the right of recovery against any party responsible for a casualty covered by the policy before the casualty or (ii) any other form of permission for the release of the other Party. Each Party hereby releases the other Party, with respect to any claim (including a claim for negligence) that it might otherwise have against the other Party, for loss, damage or destruction with respect to its property occurring during the term of this Agreement to the extent to which it is, or is required to be, insured under a policy or policies containing a waiver of subrogation or permission to release liability. Nothing contained in this Section 10 shall be

deemed to relieve either Party of any duty imposed elsewhere in this Agreement to repair, restore or rebuild.

11. ENVIRONMENTAL REQUIREMENTS.

11.1 Deleterious Material. The District shall not make, or suffer to be made, any filling of Moorlands Park or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the Moorlands Park, except as approved in writing by the City. If the District fails to remove all non-approved fill material, refuse, garbage, wastes or any other of the above materials from Moorlands Park, the District agrees that the City may, but is not obligated to, remove such materials and charge the District for the cost of removal and disposal.

11.2 Hazardous, Toxic, or Harmful Substances. The District shall not keep, use, generate, treat, store or dispose of on or about Moorlands Park any Hazardous Substance. The District shall undertake all preventive, investigatory, or remedial actions (including emergency response, removal, and containment) that are either: (a) required by any applicable Environmental Law or governmental authority; or (b) necessary to prevent or minimize property damage, personal injury, damage to the environment, or the threat of any such damage or injury, arising from the presence of Hazardous Substances. The District shall:

- a. Immediately notify the City of (i) all spills, releases or disposal of any Hazardous Substance, or imminent threat thereof, on Moorlands Park or any properties adjacent to Moorlands Park, (ii) all failures or potential failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended, (iii) all inspections of Moorlands Park by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances or Environmental Law and Moorlands Park, (iv) all regulatory orders, complaints, lawsuits or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party relating to Hazardous Substances or Environmental Law and to Moorland's Park or to the District's operations; and
- b. On request, provide copies to the City of any and all correspondence, pleadings, and/or reports received by or required of the District.

If the District fails to perform any of its obligations under this Section 11, the City may perform such obligations at the District's expense.

11.3 Definitions. For purposes of this Section 11, the following definitions apply:

"Environmental Law" means any federal, state, or local law, regulation or ordinance governing any substances that could cause actual or suspected harm to human health or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et seq. and Washington's Model Toxics Control Act ("MTCA"), RCW 70.105D.010 et seq.

"Hazardous Substance" means any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous material, hazardous waste, toxic substance, or contaminant under any Environmental Law.

11.4 No Representations or Warranties.

THE CITY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE CONDITION OF MOORLANDS PARK OR WITH RESPECT TO COMPLIANCE WITH ANY ENVIRONMENTAL LAW. THE DISTRICT ACKNOWLEDGES THAT THE DISTRICT HAS FULLY INSPECTED MOORLANDS PARK AND IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION MADE BY THE CITY OR THE CITY'S AGENTS WITH RESPECT TO THE CONDITION OF MOORLANDS PARK, AND THE DISTRICT ASSUMES THE RESPONSIBILITY AND RISKS OF THE SAME, INCLUDING ANY DEFECTS OR CONDITIONS THAT CANNOT BE OBSERVED BY CASUAL INSPECTION.

11.5 Survival. This Section 11 shall survive the expiration or earlier termination of this Agreement.

12. DAMAGE OR DESTRUCTION-MOORLANDS PARK. If Moorlands Park shall be damaged by fire or other casualty, the City shall use available insurance proceeds to repair Moorlands Park to the condition as it existed on the Commencement Date, except that the City shall not be required to repair or replace any alterations or improvements made by the District after the Commencement Date, unless insurance proceeds are payable on account of same. The City shall not be liable for any inconvenience or annoyance to the District or its visitors resulting in any way from such damage or the repair thereof. Notwithstanding the foregoing to the contrary, the City may elect to terminate this Agreement if Moorlands Park is damaged by fire or other casualty or cause such that: (a) more than fifty percent (50%) of Moorlands Park is affected by the damage; (b) the damage occurs less than one year prior to the end of the Term; or (c) in the City's reasonable opinion, the cost of the repairs, alterations, restoration or improvement work would exceed fifty percent (50%) of the replacement value of Moorlands Park. In any such case, the City may terminate this Agreement by notice to the District within sixty (60) days after the date of damage.

