

**INTERLOCAL AGREEMENT
BETWEEN THE ORCAS ISLAND SCHOOL DISTRICT AND
THE ORCAS ISLAND PARK AND RECREATION DISTRICT
FOR SHARED USE OF A WELL**

THIS INTERLOCAL AGREEMENT (“the Agreement”) is entered into by and between the Orcas Island School District (“School District”) and the Orcas Island Park and Recreation District (“OIPRD”) (collectively “the Parties”), municipal entities formed in the State of Washington, for the purpose of describing the terms of use for the well on the property known as Buck Park. This Agreement is entered into pursuant to RCW 39.34.030, RCW 67.20.020 and RCW 36.69.130.

RECITALS

WHEREAS, the School District owned in fee simple a property commonly known as Buck Park, located at 673 Mt. Baker Road, Eastsound, Washington (TPN 271322002) (“Buck Park”), and operated a well under Buck Park (“the Well”) through a lease agreement for water rights with the Eastsound Water Users Association (EWUA) and

WHEREAS, OIPRD is a special taxing district duly established pursuant to the laws of the State of Washington, RCW Chapter 36.69, as a park and recreation district, for the purpose of providing leisure time activities and recreational facilities that include parks and playgrounds; and

WHEREAS, pursuant to Resolution No. 2014-10, duly passed by the School District’s Board of Directors on _____, the School District transferred to OIPRD the School District’s interest in Buck Park and its interest in the EWUA Lease, effective on _____; and

WHEREAS, the School District desires to continue to use the Well to irrigate its property, known as the Upper Ballfields, located at TPN 271411008 (“Upper Ballfields”); and

WHEREAS, the Parties desire to jointly use the Well for the irrigation of Buck Park and the Upper Ballfields, pursuant to RCW Chapter 39.34.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals and the mutual covenants, promises, and conditions set forth in this Agreement, it is agreed by and between the School District and OIPRD as follows:

SECTION 1. Purpose. The purpose of this Agreement is to describe the terms and conditions by which the School District and OIPRD will jointly use the Well located at Buck Park for irrigation purposes, including assigning from the School District to OIPRD the School District's interest in the EWUA Lease and establish shared costs and responsibilities for use of the Well.

SECTION 2. Term; Review.

A. This Agreement shall be effective upon execution by the governing bodies of the Parties and shall continue in full force and effect for **ten (10) years**, unless extended by mutual written agreement of the Parties or unless sooner terminated or superseded, pursuant to the terms of this Agreement. In no case shall this Agreement be extended by more than ten (10) additional years without legal review and a newly-executed agreement.

B. The Parties agree to hold an annual meeting of OIPRD and the School District, or their duly assigned representative(s), to review the terms and conditions of only Sections 6, 7 and 8 of this Agreement, on or around one year after the effective date of the Agreement. Any amendment to the Agreement must be in writing and duly passed by each entity's governing body.

SECTION 3. Exhibits.

Exhibit A: Illustration of location of Buck Park and Well

Exhibit B: EWUA Lease (executed copy)

Exhibit C: Illustration of location of Upper Ballfields Meter for OISD water supply

SECTION 4. Descriptions of Property and Well; Meter.

A. Buck Park is located at 673 Mt. Baker Road, Eastsound, Washington, TPN 271322002, as illustrated in **Exhibit A**, attached and incorporated herein. The Upper Ballfields are located at TPN 27141108, and are owned by the School District. The Well that

serves Buck Park is leased from EWUA through the EWUA Lease, as set forth in **Exhibit B**, attached and incorporated herein.

B. The Parties agree that a meter will be placed on the water line leading from Buck Park to the Upper Ballfields, as marked on the map set forth in **Exhibit C**. The purpose of the meter is to measure School District use, in particular for a leak or problem with the School District's line.

SECTION 5. Assignment of Lease Agreement with EWUA.

A. The School District agrees to assign all of its duties, rights, obligations and interest in the EWUA Lease to OIPRD, pursuant to Section 13 of the EWUA Agreement. OIPRD will assume and be fully responsible for all of the duties, rights and obligations in the EWUA Agreement, except as otherwise provided in this Agreement. Prior to such transfer of interest in the EWUA Agreement from the School District to OIPRD, the School District agrees to pay to EWUA, in full, any and all outstanding fees, costs, or other amounts due to EWUA by the School District under the EWUA Agreement.

B. After the transfer of its interest in the lease to OIPRD, the School District agrees to be bound by the terms and conditions of the lease as a third party beneficiary to that agreement, including but not limited to Sections 4, 8 and 9 of the EWUA Lease, providing the water use requirements for the Well.

