



# City Council Agenda Bill

# 20247

Bill Number

**Subject:** Joint public hearing of the of the City Council and the Chuckanut Community Forest Park District Board to consider the City's proposed sale of a Conservation Easement to the Park District and related Interlocal Agreement

**Summary Statement:** In August 2011, the City purchased the 82-acre Chuckanut Community Forest property from Washington Federal for \$8.2 million using greenways funds, park impact fees, and a Greenways Endowment Fund loan of \$3,232,301. In February 2013, citizens in South Bellingham voted to create the Chuckanut Community Forest Park District with the intent that the Park District would repay the Greenways Endowment Fund loan through a property tax levy. At the joint public hearing, City Council and the Park District Board will consider whether to approve the City's sale of a Conservation Easement to the Park District in exchange for the Park District paying off the loan with interest.

**Previous Council Action:** Purchase of the property and authorization of the interfund loan.

**Fiscal Impact:** The Park District will repay the \$3.2 million loan from the Greenways Endowment Fund plus interest.

**Funding Source:** Park District

**Attachments:** Conservation Easement  
Interlocal Agreement  
  
Public Hearing Notice  
(No written comment was received by City Council.)

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Public Hearing Council Vote Requested	16-Dec-2013	Vote to Approve	Alan Marriner, Asst. City Atty.; James King, Parks and Recreation Director	10 min.

**Council Committee:**

**Agenda Bill Contact:**  
Alan Marriner

Reviewed By	Initials	Date
James King, Parks Director		12/10/13

**Committee Actions:**

Legal	Mayor
	<p>AAm 12/10/13 KL 12/11 L3</p>

**Council Action:**

After Recording Return To:

Robert A. Carmichael  
1700 D Street  
Bellingham, WA 98229

DOCUMENT TITLE:  
**CHUCKANUT COMMUNITY FOREST CONSERVATION EASEMENT**

GRANTOR:  
**CITY OF BELLINGHAM**

GRANTEE:  
**CHUCKANUT COMMUNITY FOREST PARK DISTRICT**

ABBREVIATED LEGAL DESCRIPTION:  
Ptn of S ½ SW ¼ Sec 12 TWP 37 N Rge 3 E  
Lot B, as delineated on Chuckanut Trust Lot Line Adjustment  
Lots 1-24, Block 1, Map of Diffenbachers Addition to Fairhaven  
Full legal description at page \_\_\_\_\_

ASSESSOR'S TAX PARCEL NUMBERS:  
370212 359328 0000  
370212 364207 0000  
370212 478165 0000  
370212 447323 0000  
370212 477313 0000

## **CHUCKANUT COMMUNITY FOREST CONSERVATION EASEMENT**

### **I. PARTIES.**

This Grant of a Conservation Easement (“Conservation Easement” or “Easement”) is made by the City of Bellingham, a municipal corporation organized under the laws of the State of Washington (“Grantor” or “City”), to the Chuckanut Community Forest Park District, a municipal corporation organized under the laws of the state of Washington (“Grantee” or “Park District”).

### **II. FACTS, OBJECTIVES AND PURPOSES.**

Grantor owns real property in Whatcom County, Washington, referred to hereafter as the "Property", the legal description of which is attached as Exhibit A. A sketch map of the Property is attached as Exhibit B.

The Grantee is a metropolitan park district organized pursuant to RCW 35.61 by public vote to ensure that the Property's ecological, recreational, and educational functions are protected in perpetuity.

The City purchased the Property from Washington Federal Savings Bank for \$8.2 million using greenways funds, park impact fees, and a Greenways Endowment Fund Loan ("Loan") of \$3,232,021.60. The City's grant of the Conservation Easement to the Park District is in consideration for: (1) the Park District paying off the Loan and accrued interest on the Loan; and (2) the Park District formally dissolving in accordance with RCW 35.61.310 effective no later than one year from the date the City petitions the Park District to dissolve. The City will file a petition for dissolution of the Park District pursuant to RCW 35.61.310 after the Loan is paid off, but not before that time, subject to the terms in the “Interlocal Agreement.” The City and the Park District have entered into an "Interlocal Agreement" specifying the terms for the Park District's payment of the Loan.

The approximately eighty-two (82) acre Property is located on the south side of the City of Bellingham and is locally known as Chuckanut Ridge or the Hundred Acre Wood. The Property is mostly forested and contains wetlands, steep slopes, and a variety of plant species. The Property also provides wildlife habitat and habitat corridors for a number of species and was listed as one of the City’s “significant habitats” in the City of Bellingham Wildlife and Habitat Assessment and Wildlife Habitat Plan, December 1995.