13. DAMAGE OR DESTRUCTION-DISTRICT PARKING LOT. If the Parking Spaces shall be damaged by fire or other casualty, the District shall use available insurance proceeds to repair the Parking Spaces to the condition as it existed on the Commencement Date, except that the District shall not be required to repair or replace any alterations or improvements made by the City after the Commencement Date, unless insurance proceeds are payable on account of same. The District shall not be liable for any inconvenience or annoyance to the City or its visitors resulting in any way from such damage or the repair thereof. Notwithstanding the foregoing to the contrary, the District may elect to terminate this Agreement if the Parking Spaces are damaged by fire or other casualty or cause such that: (a) more than fifty percent (50%) of the Parking Spaces are affected by the damage; (b) the damage occurs less than one year prior to the end of the Term; or (c) in the District's reasonable opinion, the cost of the repairs, alterations, restoration or improvement work would exceed fifty percent (50%) of the replacement value of the Parking Spaces. In any such case, the District may terminate this Agreement by notice to the City within sixty (60) days after the date of damage.

14. DEFAULT. The City shall provide the District a notice of default ("Default Notice") in writing thirty (30) days before exercising the rights set forth herein. A default in monetary obligations, such as payment of Participation Fee, must be cured within thirty (30) days of the date of the Default Notice. In the event of any material breach of any provision of this Agreement by the District, the City shall be entitled to terminate this Agreement and to seek any other remedies set forth in this Agreement or otherwise available at law or equity. The City shall not terminate this Agreement if the breach pertains to a matter other than the payment of any monies due under this Agreement, and the District promptly commences to cure the breach and shall cure the breach within forty-five (45) days of the Default Notice. If such breach is non-monetary in nature, and, as determined by the City, is not reasonably susceptible of being cured in said forty-five (45) days (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), the District shall commence to cure such breach within said period and diligently pursue such action with continuity to completion. If the District fails to cure a material breach, all District owned improvements shall at the option of the City, be removed by the District, be removed by the City at the District's cost, or become the property of the City. Waiver or acceptance of any default of the terms of this Agreement by the City shall not operate as a release of the District's responsibilities for any prior or subsequent default.

15. GENERAL PROVISIONS.

15.1 Nondiscrimination. Each Party, for itself, its successors and assigns as part of the consideration hereof, does hereby covenant and agree to comply with all civil rights and antidiscrimination requirements, including, but not limited to Chapter 49.60 RCW.

15.2 Assignment. Neither this Agreement nor any rights created by it may be assigned, sublet, or transferred, whether voluntarily or involuntarily, or by operation of law or otherwise, without the prior written consent of the Parties. In the event that the District allows others to use any portion of Moorlands Park, whether by written or verbal agreement without the City's prior written approval, the City, in addition to or in lieu of terminating this Agreement for default, and in addition to any damages it may experience, may demand a share of any revenue generated by such unauthorized use. The City shall set the amount of said share and its decision shall be final and binding. The City may demand such share at any time during the term of this Agreement. The District shall pay said share to the City within thirty (30) days of demand. The District agrees to pay said share retroactively to the date the unauthorized third-party use of Moorlands Park commenced. Furthermore, such unauthorized assignment shall not relieve the District hereunder from all of its obligations under this Agreement, including but not limited to, payment of Rent and maintenance of insurance.

15.3 Limitation of Liability. The District shall look only to the City's interest in Moorlands Park for the satisfaction of the District's remedies, for the collection of a judgment (or other judicial process) requiring payment of money by the City in the event of any default by the City hereunder, and no other property or assets of the City shall be subject to levy, execution or other enforcement procedure for the satisfaction of the District's remedies under or with respect to this Agreement, the relationship of the City and District hereunder or the District's use or occupancy of Moorlands Park.

15.4 Force Majeure. The Parties shall not be required to perform any of their respective obligations under this Agreement, nor be liable for loss or damage for failure to do so, where such failure arises from or through Force Majeure. For purposes of this Agreement, "Force Majeure" shall mean acts of God, strikes, lockouts, labor difficulties, explosions, sabotage, accidents, riots, civil commotions, acts of war, results of any warfare or warlike conditions in this or any foreign country, fire and casualty, legal requirements, shortages or inability to obtain materials or equipment, energy shortage, or causes beyond the reasonable control of the Parties.