SECTION 6. Joint Water Use; Purpose.

A. OIPRD agrees that the School District may continue to use the Well for the sole purpose of irrigating the Upper Ballfields, and the School District understands and agrees that OIPRD will use the Well to irrigate Buck Park, both in conformance with the EWUA Lease. The School District is hereby granted the right in common with OIPRD to draw water from the Well for irrigation purposes only, excluding the right to draw water from the Well for drinking water or any other purpose.

B. Only those parcels described in Section 2 of this Agreement shall be permitted to receive water from the Well and pumping equipment. OIPRD and the School District hereby covenant and agree that they will not allow or permit other persons to take, draw, use or receive water from the Well, nor permit other persons to connect to the pipes or mains serving its respective parcel(s).

SECTION 7. Shared Costs; Payments.

A. The School District and OIPRD agree to pay an equal (50/50) share of all expenses for the operation, repair and maintenance of the Well and the common part of the

water distribution system, i.e., that part of the system that is within Buck Park, east of the property line for Buck Park, including:

1. The actual amount assessed by EWUA through invoice to OIPRD under the fee schedule set forth in the EWUA Agreement, Section 7, "Payment for Use of Water," and all other fees or costs imposed on OIPRD pursuant to the terms and conditions of the EWUA Agreement;
2. The cost of all maintenance and operations of the Well, including the pump, back flow assembly, parts and repair costs related to delivering irrigation water along the existing main line from the Well to the northwest property line of Buck Park ("Main Line");
3. The cost of installing metering and valves to separately record and regulate water use at Buck Park and the Upper Ballfields;
4. The costs for all repair, maintenance and replacement of the main line to the OISD deduct meter located in Buck Park; and
5. The cost of electricity for pumping, repairs and maintenance on the Well and water distribution system.

B. All other costs related to water use or irrigation on the separate properties are the sole financial liability and responsibility of each respective property owner. The School District shall be solely responsible and liable for all repair, maintenance and/or replacement of the water line(s) and related infrastructure in the Upper Ballfields, starting from its deduct meter for the Upper Ballfields.

C. Terms of Payment.

1. OIPRD's Responsibilities. OIPRD agrees to pay EWUA the total cost billed to OIPRD under the EWUA Lease. Upon receipt of an invoice from EWUA, OIPRD will immediately send an invoice to the School District for the School District's share of the amount due to EWUA.
2. School District's Responsibilities. The School District agrees to pay the amount in the invoice sent by OIPRD to OIPRD within 30 calendar days after receiving said invoice. The School District agrees to keep its account current each month. The Parties agree that in the event the School District has not paid OIPRD the amount billed within 30 calendar days after the date of OIPRD's invoice, then OIPRD may assess a 2% interest fee on the amount due, generated monthly, for every month that the full amount is not paid. If the full amount is not paid and the account is not current after 90 days of the date of OIPRD's invoice, then OIPRD may shut off the water to the Upper Ballfields, until such time as the account is made current.

SECTION 8. Remedy of Maintenance and Repair Issues.

A. Each party agrees that it will promptly repair, maintain and replace all water pipes or mains serving their respective parcels.

B. The oral or written consent of the Parties to pay a proportionate share of costs shall be obtained prior to embarking on unusual or extraordinary expenditures for system maintenance, replacement or improvement, except in emergency situations.

C. Each party shall have reasonable access to the water distribution system on the other party's parcel(s) for the purpose of investigating or remedying any necessary repair or maintenance of the Well or the water distribution system affecting their parcel.

D. No party may install landscaping or improvements that will impair access to the Well or the party's respective water distribution systems, without the express written consent of the other party.

E. Each party shall have the right to act to correct an emergency situation and shall have access to the pertinent parcel in the absence of the other. An emergency situation is defined as the failure of any shared portion of the system to deliver water upon demand, or a leak or misuse of water for any shared portion of the system in a manner that causes substantial environmental, monetary, or other damage to property that may violate the EWUA Lease.

F. In the event there is a leak in the School District's water distribution system to the Upper Ballfields, and/or the meter for the Upper Ballfields shows water use exceeding the amount permitted under the EWUA Lease, then the School District shall immediately investigate and repair such problem. In the event that such maintenance or repair is not done within 10 calendar days from the date the School District received notice of the problem, then OIPRD may isolate the water line, or shut off water, to the Upper Ballfields, in order to stay in compliance with the EWUA Lease and allow the School District adequate time to resolve the maintenance or repair.