The intent of the Grantor and Grantee and the purpose of this Conservation Easement are to assure that the natural features, functions and values of the Property are protected in perpetuity including the existing wetlands, forest, wildlife habitat, wildlife habitat corridors, and other features of ecological significance; while also allowing for the

recreational, educational, and scientific uses named in Section IV. The uses allowed pursuant to Section IV shall be sited, designed, maintained, and operated so as to minimize the impact to the natural attributes of the Property.

### **III. GRANT OF CONSERVATION EASEMENT.**

Grantor hereby conveys to Grantee, its successors and assigns, in perpetuity, a Conservation Easement ("Easement") pursuant to Revised Code of Washington RCW 84.34.210, over the Property. The Easement consists of mutual rights and obligations and is subject to the reservation of rights set forth below. Rights, obligations and reservations all operate as covenants running with the land in perpetuity.

### **IV. PERMITTED USES, PRACTICES AND RIGHTS RESERVED BY GRANTOR.**

The Grantor shall have the right to do or permit the following on the Property:

1. Allow nature oriented, non-motorized public recreational, scientific, and educational uses and construction of appropriate facilities to enhance the nature oriented public recreational or educational/research uses such as:
  - a. facilities for motor vehicle parking on the Property located, if possible, near perimeter boundaries;
  - b. facilities and access for on-site education or research related to objectives and purposes of the Easement;
  - c. trails (including, but not limited to, walking, mountain bike, forest overlook/view, natural wildlife/habitat interpretive, birdwatcher, and disabled-accessible trails), boardwalks, and bridges;
  - d. benches;
  - e. plaques for recognition, memorial, or educational purposes;
  - f. restrooms, pavilions, and educational/interpretive buildings;
  - g. directional, informational, or educational signs;
  - h. "Tree House" forest canopy viewing stations similar to the Sehome Arboretum tower;
  - i. Kid-friendly wildlife/habitat observation "Blinds";

- j. Outdoor mature forested wetlands "Touch Tank" similar to the indoor tank at the Marine Life Center;
- k. Mid-successional forest and wetlands "Native Flora/Fauna Gardens";
- l. Dual-purpose "Eco Pod" and "Yurt" forest campsites/field research labs (safety-approved fire pits/grills possible);
- m. 5k cross country running course similar to the unpaved Lake Padden trail (small portable concession stand for school/fundraising use possible on portion of parking area);
- n. Off-leash dog trails with centralized, forested obstacle/exercise area;
- o. Forest "Zip Lines";
- p. An Urban Forested Wetlands Ecology Center;
- q. Small multi-purpose outdoor seating arena similar to the one in Sehome Arboretum;
- r. All-ages forested picnic areas with recycle station similar to the one at Boulevard Park;
- s. Hike-in uplands "View Pavilion" (covered structure); and
- t. Steep-slope hazard area education site designed with kid-friendly "Mud Slide" and other hands-on learning activity exhibits.

Provided that, such uses and facilities do not adversely impact the critical areas on the Property as defined by the City's Critical Areas Ordinance (Bellingham Municipal Code Chapter 16.55, "Critical Areas Ordinance") without adequate mitigation. Mitigation of any adverse impact to a critical area on the Property shall take place on the Property or on adjacent property if a qualified wetland biologist determines that offsite mitigation is environmentally preferable and if such off-site mitigation is allowed and approved under the Critical Areas Ordinance.

2. With reasonable prior written notice to Grantee, remove trees that are invasive, diseased or present a safety hazard to people or property. However, the Grantor

may remove trees without prior notice to Grantee if the trees present an immediate safety hazard.

3. Make modest clearings to create viewpoints.
4. Plant native trees and vegetation and conduct other activity to enhance and protect water quality, critical areas, and wildlife habitat.
5. Control invasive, non-native species by means that do not harm water quality, critical areas or wildlife habitat.
6. Operate motor vehicles for the maintenance and development of the Property consistent with the permitted uses listed herein.
7. Maintain, repair, expand, improve, decommission, or retain trails on Property, consistent with the intent of this Easement and future City master plan.
8. Undertake other activities necessary to protect public health or safety on the Property, or that are actively required by any governmental agency with authority. Any such activity shall be conducted so that interference with the ecological values of the Property is avoided, or if avoidance is not possible, minimized to the maximum extent possible.