15.5 Liens. The District shall not suffer or permit any mechanic's liens or materialman's liens to be filed against Moorland Park or against the District's leasehold interest in Moorlands Park.

15.6 Modifications. This Agreement contains all the agreements and conditions made between the Parties pertaining to the use of Moorlands Park and the Parking Spaces and may not be modified orally or in any other manner other than by a written agreement signed by the Parties. The receipt of the Participation Fee by the City, with knowledge of any breach of this Agreement by the District, and/or with knowledge of any default on the part of the District, shall not be deemed to be a waiver of any provision of this Agreement. Failure on the part of the City to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of the City to enforce the same in the event of any subsequent breach or default.

15.7 Totality of Agreement. It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by the City except to the extent that the same are expressed in the Agreement.

15.8 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.

15.9 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15.10 Attorneys' Fees. In the event of controversy, claim, or dispute arising out of this Agreement, each Party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

15.11 Venue. The Parties agree that the venue of any action or suit concerning this Agreement shall be in the King County Superior Court, and all actions or suits thereon shall be brought therein, unless applicable law provides otherwise.

15.12 Notices. Wherever in this Agreement written notices are to be given or made, they will be served, personally delivered or sent by certified or overnight mail addressed to the Parties

at the addresses listed below, unless a different address has been designated in writing and delivered to the other Party.

If to City: City of Kenmore
Attn: City Manager
18120 68th Avenue NE
P.O. Box 82607
Kenmore, WA 98028
Ph: (425) 398-8900
Fax: (425) 481-3236

If to District: Northshore School District
Attn: Director of Capital Projects
22105 23rd Drive SE
Bothell, WA 98021
Ph: (425) 408-7853
Fax: (425) 408-7852

(signature page follows)

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the date first written above.

CITY:

CITY OF KENMORE

A WASHINGTON STATE MUNICIPAL CORPORATION

By: _____

Name: Rob Karlinsey

Title: City Manager

APPROVED AS TO FORM:

ROD KASEGUMA
CITY ATTORNEY

DISTRICT:

NORTHSHORE SCHOOL DISTRICT No. 417

A WASHINGTON STATE SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

SERENA S. CARLSEN

Name: _____

Title: _____

CITY ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

THIS IS TO CERTIFY that on this day, before me the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me known to be the _____ of the **CITY OF KENMORE**, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute the said instrument.

WITNESS my hand and official seal this _____ day of _____, 20__.

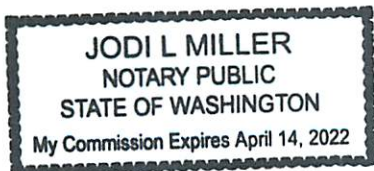
Printed _____
Notary Public in and for the State of Washington
residing at _____
My commission expires _____

DISTRICT ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

THIS IS TO CERTIFY that on this day, before me the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Michelle C Reid to me known to be the Superintendent of the Northshore School District No. 417 that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that Michelle was authorized to execute the said instrument.

WITNESS my hand and official seal this 16th day of April, 2010.



Jodi L Miller
Printed: Jodi L. Miller
Notary Public in and for the State of Washington
residing at 1914 145th St SW Lynnwood WA 98027
My commission expires 4-14-2022

EXHIBIT A

**INTERLOCAL AGREEMENT FOR THE COOPERATIVE USE,
MAINTENANCE AND DEVELOPMENT OF
MOORLANDS PARK
JUNE 13, 1994**

**INTERLOCAL AGREEMENT
FOR THE COOPERATIVE USE, MAINTENANCE AND DEVELOPMENT OF
MOORLANDS PARK**

THIS AGREEMENT is made on this 13 day June of 1994, by NORTHSHORE 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 Moorlands Elementary School which is located adjacent to the County's Moorlands Park.
2. The County owns certain real property known as Moorlands Park where the District has expressed an interest to make certain improvements to, use and maintain the park, including the baseball field and backstop, and to manage the site for public parks and recreation and school purposes.
3. 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 authorizing the District to make improvements to the field facilities and assume responsibility to schedule the use of and maintain the property for public parks and recreation and school purposes.
4. 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.
5. 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 10 year term.

