

**INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY
AND THE CITY OF ARLINGTON FOR JOINT OPERATION AND
MAINTENANCE OF TWIN RIVERS PARK**

This INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY OF ARLINGTON FOR JOINT OPERATION AND MAINTENANCE OF TWIN RIVERS PARK (this "Agreement"), is made and entered into this ____ day of _____, 2018, by and between Snohomish County, a political subdivision of the State of Washington (the "County"), and the City of Arlington, a Washington municipal corporation (the "City"), pursuant to Chapter 39.34 RCW.

RECITALS

A. The 2007 Comprehensive Parks and Recreation Plan, a component of the Snohomish County Growth Management Act Comprehensive Plan, has documented a County-wide need for community parks, open space, and natural area parks accessible to the general public.

B. The County Executive and the County Council have determined that it is consistent with the Comprehensive Parks and Recreation Plan and is in the public interest of County residents to participate in joint undertakings with local municipalities to increase recreational opportunities and facility capacity.

C. The County owns real property commonly known as Twin Rivers Park (the "Park"), located adjacent to the City along State Route 530. The Park property includes any and all buildings, structures, landscaping, driveways, private roadways, parking lots and other improvements now or hereafter constructed or located on or at the Park.

D. From 2009-2014, the County and the City operated and maintained the Park pursuant to an Interlocal Cooperation Agreement executed on May 5, 2009, and recorded under Snohomish County Auditor File No. 200905120563.

E. Pursuant to this Agreement and Chapter 39.34 RCW, the parties wish to reestablish joint operation and maintenance of the Park.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the City agree as follows:

1. Purpose of Agreement.

The purpose and intent of this Agreement is to define the responsibilities of the County and the City as they relate to the joint operation and maintenance of the Park as a public park. A legal description of the Park is included in Exhibit A, attached hereto and incorporated herein by this reference.

2. Effective Date and Duration.

As provided by RCW 39.34.040, this Agreement shall not take effect unless and until it has (i) been duly executed by both parties and (ii) either filed with the County Auditor or posted on the County's Interlocal Agreements website (the "Effective Date"). This Agreement shall remain in effect for five (5) years following the Effective Date, unless terminated pursuant to the provisions of Section 15, PROVIDED, HOWEVER, that the term of this Agreement may be extended or renewed for up to one (1) additional five (5) year term, at the sole discretion of the County, by written notice from the County to the City, PROVIDED, FURTHER, that each party's obligations after December 31, 2018, are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with applicable law.

3. Administrators.

Each party to this Agreement shall designate an individual (an "Administrator"), who may be designated by title or position, to oversee and administer such party's participation in this Agreement. The parties' initial Administrators shall be the following individuals:

County's Initial Administrator:

Russ Bosanko, Division Manager
Park Operations and Community Partnerships
Snohomish County Parks and Recreation
Department
6705 Puget Park Drive
Snohomish, Washington 98296
(425) 388-6602 phone
(425) 388-6645 facsimile
russ.bosanko@snoco.org

City's Initial Administrator:

Paul Ellis
City Administrator
238 N. Olympic Avenue
Arlington, WA 98223
(360) 403-4603 phone
(360) 403- 4605 facsimile
pellis@arlingtonwa.gov

Either party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other party.

4. Responsibilities of the County.

4.1 Restroom Maintenance. The County shall winterize the restrooms located at the Park each year and shall further provide a portable restroom to serve Park users from October 1 to March 1 of each year. The County shall pump out and maintain the septic system for the Park as needed. In addition, upon written request from the City, the County shall inspect the restrooms and make any repairs it determines are necessary. All repairs and maintenance described in this Section 4.1 shall be completed by the County at its sole cost and expense.

4.2 Utilities. The County shall pay all costs, charges and expenses for utility service to the Park, including but not limited to electrical service and telephone service.

4.3 Signage. The County shall maintain, at its sole cost and expense, the informational

sign located at the Park which recognizes the County and the City as partners in the operation and maintenance of the Park and which provides contact information for both parties.

4.4 Trail Maintenance. The County shall, at its sole cost and expense, collect and dispose of litter on trails and beaches located within the Park and shall further maintain the trails.

4.5 Enforcement. Nothing contained in this Agreement shall be considered to diminish the governmental or police powers of the County. The Park is subject to Title 22 of the Snohomish County Code and all other rules and regulations adopted by the County. The County shall, at its sole cost and expense, enforce the Snohomish County Code, rules and regulations within the Park and monitor the Park for appropriate use.

5. Responsibilities of the City.

5.1 Operation as Public Park. The City shall operate the Park as a public park and for such ancillary uses or purposes as are commonly associated with a public park and for no other purpose or use whatsoever without the prior written consent of the County, which may be granted or withheld in the County's sole discretion. The County may enter the Park at any time for purposes of inspecting and ensuring that Park usage is in compliance with this Section 5.