#### **V. RESTRICTIONS ON USE.**

Grantor may prohibit uses on the Property independent of this Easement. **Except as provided above**, the Grantor shall not on the Property do or permit any of the following:

1. Harvest, cut or remove trees or other vegetation except as allowed pursuant to Section IV, consistent with the purposes identified in this Conservation Easement.
2. Build or place roads or buildings of any type.
3. Explore for or extract minerals, hydrocarbons or other materials, except as expressly authorized pursuant to mineral, oil, or gas reservations or leases recorded prior to and continuing in existence on the date of this Easement.
4. Trapping or hunting of animals except to deal with a local public health emergency.

5. Excavate or grade the Property or otherwise materially alter the landscape or topography except as necessary for one of the permitted uses, practices and rights identified in Section IV above.
6. Subdivide the Property in any manner.
7. Make residential, commercial, or industrial use of the Property other than an apartment for a residential caretaker and de minimus use of the Property for commercial recreation.
8. Operate motor vehicles, except as is necessary for the development and management of the Property as allowed in Section IV; provided further that, an existing driveway serving a single family residence on an adjoining parcel pursuant to a License Agreement recorded at Whatcom County Auditor File No.893239 which may encroach on the southerly tip of Parcel C on Exhibit B and may continue so long as its use remains limited to providing ingress and egress to said single family residence only and so long as its width and length are not expanded.
9. Store derelict vehicles or waste of any kind.
10. Building or maintaining of fires except for purposes identified in this Conservation Easement.
11. Allow overnight camping except for purposes identified in this Conservation Easement.
12. Provide athletic facilities or ball fields of any kind.
13. Widen existing trails for bicycle use or build new trails for bicycle use except pursuant to an adopted master plan.
14. Grant other easements except for trails including those easements obtained through eminent domain.
15. Use or apply pesticides or herbicides on the Property including for activities allowed under Section IV; except if such use is the only reasonably feasible means to control invasive, non-native species and then only if such use can be accomplished without harming water quality or critical areas. Before any pesticide or herbicide use is allowed, the necessary risks from use shall be evaluated using best available science to determine if such use will cause adverse

impacts to water quality or critical areas. Should the results of the evaluation reveal adverse impact, said use shall be minimized.

16. Use of the Property contrary to the purposes of this Easement.

## **VI. RIGHTS AND RESPONSIBILITIES OF GRANTEE.**

Grantor grants and Grantee accepts the right and shared responsibility to preserve and protect in perpetuity the natural features, functions and values of the Property including the existing wetlands, forest, and wildlife habitat consistent with the terms of this Easement. In connection with such rights and responsibilities:

1. Grantor grants to Grantee the right to enter the Property, to observe and monitor compliance with the terms of this Easement.
2. Should Grantor, its successors or assigns, undertake any activity on the Property in violation of this Easement, or should Grantor permit an activity on the Property in violation of this Easement, Grantee shall have the right to enjoin and abate any such activity. In addition, Grantee shall have the right to recover damages from Grantor or to compel the restoration by Grantor of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In the event Grantee commences a legal action against the Grantor or otherwise seeks to enforce the terms of this Easement against the Grantor, the prevailing party in any such matter shall be entitled to an award of damages, including, if applicable, costs of restoration, expenses and costs of suit, including attorneys' fees and expert witness fees.
3. Any forbearance by Grantor or Grantee to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantor's or Grantee's rights hereunder.
4. Grantee shall indemnify, appear and defend, and hold harmless Grantor from all claims, lawsuits and liabilities of any kind, including attorney's fees and costs, arising from any negligent act or omission by Grantee in connection with its performance under this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the Grantor.

## **VII. BASELINE DATA.**

In order to establish the present condition of the Property so as to be able to properly monitor future uses of the Property and assure compliance with the terms of this Agreement, Grantor and Grantee shall, prior to the adoption of the park master plan, prepare or cause to be prepared by a mutually agreed upon qualified person(s) with



relevant scientific education, training, and experience, an inventory of the Property's relevant features and conditions, known as baseline data. The baseline data shall be used to establish the condition of the Property as of the date of this Easement and document off-site references made for comparison in Section V. The Park District will pay up to \$10,000 for gathering the baseline data.