GENERAL TERMS

6. **AUTHORITY.** This Agreement is entered pursuant to Washington Statute Chapter 39.34 RCW (Interlocal Cooperation Act).
7. **TIME PERIOD.** The term of this Agreement is ten (10) years. The Agreement shall be renewed automatically for succeeding periods of five (5) years each. Either Party may decline to renew or further renew by so notifying the other Party in writing. Such notices must be delivered to the other Party no less than eighteen (18) months before the date of the expiration of the agreement.
8. **OWNERSHIP.** The real property and fixtures shall remain the property of County. Any personal property stored on the property (e.g., lawn mowers) will remain the property of the Party which supplied it.
9. **GENERAL MAINTENANCE.** The District will perform all routine and special maintenance, repairs, field preparations and cleanup necessary for the public's and school use of the Moorland Park property. Disputes concerning maintenance and

repair work shall be resolved through the Dispute Resolution process described Section 22, infra.

10. **ALTERATIONS TO PROPERTY.** Written permission to make alterations to the park must be requested and obtained in advance from the Parks Division. This includes improvement projects performed by volunteers using donated materials.

11. **USE OF LOUDSPEAKERS.** Permission to use loudspeakers, or amplification or hold group assemblies must be obtained in advance from the Parks Division.

12. **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 improvements, 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.

13. **HAZARDOUS SUBSTANCES.** The District shall not, without first obtaining the County's prior written approval, generate, release, spill, store, deposit, transport, or dispose of (collectively "Release") any hazardous substances, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances, hazardous materials, toxic substances or any pollutants or substances defined as hazardous or toxic in accordance with applicable federal, state, and local laws and regulations in any reportable quantities ("Hazardous Substances") in, on or about the Facility. In the event, and only in the event, the County approves such Release of Hazardous Substances on the Facility, the District agrees that such Release shall occur safely and in compliance with all applicable federal, state, and local laws and regulations. The District shall indemnify, hold harmless and defend the County from any and all claims, liabilities, losses, damages, cleanup costs, response costs, and expenses, including reasonable attorney's fees arising out of or in any way related to the Release by the District, or any of its agents, representatives, or employees or the presence of such Hazardous Substances in, on or about the Facility occurring at any time after the Commencement Date to the full extent of the District's liability therefore.

14. **ASSIGNMENT.** The District will not assign or sublet its rights or responsibilities under this Agreement without the written authorization of the County.

15. **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.

16. **TERMINATION.** Pursuant to the terms and conditions of this agreement, this agreement may be terminated upon written mutual agreement between the parties hereto. Either party may terminate the agreement unilaterally after giving one year prior written notice to the other party.

17. **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.

EXECUTION OF IMPROVEMENTS

18. **FINANCING OF IMPROVEMENTS:** Improvements may be constructed by either Party. For each such improvement the Parties shall agree on which Party shall be responsible for costs. The District shall be responsible for all costs related to maintenance and repairs made to the property.

The County shall have the right to review and approve the District's improvement proposals prior to submission of the proposal for competitive construction bids; which approval shall not be unreasonably withheld. For improvements contemplated by the County, the County shall consult with the District. All improvements shall serve public parks and recreation purposes, and may also serve school purposes.

19. CONSTRUCTION OF IMPROVEMENTS:

A. Supervision and Compliance: The Party responsible for constructing improvements shall perform the duties of the "Owner" as defined in the contract documents and specifications. In the construction of the improvements to the property, the Party responsible for construction 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.

B. License to Enter Property: The County agrees to grant to the District 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 FIELD

20. PRIORITIES OF USE.

20.1 It is understood the park shall remain open and available to the public for recreational purposes at all times, during normal park hours from dawn to dusk. The athletic field shall be available for scheduled reserved use described in 20.2, 20.3 and 20.4. Infra.

20.2 During the regular school term and usual hours of operation when students are on site, weekdays from approximately August 25 to June 15, except school holidays, the District shall have first priority for scheduled use of the athletic field. Use by the District shall consist of the District's students, personnel and guests at school sponsored activities within the time reserved for the District.

20.3 Kenmore Little League shall receive first priority for scheduled use of the ballfield after the school day and weekends, during Little League season.