5.2 Access for County Residents. The City shall make the Park available to all County residents on the same terms as to residents of the City.

5.3 Usage Fees and Licensing. The City may schedule, issue licenses to third parties and collect fees therefrom for the following activities only: (a) group reservations for picnic areas; (b) use of the disc golf course; and (c) use of athletic fields for practices, games and tournaments, provided that spectators are not charged to view said practices, games and tournaments. The authority for granting and/or conveying all other permits, licenses, leases, rights of entry, easements or other grant or conveyance of real property interest shall remain with the County. Any and all fees collected by the City pursuant to this Section 5.3 may only be expended on Park operations and maintenance. The City shall report to the County on annual basis the number of licenses issued, the amount of fees charged and collected, and the amount and type of use scheduled by the City.

5.4 General Maintenance. Except as where otherwise provided in this Agreement, the City shall, at its sole cost and expense, keep and maintain the Park and all fixtures and improvements located thereon in good condition and repair, subject to ordinary wear and tear. All such maintenance and repair for which the City is responsible shall be performed by the City in a good and workmanlike manner in compliance with all applicable laws. Maintenance shall include, but shall not be limited to, the following: (a) turf maintenance in compliance with the standards described in Exhibit B, attached hereto and incorporated herein by this reference; (b) lining the athletic fields; (c) dragging the baseball field; (d) regular inspection, cleaning and repair of all improvements and facilities, except as otherwise provided herein; and (e) grading and re-rocking the entry road and parking lot. The County may enter the Park at any time to inspect the Park and the performance of the City, and the County shall assume no duty or liability with respect to the Park or its maintenance by reason of such inspection.

5.5 Repair following Minor Weather Event. The City shall, at its sole cost and expense, clear and dispose of any and all debris generated by a Minor Weather Event. For purposes of this Agreement, a "Minor Weather Event" means a weather event the impacts of which take three (3) days' labor or less to correct and which may include high wind events, high water events, rain, snow and flooding. Upon the occurrence of a Minor Weather Event, the City may request that the County provide up to twenty (20) yards of rock material which the City shall spread over the entry road and parking lot. For any and all other weather events the impacts of which take more than three (3) days' labor to correct, the parties shall by separate agreement determine each party's level of responsibility to correct the impacts of the weather event and bring the Park back to its pre-weather event condition.

6. Joint Responsibilities.

6.1 Annual Meetings. The parties shall meet as needed and at least annually to exchange, review and discuss policies, development plans, levels of scheduled use and procedures relating to the Park as well as to ensure that both parties are performing satisfactorily under this Agreement.

6.2 Media Outreach. The parties shall work together and coordinate all media outreach, requests for interviews, and media events relating to activities at the Park.

7. Alterations and Improvements.

7.1 Consent by the County. The City may not make additions, changes, alterations, or improvements to the Park, or to any electrical, mechanical, or other systems or facilities located in or otherwise serving the Park (collectively, the "Alterations") without first obtaining the prior written consent of the County. The City shall provide the County with detailed plans and specifications detailing any proposed Alterations. Should the County consent to any proposed Alterations, such consent shall not be deemed a representation or warranty as to the adequacy of the architectural design or plans for such Alterations, and the County hereby expressly disclaims any responsibility or liability for same. The County shall have no obligation whatsoever to make any Alterations to the Park now or at any time in the future.

7.2 Alterations by City. All alterations shall be performed: (a) at the City's sole cost and expense unless otherwise agreed to by the parties; (b) in a good and workmanlike manner, with all materials used being of a quality at least as good as those already in use on the Park; (c) in accordance with plans and specifications approved by the County pursuant to Section 7.1; and (d) in compliance with all applicable laws, including but not limited to those related to prevailing wages (see RCW 39.12), retainage (see RCW 60.28), bonding (see RCW 39.08), use of licensed contractors (see RCW 39.06), and competitive bidding (see RCW 36.32 and RCW 35.21.278), and all codes and regulations. In addition, the County may require that any or all Alterations be performed under the County's supervision; provided that any such supervision by the County shall not be deemed a representation or warranty as to the adequacy of the design, workmanship, quality of materials, or construction of the Alterations at issue, and the County hereby expressly disclaims any responsibility or liability for same.

7.3 Disposition of Alterations at Termination. Upon the expiration or earlier termination of this Agreement, all fixed Alterations shall remain in and be surrendered with the Park as a part thereof, unless, with respect to any Alteration, the County specifies in its consent to the construction of such Alteration that such Alteration must be removed prior to surrender, in which case the City shall, prior to surrender, remove the Alteration in question and repair any damage to the Park caused by such removal.