#### **VIII. GRANTOR'S RESPONSIBILITIES.**

1. Grantor agrees to bear all costs of ownership, operation, improvements, administration, upkeep, management and maintenance of the Property and shall indemnify, appear and defend, and hold harmless the Grantee from all claims, lawsuits and liabilities of any kind, including attorney's fees and costs, arising from any act or omission of Grantor in connection with its ownership, management, maintenance, or administration of the Property, or in connection with public use of the Property, or for any negligent act or omission in connection with its performance of this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the Grantee.
2. Grantor shall pay all real property taxes and assessments levied on the Property.
3. Before construction of new facilities or upgrades of existing facilities that go beyond maintenance can occur, the Grantor shall adopt a master plan for the Property.
4. Facilities which are built and maintained on the Property shall be located, designed and constructed so as to avoid and where necessary minimize impact on critical areas and wildlife habitat.
5. Trail details such as decommissioning or upgrading existing trails, creating new trails, and maintaining trails will be determined in the master plan process.
6. Grantor shall take reasonable steps to direct and confine public access to defined and maintained trail surfaces and designated areas and to prevent damage to ground cover, understory vegetation and disturbance of wildlife from off-trail public use.
7. If dogs are allowed on the Property, Grantor shall require compliance with the City of Bellingham's animal leash laws and laws requiring immediate removal of animal waste on the Property.

**IX. ASSIGNMENT OF GRANTEE'S INTERESTS.**

The Grantee may assign its interests in this Easement to a "qualified" organization within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, and RCW 64.04.130 and RCW 84.34.250. Should the Grantee cease to exist, this Easement would be assigned to such an organization. Grantee shall give the Grantor 30-days advance written notice of its intent to assign its interests in this Easement to a "qualified" organization, including the name of the organization.

**X. TERM OF CONSERVATION EASEMENT.**

This Easement shall run with the Property in perpetuity and shall bind the Grantor and Grantee, their successors and assigns forever. However, the City may elect to terminate the Easement if: (1) following a notice of deficiency, the Park District remains delinquent on its payments on the Loan for two consecutive years as provided in the Interlocal Agreement; (2) the Park District incurs long-term debt ("long-term debt" shall mean debt not repaid in one year or less; it shall not mean the Loan defined in the Interlocal Agreement) through acquisition of an interest in or leasing of any real property, funding a capital project, or entering into an employment agreement, without advance City approval; or (3) the Park District has not formally dissolved in accordance with RCW 35.61.310 within one year of the date the City's files a petition for dissolution of the Park District. If any of the three conditions is met, upon receiving notice to terminate the Conservation Easement from the City, the Park District shall timely execute and record an appropriate deed reconveying the Conservation Easement to the City. If the Park District fails to take such action after notice from the City, the City may file a quiet title action in Whatcom County Superior Court to establish that the Conservation Easement is terminated under the terms of the Conservation Easement and Interlocal Agreement. The prevailing party in any such quiet title action shall be entitled to an award of reasonable attorneys' fees and costs.

**XI. PROPERTY INTEREST.**

Grantor and Grantee agree that this Easement gives rise to a property right immediately vested in the Grantee, which right has a fair market value that is equal to the proportionate value that the Easement bears to the value of the Property as a whole, upon the date of the execution of the Easement.

If all the purposes of this Easement become impossible to accomplish because of a change of circumstances, this Easement can be extinguished only by judicial proceedings, and on subsequent disposal of the Property, the Grantee is entitled to a portion of the proceeds equal to the proportionate value of the Conservation Easement. In the event of condemnation of the Property in whole or in part, Grantee shall be entitled to

compensation proportionate to the loss of conservation values caused by the condemnation.

## **XII. MISCELLANEOUS.**

1. The terms Grantor and Grantee, wherever used in this Easement, shall include the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns.
2. In the event that any of the provisions contained in this Easement are declared invalid or unenforceable in the future, all remaining provisions shall remain in effect.
3. Notice to Grantee shall be to the Clerk of Grantee, who until further notice shall be:

Vince Biciunas, Clerk  
P.O. Box 4283  
Bellingham, WA 98227

Copy to: Attorney for Park District  
1700 "D" Street  
Bellingham, WA 98225

Notice to Grantor shall be to the Director of Parks for Grantor, who until further notice shall be:

Bellingham Parks Director  
3424 Meridian St.  
Bellingham, WA 98225

Copy to: City Attorney  
210 Lottie St.  
Bellingham, WA 98225

4. This Easement, along with the Interlocal Agreement entered into between the parties of same date herewith, sets forth the entire agreement of the parties and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property. No alteration or variation of this instrument shall be valid or binding unless it is in writing and properly executed and acknowledged by both parties. The interpretation and the performance of this Easement shall be governed by the laws of the State of Washington.

5. This Easement shall be liberally construed in favor of the grant to effectuate the objectives and purposes of this Easement particularly as set forth in Section II and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the objectives and purposes of this Easement that would render the provision valid should be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Conservation Easement this \_\_\_\_ day of \_\_\_\_\_, 2013.