At all other times priorities shall be: the County, the District, other scheduled users and finally unscheduled users. Such use and user groups shall be controlled by the District.

20.4 The Parties agree that all uses scheduled or permitted by either of them shall be reasonably appropriate.

21. DISPUTE RESOLUTION MEETINGS. The Parties' representatives shall meet as necessary to discuss any issues either wishes to raise concerning use, maintenance and repair, including, but not limited to, allocation of responsibility and quality of past performance.

22. USER FEES. The District shall not assess fees for the use of property without prior written approval of King County Parks Division.

NORTHSHORE SCHOOL DISTRICT

By: Karen A. Fors
Karen A. Fors

Title: Superintendent

Date: 12/6/94

KING COUNTY

By: Gary Licks

Title: Executive

Date: 6/13/95

APPROVED FOR ENTRY

By: Linda Dougherty

Title: Manager, Parks Division

Date: 12/9/94

APPROVED AS TO FORM:

By: DRB

Title: DRB

Date: 5-18-95

EXHIBIT B

**ASSIGNMENT OF INTERLOCAL AGREEMENT AND
CONSENT TO ASSIGNMENT
MARCH 19, 2001**

**ASSIGNMENT OF INTERLOCAL AGREEMENT AND CONSENT TO
ASSIGNMENT**

ASSIGNMENT. FOR VALUE RECEIVED, and by mutual agreement, KING COUNTY, WASHINGTON, a political subdivision of the State of Washington, (the "ASSIGNOR"), hereby assigns its June 13th 1994 Interlocal Agreement with NORTSHORE SCHOOL DISTRICT NO. 417, a municipal corporation of the State of Washington, (the "DISTRICT"), for the cooperative use, maintenance and development of Moorlands Park, to the CITY OF Kenmore, a political subdivision of the State of Washington, (the "ASSIGNEE"). As consideration for this Assignment and for the Consent of the DISTRICT, the ASSIGNEE hereby fully assumes and agrees to perform and be bound by any and all covenants, conditions, terms, stipulations, duties, and agreements contained in the June 13th 1994 Interlocal Agreement. As further consideration, the ASSIGNEE hereby agrees to fully defend, indemnify, and hold harmless the ASSIGNOR for any and all liabilities, costs, and attorney fees whatsoever, associated with, or arising from the June 13th 1994 Interlocal Agreement, and/or any use of Moorlands Park.

CONSENT TO ASSIGNMENT: The DISTRICT hereby fully consents to this Assignment of the June 13th 1994 Interlocal Agreement from the ASSIGNOR to the ASSIGNEE. The DISTRICT hereby fully releases the ASSIGNOR from any and all covenants, conditions, terms, stipulations, duties, and agreements contained in the June 13th 1994 Interlocal Agreement, and from any liability arising out of said Interlocal Agreement, and/or the use of Moorlands Park.

IN WITNESS WHEREOF, the parties have executed this Assignment and Consent of Assignment.

ASSIGNOR:
KING COUNTY, WASHINGTON



King County Parks Director

Date

3/19/01

ASSIGNEE:
CITY OF KENMORE, WASHINGTON



City Manager

December 11, 2000
Date

MAR 30 2001
Department of Parks
and Recreation

EXHIBIT C

**MOORLANDS PARK
LEGAL DESCRIPTION**

Parcel A:

South 100 feet of the North 330 feet of the East 480 feet of the NE 34 of the southeast quarter of Section 13, Township 26 North, Range 4 East, W.M., in King County, Washington;

Except portion thereof conveyed to King County for road by deed recorded under recording number 2828743;

(Being known as Tract 3, Block A, Moorland Heights, according to the unrecorded plat thereof).

Parcel B:

South 200 feet of the North 530 feet of the West 200 feet of the East 480 feet of the northeast quarter of the southeast quarter of Section 13, Township 26 North, Range 4 East, W.M., in King County, Washington, Also the South 16 feet of the North 530 feet of the West 250 feet of the East 280 feet of the northeast quarter of the southeast quarter of said Section 13;

(Being known as the West 200 feet of Lots 4 & 5, Block A, together with the South 16 feet of the East 250 feet of Lot 5, Block A, Moorland Heights, an unrecorded plat).