7.4 Liens. The City shall keep the Park free from any liens arising out of work performed for, materials furnished to, or obligations incurred by, or on behalf of, the City. Any construction liens filed against the Park for work claimed to have been furnished to the City will be discharged by the City, by bond or otherwise, within ten (10) days after the filing of the claim or lien, at the City's sole cost and expense. Should the City fail to discharge any such construction lien, the County may at its election pay that claim or post a bond or otherwise provide security to eliminate the lien as a claim against title and the cost to the County shall be immediately due and payable by the City. The City shall indemnify and hold the County harmless from and against any liability arising from any such lien.

8. Independent Contractor.

The City will perform all work associated with the Park as an independent contractor and not as an agent, employee, or servant of the County. The City shall be solely responsible for control, supervision, direction and discipline of its personnel, who shall be employees and agents of the City and not the County. The County shall only have the right to ensure performance.

9. Indemnification/Hold Harmless.

Each party to this Agreement shall indemnify, defend and hold the other party and its elected officials, agents and employees harmless from and against any and all costs, liabilities, suits, losses, damages, claims, expenses, penalties or charges, including, without limitation, reasonable attorneys' fees and disbursements, that the other party may incur or pay out by reason of any accidents, damages or injuries to persons or property occurring during the Term of this Agreement, but only to the extent the same are caused by any negligent or wrongful act of the indemnifying party, or any breach of the indemnifying party under this Agreement. It is specifically and expressly understood that the indemnification provided in this Agreement constitutes the parties waiver of immunity under the state industrial insurance laws, Title 51 RCW, solely for the purpose of this indemnification. The City and the County agree that this waiver has been mutually negotiated. The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. Liability Related to Town Ordinances, Policies, Rules and Regulations.

In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, policies, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, policy, rule or regulation is at issue, the City shall defend the same at

its sole expense and, if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and reasonable attorney's fees.

11. Condition of Park.

The City acknowledges and agrees that it has had an adequate opportunity to inspect the Park and is accepting the Park in its current condition, AS IS, WHERE IS, subject to all faults and defects, known and unknown. The City further represents and warrants to the County that except for the County's express representations, warranties, covenants and obligations under this Agreement and the exhibits hereto, the City has not relied and will not rely on, and the County is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Park.

12. Insurance.

12.1 City's Insurance Obligation. Upon execution of this Agreement, the City, at its' own cost, shall have procured and will maintain for the duration of this Agreement, insurance as specified in Section 12.2 below, the Minimum Scope and Limits of Insurance. Each insurance policy shall be written on an "occurrence" form unless otherwise approved by the County. The City's maintenance of insurance through a qualified Risk Pool is acceptable to the County. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this Section 12 shall affect and/or alter the application of any other provision contained within this Agreement.

12.2 Minimum Scope and Limits of Insurance. The City shall maintain limits no less than:

- (a) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition.
- (b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1, unless otherwise approved by County Risk Management.
- (c) Workers' Compensation: Statutory requirements of the State of residency.

By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the City under this Agreement. The City shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

12.3 Other Insurance Provisions and Requirements. The insurance coverage(s) required in this Agreement are to contain, or be endorsed to contain the following provisions:

- (a) The County, its officers, officials, employees and agents are to be covered as

additional insureds as respects liability arising out of or in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. The Additional Insured Endorsement shall be included with the certificate of insurance, CG 20 26 or its equivalent is required.

- (b) The City's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (c) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the City's liability to the County and shall be the sole responsibility of the City.
- (d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after thirty (30) calendar days' prior written notice to the County.
- (e) Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

12.4 Documentation of Insurance Requirements. The City shall furnish the County with certificates of insurance and endorsements required by this Agreement. The County reserves the right to require complete, certified copies of all required insurance policies at any time. If at any time any of the policies described in this Section 12 fail to meet minimum requirements, the City shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

13. Compliance with Laws.

In the performance of its obligations under this Agreement, each party shall comply with all applicable federal, state, and local laws, rules and regulations.

14. Default and Remedies.

14.1 Default. If either the County or the City fails to perform any act or obligation required to be performed by it hereunder, the other party shall deliver written notice of such failure to the non-performing party. The non-performing party shall have twenty (20) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default ("Default") under this Agreement; provided, however, that if the non-performance is of a type that could not reasonably be cured within said twenty (20) day period, then the non-performing party shall not be in Default if it commences cure within said twenty (20) day period and thereafter diligently pursues cure to completion.

14.2 Remedies. In the event of a party's Default under this Agreement, then after giving notice and an opportunity to cure pursuant to Section 14.1 above, the non-Defaulting party shall have the right to exercise any or all rights and remedies available to it in law or equity.