**GRANTOR: THE CITY**

**GRANTEE: THE DISTRICT**

CITY OF BELLINGHAM

PARK DISTRICT

\_\_\_\_\_  
Kelli Linville, Mayor

\_\_\_\_\_  
John Hymas, President

Department Approval:

Approved as to Form:

\_\_\_\_\_  
Department of Parks and Recreation

Approved As To Form:

\_\_\_\_\_  
Robert Carmichael  
Attorney for Park District

\_\_\_\_\_  
Office of City Attorney

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Finance Director



STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF WHATCOM        )

I certify that I know or have satisfactory evidence that \_\_\_\_\_  
signed this instrument and acknowledged it as the \_\_\_\_\_ of  
CHUCKANUT COMMUNITY FOREST PARK DISTRICT to be the free and voluntary  
act of such party for the uses and purposes mentioned in the instrument.

DATE: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF BELLINGHAM AND THE CHUCKANUT  
COMMUNITY FOREST PARK DISTRICT FOR REPAYMENT  
OF THE GREENWAYS ENDOWMENT FUND LOAN USED TO  
PURCHASE THE CHUCKANUT COMMUNITY FOREST**

**THIS INTERLOCAL AGREEMENT** (the "Agreement") between the City of Bellingham ("City"), a municipal corporation, and the Chuckanut Community Forest Park District ("Park District"), a metropolitan park district, is entered into pursuant to the Interlocal Cooperation Act, RCW 39.34.

**WHEREAS**, in August 2011, the City purchased the 82-acre Chuckanut Community Forest, also known as Chuckanut Ridge, Fairhaven Highlands, and the Hundred Acre Wood ("Property"); and

**WHEREAS**, the City purchased the Property from Washington Federal for \$8.2 million using greenways funds, park impact fees, and a Greenways Endowment Fund Loan ("Loan") of \$3,232,021.60; and

**WHEREAS**, interest generated by the Greenways Endowment Fund is used to pay for park maintenance; and

**WHEREAS**, when City Council approved the financing plan to purchase the Property, members agreed to explore a variety of options for paying back the Loan from the Greenways Endowment Fund; and

**WHEREAS**, on February 12, 2013, voters in a southern portion of the City approved a ballot measure to create the Chuckanut Community Forest Park District ("Park District") that will tax property owners within the Park District to repay the Loan from the Greenways Endowment Fund; and

**WHEREAS**, an election of Commissioners for the new Park District took place simultaneously with the ballot measure to create the Park District; and

**WHEREAS**, the mission of the Park District is to ensure the entirety of the Property is protected in perpetuity in public ownership, with respect for its ecological, recreational and educational functions, and to serve as a fiscal mechanism through which the District, via a tax levy, will repay the City's Greenways Endowment Fund Loan; and

**WHEREAS**, on July 15, 2013, the Bellingham City Council voted to docket a legislative rezone of the Property from Residential Multi, Planned to Public, Open Space as part of its 2014 Comprehensive Plan amendment docket; and

**WHEREAS**, in addition to the 82-acre Chuckanut Community Forest Property, this proposed legislative rezone also includes an additional 29 acres ("Additional Acreage") owned by the City adjacent to the Property for a total rezone area of 111 acres; and

**WHEREAS**, the City and the Park District desire to enter into this Agreement to define the terms and conditions under which the Park District will repay the City's Greenways Endowment Fund Loan in exchange for a conservation easement; and

**WHEREAS**, both the City Council and the Park District Commission have reviewed and approved this Agreement;

**NOW THEREFORE**, the City and the Park District agree as follows:

1. **Loan Repayment** – The Park District shall begin making payments to the City to pay off the Loan of \$3,232,021.60, accrued interest on the Loan through June 30, 2014 of \$100,334.56, and future interest on the Loan after June 30, 2014 as set forth in Section 1.b herein.