SECTION 9. Remedy. If either party fails to maintain, repair or use its water rights in accordance with the EWUA Lease or this Agreement, then the non-offending party will notify the offending party, in writing, as soon as practicable, excluding Section 8(F), above. The notification will include a statement of the problem and the proposed repair or remedy. If the offending party fails to resolve or repair the issue in a workmanlike manner within 30 calendar days after receipt of such notice, or by the earliest date practicable, the non-offending party may order the repair or remedy to be performed, in a workmanlike manner and by a licensed contractor where so required. The offending party will give its consent and permission for such to work to be done, up to \$2,500.00. The non-offending party will bill

the offending party for such work. The offending party agrees to pay such amount, in full, within 30 calendar days of receiving such invoice.

SECTION 10. Budgetary obligations. Each party shall be responsible for preparing its own budget for each fiscal year during the term of this Agreement, including fees and costs pursuant to this Agreement.

SECTION 11. Separate Entity; Independent Contractor. This Agreement does not create a separate legal entity to administer this Agreement. OIPRD's employees, officers and agents, including volunteers, shall remain under OIPRD's supervision, control, and insurance policies. The School District's employees, officers or agents shall remain under the School District's supervision, control and insurance policies.

SECTION 12. Insurance.

A. The School District certifies that it is insured through the Washington Schools Risk Management Pool. The School District certifies that it maintains property, premises liability, and general liability insurance in excess of \$1,000,000.00 per occurrence, including for the acts or omissions of its officers, employees, and representatives for the type and scope of work contemplated herein by its officers, employees, volunteers and agents. The School District agrees to name OIPRD as an additional insured on its insurance policies.

B. OIPRD hereby certifies that it is insured through the Enduris risk pool and maintains property, premises liability, and general liability insurance up to \$1,000,000.00 per occurrence, including for the acts or omissions of its officers, employees, and representatives for the type and scope of work contemplated herein by its officers, employees, volunteers and agents, through a qualified insurance carrier.

C. Either party may request proof of insurance on request from the other party.

SECTION 13. Mutual Indemnification; Hold Harmless.

A. OIPRD agrees to protect, defend, indemnify and hold harmless the School District for any and all activities by OIPRD employees, officers, elected officials, agents and volunteers, from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements) caused by or occurring by reason of any violation of law or negligent act or omission of its elected officials, officers, agents, volunteers or employees, arising out of or in connection with the activities of OIPRD and the activities under and pursuant to this Agreement, including but not limited to any personal injury, death, and/or property damage claim, demand, lawsuit or other proceeding, including industrial insurance claims and administrative

enforcement actions, brought against the School District or OIPRD, directly caused by OIPRD's use of the Well and water distribution system under this Agreement.

B. The School District agrees to protect, defend, indemnify and hold harmless OIPRD for any and all activities by School District employees, officers, elected officials, agents and volunteers, from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements) caused by or occurring by reason of any violation of law or negligent act and/or omission of its elected officials, officers, agents, volunteers or employees, arising only out of or in connection with the School District's ownership, control and maintenance of the School District's property and the School District's activities under and pursuant to this Agreement, including but not limited to any personal injury, death, and/or property damage claim, demand, lawsuit or other proceeding, including industrial insurance claims and administrative enforcement actions, brought against the School District or OIPRD, that is not directly caused by OIPRD's use of the Well and water distribution system under this Agreement.

C. Nothing contained in this section or Agreement shall be construed to create a right of indemnification in any third party. The provisions of this section shall survive the termination of this Agreement, and shall be construed to apply during the effective term of this Agreement.

D. The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under the above referenced lease/purchase agreements, or the termination of the same.

SECTION 14. Dispute Resolution.

A. Mediation. The Parties shall first attempt to resolve any controversies or disputes arising out of or relating to this Agreement through a good faith attempt at mediation, using a mediator mutually agreed upon by the parties. Each party will pay its own attorneys' fees and costs, and shall evenly share (50/50) the cost of the mediation.

B. Arbitration.

1. Any controversy or claim arising out of or relating to this Agreement that is not resolved through mediation, shall be resolved by final and binding arbitration pursuant to RCW 7.04A. Demand for arbitration shall be made in writing to the other party. The arbitration shall be held in San Juan County before a single arbitrator selected by the agreement of the parties. If the parties cannot agree upon an arbitrator within 15 days after the demand for arbitration is made, the arbitrator shall be selected by a judge in

2. the Superior Court of San Juan County in accordance with the procedures set out in RCW 7.04A.110.
3. Unless the parties agree otherwise in writing, the arbitration hearing shall occur no later than 60 days after the date the arbitrator is appointed. The parties agree that, with the exception of the circumstances set out in RCW 7.04A.230, the arbitrator's decision shall be binding, final and not appealable to any court of law.
4. Each party shall pay its own costs of arbitration including each party's own attorneys' fees and costs. The arbitrator's fee and any administrative expenses imposed by the arbitrator shall be shared equally by the parties.