15. Termination.

15.1 180 Days' Notice. Except as provided in Sections 15.2, 15.3 and 15.4, either party may terminate this Agreement at any time, with or without cause, upon not less than one hundred eighty (180) days advance written notice to the other party, PROVIDED, HOWEVER, that the County may terminate this Agreement immediately if, in the County's sole discretion, immediate termination is necessary to protect the public health, safety or welfare. A termination notice given under this Section 15.1 shall specify the date on which the Agreement shall terminate.

15.2 Lack of Funding. This Agreement is contingent upon governmental funding and local legislative appropriations. In the event that funding from any source is withdrawn, reduced, limited, or not appropriated after the Effective Date of this Agreement, this Agreement may be terminated by either party immediately by delivering written notice to the other party. The termination notice shall specify the date on which the Agreement shall terminate.

15.3 Termination for Breach. In the event that the City commits a Default as described in Section 14, the County may terminate this Agreement immediately by delivering written notice to the City.

15.4 Termination upon Change of Ownership. Upon a change of ownership of the Park, this Agreement shall terminate immediately.

16. Dispute Resolution.

In the event differences between the parties should arise over the terms and conditions or the performance of this Agreement, the parties shall use their best efforts to resolve those differences on an informal basis. If those differences cannot be resolved informally, the matter may be referred for mediation to a mediator mutually selected by the parties. If mediation is not successful or if a party waives mediation, either of the parties may institute legal action for specific performance of this Agreement or for damages. The prevailing party in any legal action shall be entitled to a reasonable attorneys' fee and court costs.

17. Notices.

All notices required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or the Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 3 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

18. Interlocal Cooperation Act.

This Agreement is made and entered into under the authority of chapter 39.34 RCW, the

Interlocal Cooperation Act. The parties agree that no separate legal or administrative entities are necessary in order to carry out this Agreement. Any real or personal property used by either party in connection with this Agreement will be acquired, held, and disposed of by that party in its discretion, and the other party will have no joint or other interest herein.

19. **Miscellaneous.**

19.1 **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document executed with the same formalities as required for this Agreement and signed by the party against whom such modification is sought to be enforced.

19.2 **Conflicts between Attachments and Text.** Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

19.3 **Governing Law and Venue.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County. In the event that a lawsuit is instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs of such a lawsuit, including reasonable attorney's fees.

19.4 **Interpretation.** This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

19.5 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

19.6 **No Waiver.** A party's forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.

19.7 **No Assignment.** This Agreement shall not be assigned, either in whole or in part,

by the City without the express written consent of the County, which may be granted or withheld at the County's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

19.8 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.

19.9 No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.

19.10 No Separate Entity Necessary. The parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

19.11 Ownership of Property. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either party in connection with its performance under this Agreement will remain the sole property of such party, and the other party shall have no interest therein.

19.12 No Third Party Beneficiaries. This Agreement and each and every provision hereof is for the sole benefit of the Town and the County. No other persons or parties shall be deemed to have any rights in, under or to this Agreement.

19.13 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

COUNTY:

Snohomish County, a political subdivision
of the State of Washington

By _____

Name: Dave Somers

Title: Executive

CITY:

City of Arlington, a Washington
municipal corporation

By Barbara Tolbert

Name: Barbara Tolbert

Title: Mayor

Approved as to Form:

[Signature] 8/30/18
Deputy Prosecuting Attorney

Approved as to Form:

[Signature]
City Attorney

Exhibit A
Legal Description of Twin Rivers Park

Tax Account 31050200101000

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Tax Account No. 31050200402500

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Exhibit B
Turf Maintenance Standards

1. Scope of Standards

The City shall maintain the Park turf/grass fields according to the following practices and standards. The City may request that these standards be modified to meet site conditions. After consultation with the City, the Snohomish County Parks Department will approve, reject or modify the standards.

2. Maintenance

- a. Mowing: Mowing shall occur as needed to maintain a height of 1 ½ -2 inches for athletic field areas throughout the mowing season, the contractor will remove and properly dispose of any excess debris such as leaves, limbs, and trash.
- b. Leveling: All turf areas will be inspected for mounds, holes, and otherwise uneven surface conditions.
 - i. Inspections should occur on a regular basis.
 - ii. Filling of areas will be done with clean topsoil and seeded.
 - iii. Excess dirt should be removed from high areas, de-compacted if necessary, and seeded.
- c. Edging and Trimming: Edging of tree rings, plant beds, buildings, sidewalks, fences, driveways, parking lots, and other surfaced areas bordered by grass shall be done as needed to maintain a clean well-kept appearance.
- d. Weed and pest control: Treatment for weeds and pests should be completed to maintain a desirable playing surface. Weed control should be done using the most effective treatment available, following manufacturer's instructions.
 - i. Weed control products should be applied by a competent licensed applicator only.
 - ii. All application records are required to be forwarded to the Snohomish County Parks Department upon request.