**a. Loan Payments.** The Park District shall make payment(s) to the City from receipt of tax revenues pursuant to an annual District levy, beginning not later than July 1, 2014. The Park District shall make its best effort to levy an amount equal to \$.28 per \$1,000 of assessed value so long as such rate is necessary to repay the Loan within ten (10) years or more from the date of this Agreement; provided further that said levy may be lower if sufficient to repay the Loan within one (1) year. Payment from the Park District to the City in Year 1 (July 1, 2014-June 30, 2015) shall be in an amount equivalent to fifty percent (50%) or more of the total amount of revenue collected from the Park District's tax levy during Year 1. Payment from the Park District to the City in Year 2 (July 1, 2015-June 30, 2016) shall be in an amount equivalent to eighty percent (80%) or more of the total amount of revenue collected from Park District's tax levy during Year 2. Thereafter, payment from the Park District to the City shall be in an amount equivalent to ninety percent (90%) or more of the total amount of revenue collected from the Park District's tax levy for each successive July 1- June 30 time period, until the debt hereunder is extinguished. The parties intend that if reasonably feasible, with the cooperation of the County Treasurer, said Loan payments shall be made directly from the Park District's account maintained by the County Treasurer to the City. The Park District shall execute reasonably necessary authorization required by the County Treasurer to allow for such direct payment to the City. The Park District will make its best effort to repay the Loan as soon as possible. There shall be no penalty for prepayment of the Loan and the Park District has the right to make payments at any time before they are due. The City shall apply all above-referenced proceeds received from the Park District to the Loan and interest thereon. The City shall calculate the Loan repayment schedule each year to reflect the principal and interest received from the Park District for the prior 12 months and shall provide same to the Park District. The City shall provide said repayment schedule to the Park District more frequently if required by law or recommended by the State Auditor's Office.



**b. Future Interest.** Future interest on the Loan shall begin to accrue on July 1, 2014 at an annual interest rate of 1%. Each year thereafter the annual interest rate on the Loan shall be reset on July 1 during the term of this Agreement at the current interfund loan rate established by the City at that time (currently approximately 1%); except that, said annual interest rate shall be capped at the following maximum rate during the term of this Agreement:

- i. Year 1 (2014-15) 1%
- ii. Year 2 (2015-16) 2%
- iii. Any year thereafter 3.0%

**c. Payment Destination.** Payments shall be received by the City's Finance Department located at 210 Lottie Street, Bellingham, WA 98225.

**2. Property Rezone** - The City shall consider a rezone of the Property and the Additional Acreage from Residential Multi, Planned to Public, Open Space as part of its 2014 Comprehensive Plan amendment docket. Nothing in this Agreement is intended to circumscribe or limit the legislative discretion of the City Council or interfere with the City's obligation to engage in the requisite public process in considering this rezone.

**3. Conservation Easement.**

**a. Conservation Easement Grant and Park District Dissolution.** The City shall grant the Park District a Conservation Easement on the Property in the form as shown in Exhibit A ("Conservation Easement") upon execution of this Interlocal Agreement. The City's grant of the Conservation Easement to the Park District is in consideration for: (1) the Park District paying off the Loan, accrued interest on the Loan and future interest; and (2) the Park District formally dissolving in accordance with RCW 35.61.310 after the Loan, accrued interest and future interest are paid off by the Park District (date of completion of Loan and interest repayment hereafter referred to as "Payoff Date"). The City shall file a petition for dissolution of the Park District pursuant to RCW 35.61.310 after the Payoff Date, subject to Section 4 herein. In no event shall the City file a petition for dissolution of the Park District before the Payoff Date or before completion of a park master plan as described in Section 4. When the City files a petition for dissolution of the Park District after the Payoff Date pursuant to RCW 35.61.310 (date the City files a petition for dissolution of the Park District after the Payoff Date hereafter referred to as "Petition Date") and the Park District dissolves pursuant to said petition, the City shall be entitled to assume all assets and liabilities of the District pursuant to RCW 35.61.310(1).

**b. Potential Conservation Easement Termination.** Subject to all terms of this Agreement, the City may elect to terminate the Conservation Easement following written notice if: (1) the Park District breaches the Interlocal Agreement by a failure to make its minimum payments as set forth in Section 1.a. herein and remains delinquent thereon for two consecutive years following a notice of deficiency in payment sent from the City to the Park District; (2) the Park District incurs long-term debt ("long-term debt" shall mean debt not repaid in one year or less; it shall not mean the Loan) through acquisition of an

interest in or leasing of any real property, funding a capital project, or entering into an employment agreement, without advance City approval; or (3) the Park District has not formally dissolved in accordance with RCW 35.61.310 within one year of the Petition Date. If any of the three conditions is met, upon receiving notice to terminate the Conservation Easement from the City, the Park District shall timely execute and record an appropriate deed reconveying the Conservation Easement to the City. If the Park District fails to take such action after notice from the City, the City may file an action in Whatcom County Superior Court to obtain a court order terminating the Conservation Easement, or in the alternative, requiring the Park District to dissolve in accordance with RCW 35.61.310. The provisions of this section shall be enforceable by the City by the remedy of specific performance. The prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and costs. If the City terminates the Conservation Easement in accordance with this paragraph, the Park District shall waive all interest in the payments made by the Park District on the Loan and accrued interest and shall not be entitled to a refund of such payments.