SECTION 15. Waiver of Breach. The failure of any party to this Agreement to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option or right conferred by this Agreement, in any one or more instances shall not be construed to be a waiver or relinquishment of any such option or right or of any other covenants or agreements which shall remain in full force and effect.

SECTION 16. Termination.

A. **For Cause.** Either party may terminate this Agreement with cause by giving 10 calendar days prior written notice to the other party under the following circumstances:

1. A material breach of the contract by either party, which breach is not cured or in good faith attempted to be cured within 10 working days of notice of such breach to the breaching party; or
2. Non-payment under this Agreement which non-payment is not cured within 20 calendar days after the non-paying party is notified in writing of such delinquency; or
3. Bankruptcy, the threat of bankruptcy, or the legal dissolution of either party; or
4. On such terms as agreed to in writing by both parties.

B. On termination of this Agreement, each party shall return to the other party any personal property belonging to that party.

SECTION 17. Modification. This Agreement may be modified by mutual written consent of the governing bodies of the Parties. Minor modifications to correct scrivener's errors, clarify the meaning of words or phrases, or clarify how terms or conditions under this Agreement shall be executed shall not constitute a modification of this Agreement, and may be agreed to between the School District Superintendent or his or her designee, and OIPRD's Chair or Director or his or her designee.

SECTION 18. No Third Party Beneficiary. The provisions of this interlocal agreement are not intended to create any third-party beneficiary contract rights, and therefore none should be deemed created by this agreement, EXCEPT that the School District agrees that it is a third party beneficiary of the EWUA Lease, and is bound by and agrees to its terms and conditions. This Agreement between the parties is only intended to create rights and/or obligations as between the signatory parties.

SECTION 19. Governing Law; Venue. This Agreement is entered into and shall be governed by the laws of the State of Washington. In the event of a dispute that has completed arbitration or been held ineligible for arbitration, the venue shall lie in San Juan County, Washington.

SECTION 20. Construction and Interpretation. This Agreement is being entered into and shall be construed and interpreted in accordance with the laws of the State of Washington.

SECTION 21. Integrated Agreement. This Agreement is the full and complete understanding of the Parties and there are no other agreements, either verbal or written, which would alter the terms of this document. Any prior written agreements or understandings are superseded by this Agreement. The Agreement may be modified or amended only by mutual written agreement by the governing bodies of the Parties.

SECTION 22. Severability; Conformance. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the Parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid. If the part, term or provision found invalid is an essential or operative term of the Agreement, the Parties may mutually agree in writing to terminate the Agreement. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to confirm to such statutory provision.

SECTION 23. Covenant Running with the Land. The benefits and burdens of this Agreement shall constitute a covenant running with the parcels of land described in Section 4, and shall be binding on the heirs, successors in title and assigns of the Parties.

SECTION 24. Notices. Any notice required or desired to be served, given or delivered hereunder shall be in writing and shall be deemed to have been validly served, given or delivered upon deposit in the United States mail by registered or certified mail with proper postage prepaid and addressed to the party to be notified. Notices under this Agreement shall be sent to:

OIPRD

Marcia West, Director
P.O. Box 575
Eastsound, WA. 98245
marciaw@oiprd.org
360-376-7275

School District

Superintendent Eric Webb
557 School Road
Eastsound, WA. 98245
ewebb@orcas.k12.wa.us
360-376-2284

DATED this _____ day of _____, 2014.

ORCAS ISLAND
SCHOOL DISTRICT

ORCAS ISLAND
PARK AND RECREATION DISTRICT

Eric Webb, Superintendent

Marcia West, Director

ATTEST:

School District Clerk

July 14, 2014

- 10 -

STATE OF WASHINGTON)

) :ss

COUNTY OF SAN JUAN)

ON THIS day of _____, 2014, before me, personally appeared **ERIC WEBB**, known to be the individual who executed the within and foregoing instrument, and acknowledged said instrument to be her free and voluntary act and deed, for the uses and purposes therein mentioned.

