

AFTER RECORDING RETURN TO:

City of Bainbridge Island, Washington
Attn: City Manager
280 Madison Avenue North
Bainbridge Island, Washington 98110

PACIFIC NW TITLE 201112190179
Agreement Rec Fee \$ 71.00
12/19/2011 01:37 PM Date 1 of 10
Batter Washington Kitsap Co Auditor

AGREEMENT REGARDING TRANSFER OF PARK PROPERTY

Grantor(s):	City of Bainbridge Island, Washington, a municipal corporation
Grantee(s):	Bainbridge Island Metropolitan Park and Recreation District, a Washington special purpose district
Short Legal Description:	Fort Ward: Lots 19 & 20, Tract A (Open Space), Fort Ward Parade Grounds, City of Bainbridge Island, Kitsap Co., WA Nute's Pond: NW/SE, Section 11, Township 24 North, Range 2 East, W.M., City of Bainbridge Island, Kitsap Co., WA [Complete legal description on Exhibit A]
Assessor's Property Tax Parcel/Account Number(s):	5451-000-023-0006, 5451-000-019-0002, 5451-000-020-0009 and 112402-4-002-2003
Reference Number(s) of Documents Assigned or Released:	N/A "Said document(s) were filed for record by Pacific Northwest Title as accommodation only. It has not been examined as to proper execution or as to its effect upon title "

THIS AGREEMENT REGARDING TRANSFER OF PARK PROPERTY (this "Agreement") is entered into this 7th day of December, 2011, by and between the CITY OF BAINBRIDGE ISLAND, WASHINGTON, a municipal corporation (the "City") and BAINBRIDGE ISLAND METROPOLITAN PARK AND RECREATION DISTRICT, a Washington special purpose district (the "District").

Recitals

- A. The City owns certain real property located in Bainbridge Island, commonly known as "Fort Ward Parade Grounds" and "Nute's Pond," as legally described on Exhibit "A," attached hereto and incorporated by this reference (collectively, the "Properties").
- B. The Fort Ward Parade Grounds, a 2.51 acre parcel, was dedicated to the City by the Kitsap County Consolidated Housing Authority ("KCCHA") in the plat (the "Fort Ward Parade Grounds"). On April 15, 2003, KCCHA and the City entered into an exchange, by which the City acquired a .06 acre parcel with Kitsap County Auditor's Parcel No. 5451-000-019-0002 and a .08 acre parcel with Kitsap County Auditor's Parcel No. 5451-000-020-0009 adjacent to the Fort Ward Parade Grounds (the "Adjacent Parcels").
- C. The City acquired Nute's Pond on January 24, 2007 upon the recommendation of the Open Space Commission for use as a passive park and open space purposes.
- D. The City and the District frequently collaborate and cooperate with each other in acquiring, maintaining and operating park and open space properties located within the City, to ensure that adequate public parks and open space properties are available to the public and that said properties offer the public the variety of desirable recreational and natural amenities that Bainbridge Island has to offer.
- E. The City has determined that the District is in the best position to develop, manage, maintain and operate the Properties for their intended purpose as public parks and/or open space properties. In consideration of the City's transfer of the Properties to the District, the District shall maintain, operate, and manage the Properties as public parks and/or open space properties. The District will assume all costs of maintenance, operations and improvement of the Properties, thereby saving the City these expenses, while also ensuring the City's constituents that the Properties will continue to be accessible as public parks and/or open space properties.
- F. After holding a public hearing on the subject, the City has determined, via Resolution No. 2011-16, that the Properties are surplus to the City's needs and that the Properties may be appropriately transferred to the District for the purposes and subject to the contingencies, terms and conditions set forth herein.
- G. The District desires to receive the Properties, and accepts the contingencies, terms and conditions of said transfer, as set forth in this Agreement. The District recognizes the value of the City's transfer and acknowledges and agrees that, in light of the value being conveyed to the District, the contingencies, terms and conditions set forth in this Agreement are reasonable and shall be binding upon the District.

NOW, THEREFORE, for and in good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Transfer of Properties:** Upon mutual execution of this Agreement, the City shall quit claim and convey to the District all of the City's rights, title and interest to the Properties via a standard form quit claim deed. The District shall record such deed within ten (10) days of the City's delivery of the same, and the District shall be responsible for all recording fees associated therewith.

2. **Conditions of Transfer:** The City's transfer of the Properties is expressly conditioned and contingent upon the following terms:

2.1 **Use for Public Passive Park and/or Open Space Property.** The Properties shall be used exclusively for passive park and/or open space purposes, except for the additional uses allowed under Sections 2.2 and 2.3, below, for the Fort Ward Parade Grounds and the Adjacent Parcels. For purposes of this Agreement, the term "passive park" shall mean a public park without sports fields or sports facilities. Permitted passive park and open space uses shall include, but are not necessarily limited to, hiking, bicycling, horseback riding, swimming, boating and nature viewing. Open space uses shall include those set forth in **Exhibit "B,"** attached hereto and incorporated by this reference. The District shall have the sole discretion of determining which permitted uses shall be allowed on which portions of the Properties and establishing appropriate rules and regulations governing such use.