Parcel C:

The West 200 feet of the East 680 feet of the South 300 feet of the North 530 feet of the northeast quarter of the southeast quarter of Section 13, Township 26 North, Range 4 East, W.M., in King County, Washington, Also the South 16 feet of the North 530 feet of the West 250 feet of the East 930 feet of said northeast quarter of the southeast quarter in said Section 13;

(Being known as the East 200 feet of Tracts 20, 21 & 22, Block A, together with the South 16 feet of the West 250 feet of Tract 20, Block A, Moorland Heights, according to the unrecorded plat thereof).

Parcel D:

The South 184.00 feet of the North 514.00 feet of the East 280.00 feet of the northeast quarter of the southeast quarter of Section 13, Township 26 North, Range 4 East, W.M., in King County, Washington;

Except the East 30.00 feet thereof conveyed to King County for road by deed recorded under recording number 2828743, records of King County, Washington

(Being known as the East 250.00 feet of Lot 4, Block A, and the East 250 00 feet of the North 84.00 feet of Lot 5, Block A, Moorland Heights, according to an unrecorded plat thereof).

EXHIBIT D

**MOORLANDS ELEMENTARY SCHOOL
LEGAL DESCRIPTION**

The West 250 feet of Lots 7 and 8, all of Lots 9 and 16, and the East 250 feet of Lots 17, 18 and 19, the West 150 feet of Lot 6, and the North 15 feet of the East 300 feet of Lot 6 in Block "A" of Moorland Heights, an unrecorded plat, situate in the County of King, State of Washington.