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

Notary Public in and for the State of Washington,
residing at:

My Appointment Expires_____

July 14, 2014

STATE OF WASHINGTON)

) :ss

COUNTY OF SAN JUAN)

ON THIS day of _____, 2014, before me, personally appeared **MARCIA WEST**, known to be the individual who executed the within and foregoing instrument, and acknowledged said instrument to be her free and voluntary act and deed, for the uses and purposes therein mentioned.

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

Notary Public in and for the State of Washington,
residing at:

My Appointment Expires _____

July 14, 2014

Exhibit A: Illustration of location of Buck Park and Well

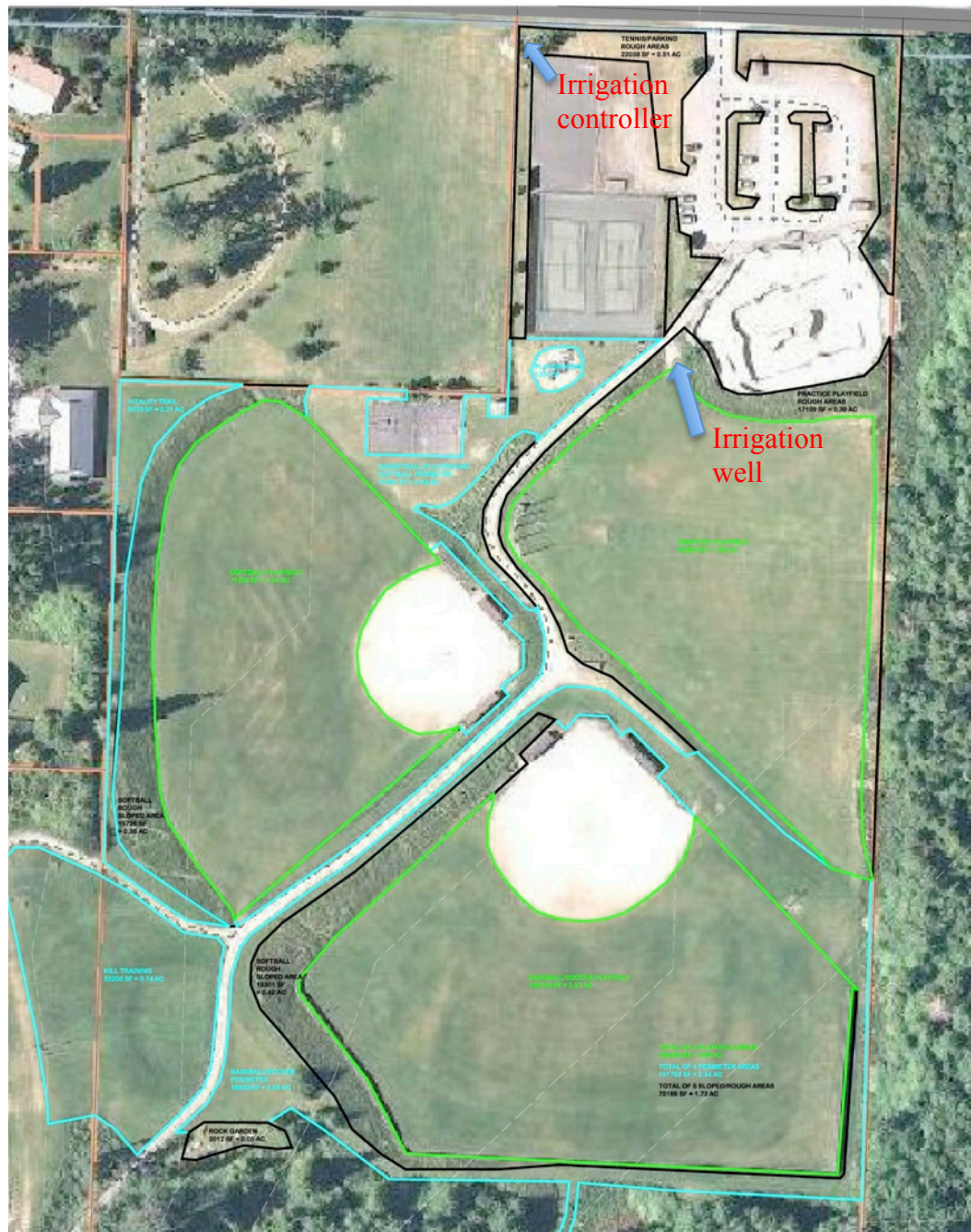


Exhibit B: EWUA Lease (executed copy)

Exhibit C: Illustration of location of Upper Ballfields Meter for OISD water supply