2.2 **Use of Fort Ward Parade Grounds.** As noted in the plat, upon recommendation of the Fort Ward Neighborhood Association, a portion of the Fort Ward Parade Grounds may be developed as a children's playground, consistent with historical use. Organized sporting events, the creation of formal sports fields, and the use of motorized vehicles (except related to maintenance activities) shall be prohibited.

2.3 **Use of Adjacent Parcels.** The Adjacent Parcels are not subject to the plat restriction and may be used for either active or passive park purposes.

2.4 **Compliance with Terms Agreed to By City Upon Acquisition.** The District shall further comply with and satisfy all other conditions, restrictions or terms established or agreed to by the City at the time of the City's acquisition of the Properties, or otherwise of record.

2.5 **Right of First Refusal.** The parties acknowledge and agree that the City is transferring the Properties and the City's interests therein to the District in consideration of the parties' relationship and the District's unique position to best manage and operate the Properties. The District therefore agrees that, prior to offering, on any terms, any portion of the Properties, or any fee simple interest therein, to any third party, the District shall first notify the City in writing of the District's intent to transfer any portion of the Properties and

shall offer to re-convey such Property to the City, without monetary remuneration or additional consideration. The City shall have twenty (20) days from its receipt of the District's offer to accept said offer. If the City fails to accept the District's offer within such time, the District's offer shall be deemed rejected, and the District may proceed with the proposed transfer under such terms and conditions as the District determines.

2.6 Reservation of Automatic Reverter.

THE CONVEYANCE OF THE PROPERTIES IS EXPRESSLY AND UNCONDITIONALLY SUBJECT TO THE CITY'S RESERVATION OF AN AUTOMATIC REVERTER IN ITS FAVOR, AS FOLLOWS:

If the Properties or any portion thereof at any time ceases to be used and/or occupied by the District or the District's successors, heirs and assigns, exclusively for public passive park and/or open space purposes (other than as noted in Sections 2.2 and 2.3 or by reason of condemnation or other occurrence outside of the District's or the District's successors', heirs' and assigns' control), then at such time, without demand and without commencement of any legal action or proceeding, title to the entire Property, and the possession thereof, shall automatically revert to and be restored to the City or the City's successors, heirs and assigns.

The possibility of reverter reserved to the City herein, and the rights and obligations set forth in this Agreement shall be deemed to be a permanent covenant, shall be binding upon the District and the District's successors, heirs and assigns, shall run with the land and shall forever burden the title to the Property. The City may, at any time, exercise and assert the right of reverter set forth herein, in accordance with this Agreement, and the passage of time without action taken by the City shall not limit or extinguish the covenants relating to the City's right of reverter.

By taking possession of the Properties hereof, the District acknowledges and agrees that the City's reservation of the automatic reverter is reasonable and appropriate to effectuate the City's intent that the Properties are used in perpetuity for their intended purpose as public passive parks and/or open space, and the District accepts the Properties subject to this reservation and the covenants set forth in this Agreement.

2.7 Sewer Connections.

The Adjacent Parcels each have a sewer connection with Sewer District No. 7 ULID #1, which shall be included with the transfer of the Adjacent Parcels. The District agrees to assume any outstanding obligations associated with the sewer connections. In the event the District sells or transfers any sewer connection, the District agrees to share any proceeds with the City in proportion to the amount each party had paid for that connection.

3. **Properties "AS-IS"**. The District accepts the Properties, and the City's interests therein, in their present condition "AS-IS, WHERE IS," without warranty or representation.

4. **Indemnity**. The District shall hold harmless, indemnify, and defend the City and its officers, employees, agents, and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Properties, regardless of cause, unless due solely to the gross negligence or intentional misconduct of any of the Indemnified Parties; (2) the District's or the District's officers', employees', agents' or contractors' violation of any covenant or restriction touching or concerning any of the Properties; and (3) the District's ownership, operation and maintenance of the Properties or any interest therein.

5. **Covenants to Survive Transfer**. The covenants, conditions and contingencies set forth herein shall survive the City's transfer of the Properties and its interests therein, and shall be binding upon the District subsequent to the recording of the deeds.

6. **Miscellaneous**.

6.1 **Attorneys' Fees**. In the event of any dispute, including mediation, arbitration or litigation concerning this Agreement or if this Agreement is otherwise placed with an attorney for action, then the prevailing party shall be awarded all reasonable litigation costs and expenses, and reasonable attorneys' fees. In the event of trial, the amount of the attorneys' fees shall be fixed by the court. The venue of any such suit shall be Kitsap County, Washington.

6.2 **Binding Effect**. This Agreement applies to, inures to the benefit of, and is binding on not only the parties hereto, but on their heirs, devisees, legatees, administrators, executors and assigns.

6.3 **Computation of Time**. Any time limit in or applicable to a notice shall commence on the day following receipt of the notice and shall expire at midnight of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday or legal holiday as defined in RCW 1.16.050, in which event the time limit shall expire at midnight of the next business day. Any specified period of five (5) days or less shall include business days only. Time is of the essence in this Agreement.