**c. Conservation Easement Assignment.** The Park District shall assign all its interest in the Conservation Easement to a "qualified" organization within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, and RCW 64.04.130 and RCW 84.34.250. The Park District shall meet with the City at least 30 days prior to executing and recording the assignment to inform the City of its intention to assign the Conservation Easement to a qualified third party.

**4. Control and Ownership of the Property** - The City shall retain control and ownership of the Property, subject to the Conservation Easement. Should the City rezone the Property and the Additional Acreage as described in Section 2, the City agrees to initiate the requisite public process for establishment of a park on the Property and complete a park master plan on the Property consistent with the intent of the Conservation Easement within ten years from the date of this Agreement. Before construction of new facilities or upgrades of existing facilities that go beyond maintenance can occur, the Grantor shall adopt a master plan for the Property. The City shall not file a petition for dissolution of the Park District pursuant to RCW 35.61.310 before said park master plan is completed. Any development of the Property as a park shall be in accordance City policy and procedures and a master plan adopted by City Council following a public process and recommendation of the Parks and Recreation Advisory Board. The Park District may participate in any master planning process that the City conducts for a future park on the Property.

**5. Indemnification**. The City shall indemnify, appear and defend, and hold harmless the Park District from all claims, lawsuits and liabilities of any kind, including attorney's fees and costs, arising from any act or omission of the City in connection with its ownership, management, maintenance, or administration of the Property, or in connection with public use of the Property, or for any negligent act or omission in connection with its performance under this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the Park District.

The Park District shall indemnify, appear and defend, and hold harmless the City from all claims, lawsuits and liabilities of any kind, including attorney's fees and costs, arising from any negligent act or omission of the Park District in connection with its performance under this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the City.

6. **Administrator.** This Agreement shall be administrated jointly by the City Parks Director and a Commissioner of the Park District Board appointed by the Board for such purpose.
7. **Modifications to this Agreement.** This Agreement shall not be modified or amended except in writing signed by the City and the Park District.
8. **Term of Agreement.** The term of this Agreement shall commence on the effective date listed below and expire one year after the dissolution of the Park District.
9. **Applicable Law.** This Agreement shall be governed by and be interpreted in accordance with the laws of the State of Washington.
10. **Severability.** If any provision of this Agreement is determined to be unenforceable or invalid by a court of law, then this Agreement shall thereafter be modified to implement the intent of the City and Park District to the maximum extent allowable under law. If this Agreement for any reason is determined to be invalid, the City shall refund the payments made by the Park District on the Loan and accrued interest, and the City and Park District shall terminate the Conservation Easement.
11. **Further Good Faith Cooperation.** The City and the Park District shall cooperate with the other in good faith to achieve the objectives of this Agreement. The parties shall not unreasonably withhold, condition or delay requests for information, approvals or consents provided for, or implicit, in this Agreement.
12. **Force Majeure.** Neither Party shall be liable for any failure to perform any part of this Agreement due to circumstances beyond a Party's reasonable control, including, but not limited to, acts of God, flood, fire, quarantine, war, sabotage, act of a public foreign or domestic enemy, earthquake, volcanic eruption, civil disturbance, and restraint by court order or other governmental authority. The obligations of a Party claiming force majeure condition(s) under this Agreement shall be suspended to such a degree and for such a period as is reasonable under the circumstances; provided that the Party asserting force majeure condition(s) works in good faith to remedy the condition(s) with all reasonable dispatch, to the extent within its control.
13. **No Presumption Against Drafter.** This Agreement has been reviewed and revised by legal counsel for both the City and the Park District and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

14. **Notices.** All communications, notices, and demands of any kind which either the City or the Park District under this Agreement is required, or desires to give the other party, shall be in writing and be either (1) delivered personally, (2) sent by facsimile transmission with an additional copy mailed first class, or (3) deposited in the U.S. mail, postage prepaid, and addressed as follows:

City: City of Bellingham  
Mayor of Bellingham  
210 Lottie Street  
Bellingham, WA 98225

Park District: Chuckanut Community Forest District  
Clerk of Chuckanut Community Forest District  
P.O. Box 4283  
Bellingham, WA 98227

Notice by hand delivery or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed received 48 hours after deposit. Any party at any time by notice to the other party may designate a different address or person to which such notice shall be given.