EXHIBIT E

MAP OF MOORLANDS PARK AND MOORLANDS SCHOOL

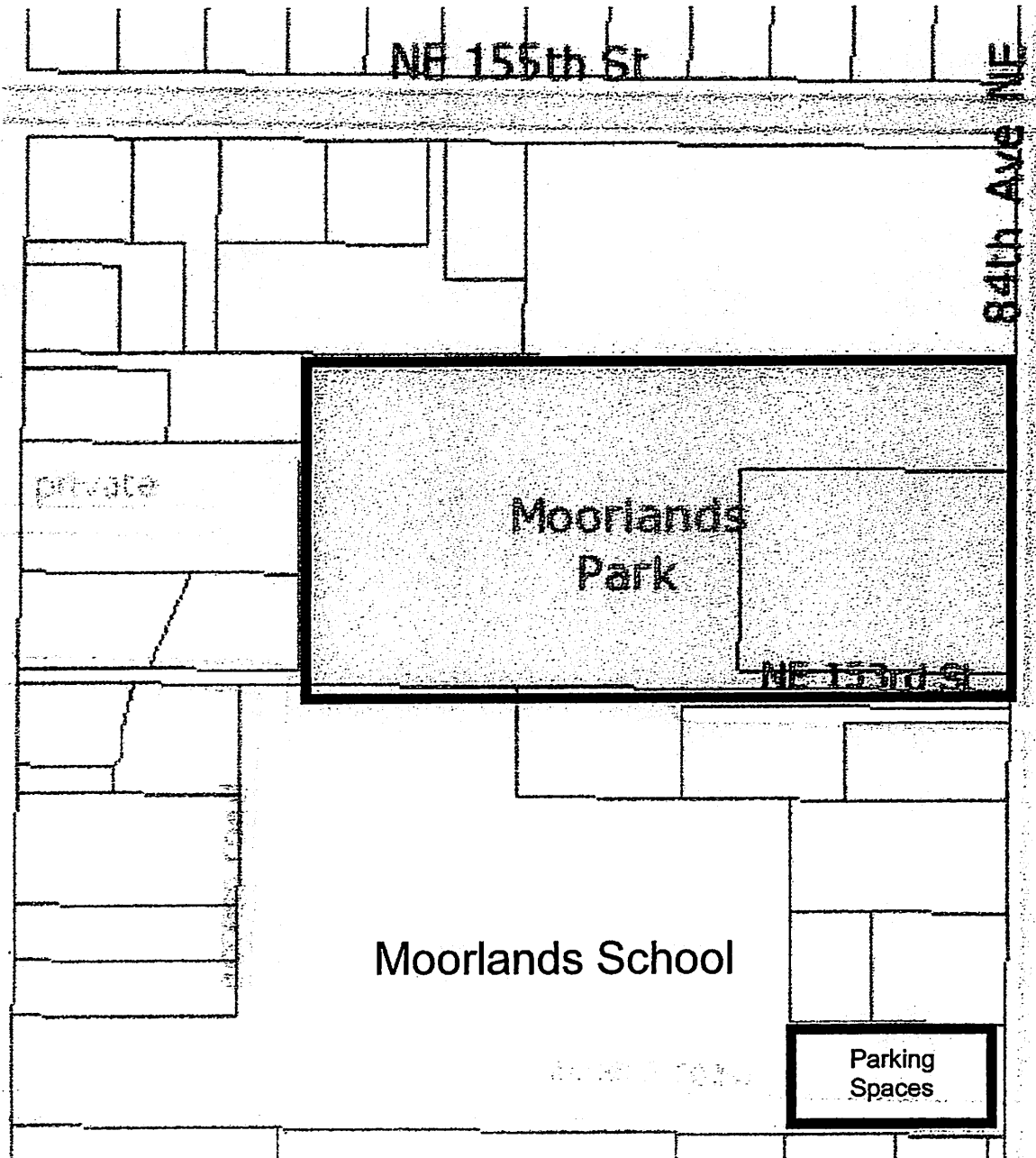


EXHIBIT F

PERMITTED USE AND OPERATION OF MOORLANDS PARK AND MOORLANDS SCHOOL PARKING SPACES

1. Operations.

1.1 Operating Protocol.

Within one-hundred twenty (120) days of final completion of the improvements to Moorlands Park planned by the City, including improvements to the ballfield, representatives from the City and the District shall meet to create more specific operating protocols and procedures, including but not limited to scheduling coordination, repair and maintenance activities, and other operating procedures. Representatives of the City and the District shall meet annually between January 1 and June 30 to review use of Moorlands Park and the Parking Spaces, related maintenance needs, physical improvements, repair and maintenance activities, scheduling questions, and any other common interests and matters which may arise concerning the park and parking facilities. The representatives shall cooperate in good faith in discussing and recommending resolutions to any issues which may arise under this Agreement.

1.2 Disputes.

In the event any dispute regarding this Agreement cannot be resolved by informal methods, then prior to commencing litigation or taking any administrative action, the aggrieved party shall notify the other in writing of the particulars of the grievance, and the other party shall reply in writing within ten (10) working days, setting forth its position and stating what, if any, action it will take with respect to the grievance. The aggrieved party shall respond in writing within seven (7) working days, indicating its satisfaction or dissatisfaction, as the case may be; in the event the aggrieved party is dissatisfied, the parties shall then meet in person and confer in good faith to resolve their differences before litigation is commenced.

1.3 Hours.

The City shall establish and post reasonable hours of operation. Field access may be limited temporarily when necessary, in the sole judgement of the City, to protect the condition of the grass. The ballfield shall be available for scheduled reserved use. During the regular school term and usual hours of operation when students are on site, which are weekdays from approximately August 25 to June 15 (as amended from time to time), except school holidays, the District shall have first priority for scheduled use of the ballfield unless closed due to weather or field condition. Use by the District shall consist of the District's students, personnel and guests at school-sponsored activities within the time reserved for the District. At all other times, use and user groups shall be controlled by the City. The Parties agree that all uses scheduled or permitted by either party shall be reasonably appropriate.

1.4 Scheduling.

The City shall be responsible for the operation and scheduling of the ballfield, whether performed by the City directly or caused to be performed through use of third parties.

15 Maintenance.

The City shall maintain or cause to be maintained Moorlands Park as set forth in Section 7.7 of the Agreement. The District shall maintain or cause to be maintained the Parking Spaces as set forth in Section 8.6 of the Agreement.

1.5 User Fees.

The City may establish fees for scheduling, preparation and use of the ballfield outside of school hours. Such fees shall be established solely by the City, consistent with any applicable requirements with grant funding agencies.

1.6 Signage.

The City may post signage near the District Parking Spaces indicating their availability for public use by park visitors and include directional information to the park entry.

1.7 Gate.

A secondary gate may be installed by the District to control school access beyond the Parking Spaces. This secondary gate will be operated by the District. Unless otherwise agreed to, the existing primary gate located at 84th Avenue NE will be closed by the City at dusk and opened by the District at the start of each school day. At all other times, the City will be responsible for closing and opening the primary gate.