6.4 **Notices**. All notices, demands, consents, approvals and other communications which are required or desired to be given by either party to the other

hereunder shall be in writing and shall be hand delivered or sent by United States regular mail, postage prepaid, return receipt requested, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered or three (3) days after mailing to the following addresses:

To the City: City of Bainbridge Island
Attn: City Manager
280 Madison Avenue North
Bainbridge Island, Washington 98110
(206) 842-2545
(206) 780-8600 facsimile

To the District: Bainbridge Island Metropolitan Park and
Recreation District
Attn: Director
P. O. Box 10010
Bainbridge Island, Washington 98110
(206) 842-2306
(206) 842-0207 facsimile

6.5 Assignment. The District shall not assign this Agreement except with the express written consent of the City, which consent may be withheld for any reason.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year indicated above.

THE CITY:
City of Bainbridge Island, Washington

By: 
Brenda Bauer, City Manager

THE DISTRICT:
Bainbridge Island Metropolitan Park
and Recreation District

By: 
Terry Lande, Director

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Brenda Bauer is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument, and acknowledged it as the City Manager of the City of Bainbridge Island, Washington to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.



DATED: December 7, 2011
Christine A. Brown
NAME: Christine A. Brown
(Print Name)
Notary Public in and for the State of Washington
Commission Expires: 3-19-15

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Terry Lande is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Director of Bainbridge Island Metropolitan Park and Recreation District to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.



DATED: December 7, 2011
Christine A. Brown
NAME: Christine A. Brown
(Print Name)
Notary Public in and for the State of Washington
Commission Expires: 3-19-15

Exhibit "A"

Legal Description of Property

Fort Ward Open Space A (Parade Grounds)

Kitsap County Auditor's Parcel No. 5451-000-023-0006

OPEN SPACE A, FORT WARD PARADE GROUNDS, ACCORDING TO THE PLAT RECORDED IN VOLUME 31 OF PLATS, PAGES 13, 14 AND 15, RECORDS OF KITSAP COUNTY, WASHINGTON; SITUATE IN THE CITY OF BAINBRIDGE ISLAND, KITSAP COUNTY, WASHINGTON.

Parcel Adjacent to Fort Ward Parade Grounds

Kitsap County Auditor's Parcel No. 5451-000-019-0002

LOT 19, FORT WARD PARADE GROUNDS, ACCORDING TO THE PLAT RECORDED IN VOLUME 31 OF PLATS, PAGES 13, 14, AND 15 OF KITSAP COUNTY, WASHINGTON, SITUATE IN THE CITY OF BAINBRIDGE ISLAND, KITSAP COUNTY, WASHINGTON

Parcel Adjacent to Fort Ward Parade Grounds

Kitsap County Auditor's Parcel No. 5451-000-020-0009

LOT 20, FORT WARD PARADE GROUNDS, ACCORDING TO THE PLAT RECORDED IN VOLUME 31 OF PLATS, PAGES 13, 14 AND 15, RECORDS OF KITSAP COUNTY, WASHINGTON; SITUATE IN THE CITY OF BAINBRIDGE ISLAND, KITSAP COUNTY, WASHINGTON.

Nute's Pond

Kitsap County Auditor's Parcel No. 112402-1-010-2009

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 24 NORTH, RANGE 2 EAST, W.M., IN KITSAP COUNTY, WASHINGTON; EXCEPT THE FOLLOWING:

EXCEPT THAT PARCEL OF PROPERTY BEGINNING AT A POINT ON THE NORTHERN BOUNDARY LINE 224 FEET WEST OF THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER IN SECTION 11,

TOWNSHIP 24 NORTH, RANGE 2 EAST, W.M.; RUNNING THENCE WEST 467 FEET;
THENCE SOUTH 467 FEET; THENCE EAST 467 FEET; THENCE NORTH 467 FEET TO
THE POINT OF BEGINNING, CONTAINING 5 ACRES MORE OR LESS;

AND EXCEPT THAT PORTION OF THE NORTH 50 FEET LYING WEST OF THE
ABOVE EXCEPTION;

AND ALSO EXCEPT THE EAST 208 FEET OF THE NORTH 416 FEET OF THE
NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11,
TOWNSHIP 24 NORTH, RANGE 2 EAST, W.M.;

EXCEPT TOE JAM HILL ROAD (COUNTY ROAD NO. 370).

Exhibit "B"

Permitted Uses

The following activities are consistent with the purpose of this Agreement and such activities and uses on the Properties designated as open space properties are permitted:

1. Passive park activities, such as hiking, bicycling, horseback riding, boating, kayaking, swimming, picnicking and nature viewing. The use of motorized vehicles and equipment shall be permitted only to the extent that such use is necessary to maintain the Properties for, and to facilitate, the passive park and/or open space activities permitted herein;

2. The placement of signs or billboards may be displayed (i) to state the name and address of the Properties, (ii) to state the preserved nature of the Properties; (iii) to advertise the passive park and/or open space activities and operations conducted upon the Properties; and (v) to post the Properties to control unauthorized entry or use; and

3. All activities incidental and/or necessary to the use of the Properties for passive park and/or open space activities, in accordance with generally accepted industry standards and practices.