15. **Waiver.** No failure by either the City or the Park District to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Either the City or the Park District, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

16. **Dispute Resolution.** In the event of any dispute as to the interpretation or application of the terms or conditions of this Agreement, the City and the Park District, through their respective representatives, shall meet within ten (10) days after the receipt of a written request from the other party to make a good faith attempt to resolve the dispute. Such a meeting may be continued by mutual agreement to a date certain to include other persons or parties, or to obtain additional information. Representatives for either the City or the Park District may declare an impasse. Thereafter, the following procedure shall be utilized:

a. **Elevation to City Mayor and Park District Commission Chairperson.** The Mayor and the Park District Commission Chairperson shall meet and resolve the dispute. If either the Mayor or the Park District Commission Chairperson declares an impasse then:

**b. Mediation.** In the event of a Mayor/Park District Commission Chairperson impasse, and prior to commencing any litigation, except for a request for a temporary restraining order and preliminary injunction, the City and the Park District shall first attempt to mediate the dispute. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall request from the Seattle office of JAMS a list of mediators experienced in matters pertaining to this Agreement. Each party may strike one name from the list until one name remains. A flip of a coin shall determine which party strikes the first name. Any expenses of the mediator shall be borne equally by the parties. However, each side shall bear its own costs and attorney fees arising from participation in the mediation.

**c. Waiver of Jury Trial and Jurisdiction.** Both the City and the Park District waive any right to a trial by jury in any action or proceeding to enforce or defend any rights under or relating to this Agreement or any amendment, instrument or other document delivered in connection with this Agreement.

**d. No Third Party Beneficiaries.** There are no third party beneficiaries of this Agreement.

**e. Award of Reasonable Attorneys' Fees and Costs.** If either the City or Park District files a lawsuit to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

**17. Entire Agreement.** This Agreement, including the recitals, definitions, and exhibits, represents the entire agreement of the City and the Park District with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. This Agreement supersedes all previous understandings or agreements between the City and the Park District concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have signed this agreement, effective the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF BELLINGHAM

CHUCKANUT COMMUNITY FOREST  
PARK DISTRICT

By: \_\_\_\_\_  
Kelli Linville, Mayor

By: \_\_\_\_\_  
Commission Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Approved as to form:

By: \_\_\_\_\_  
Office of the City Attorney

By: \_\_\_\_\_  
Robert A. Carmichael  
Attorney for Chuckanut Community  
Forest Park District

Attest:

By: \_\_\_\_\_  
City Finance Director





## BELLINGHAM CITY COUNCIL

210 Lottie Street, Bellingham, Washington 98225  
Telephone (360) 778-8200 Fax (360)778-8101  
Email: [cemail@cob.org](mailto:cemail@cob.org) Website: [www.cob.org](http://www.cob.org)

### NOTICE OF PUBLIC HEARING

Notice is hereby given that the **BELLINGHAM CITY COUNCIL** and the **CHUCKANUT COMMUNITY FOREST PARK DISTRICT BOARD OF COMMISSIONERS** will hold a joint public hearing on **MONDAY, DECEMBER 16, 2013, 7:00 PM**, or as soon thereafter as possible, in the **CITY COUNCIL CHAMBERS, CITY HALL, 210 Lottie Street, Bellingham, Washington**, to take public comment on the following:

**THE PROPOSED SALE BY THE CITY OF BELLINGHAM OF A CONSERVATION EASEMENT FOR THE CHUCKANUT COMMUNITY FOREST (aka Chuckanut Ridge, Fairhaven Highlands, and Hundred Acre Wood) TO THE CHUCKANUT COMMUNITY FOREST PARK DISTRICT**

The Conservation Easement and related Interlocal Agreement, SEPA Determination of Nonsignificance, and SEPA Checklist are available for review at <http://www.cob.org/cob/Pubnot.nsf/Public%20Notices?OpenForm>.

**Staff Contact:** Alan Marriner, (360) 778-8279 or [amarriner@cob.org](mailto:amarriner@cob.org)

Anyone wishing to comment on this topic is invited to attend; or if unable to attend, to send your comments, in writing to the Council Office, 210 Lottie Street, or email to [cemail@cob.org](mailto:cemail@cob.org), or fax to 778-8101, to be received prior to 10:00 a.m., Wednesday, December 11, to be included in the agenda packet. Comment received after that time will be distributed to Council but not included in the published meeting materials.

FOR OUR CITIZENS WITH SPECIAL NEEDS, the Council Chambers is fully accessible. Elevator access to the second floor is available at City Hall's west entrance. Hearing assistance is available and a receiver may be checked out through the clerk prior to the evening session. For additional accommodations, persons are asked to contact the Legislative Assistant at 778-8200 in advance of the meeting. Thank you.

Publication date: Friday, December 6, 2013

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