

SR026-19

**INTERLOCAL AGREEMENT
BETWEEN CLARK COUNTY AND THE CITY OF VANCOUVER
CONCERNING THE FENTON ACQUISITION**

I PURPOSE

This agreement sets forth the terms and conditions by which Clark County, Washington, hereafter referred to as County, shall provide funds from its Conservation Futures Fund, pursuant to RCW 84.34.210 and Chapter 3.24 of the Clark County Code, to the City of Vancouver, hereinafter identified as City, for the purpose of acquiring fee simple or lesser interest in open space, farm land, or timber land, as such are defined in RCW 84.34.020.

II AUTHORITY

This interlocal agreement by and between Clark County, Washington, and the City of Vancouver is authorized by Chapter 39.34 of the Revised Code of Washington.

III PROJECT DESCRIPTION

The City's application to County is part of this agreement. The application is the City's notification of its intent to implement and manage this project in conformance with local and state goals and objectives. The project to be assisted is summarized from the City's application as follows:

- A. Acquire approximately 44.78 acres of land to protect, scenic, recreation and environmental values adjacent to a fish-bearing tributary of Lacamas Creek.
- B. Acquisition facilitates establishment of a community park in the northwest portion of the City.

IV FUNDING OF PROJECT

City has negotiated a purchase and sale agreement to acquire the property. The appraised value of the property is \$5,725,000, with a negotiated purchase price of \$5,165,895. City requests that County pay \$250,000, toward the project cost. City further requests the opportunity to apply for additional funding for this project in the future if additional resources become available.

County agrees to pay \$250,000 of the project cost, and further agrees that the City may apply for additional conservation futures funding as resources are available.

The cost of the appraisal, other due diligence studies and related administrative costs incurred by City may be reimbursed by County as components of the \$250,000. Unless specifically authorized via a written amendment to this agreement, however, County funding contributions to this acquisition project including land costs and said incidental costs shall not exceed this limit.

VIII CONTINGENCIES

The duty of County to pay out funds under this agreement depends on:

- A. City submitting official documentation to County delineating expenditures made on the acquisition for which reimbursement from County is requested.
- B. City submitting copies of due diligence documents to County including: Title insurance policy, property boundary survey, level one environmental assessment, archaeological study, and wetlands study.
- C. Strict compliance by City with the terms of this agreement, and;
- D. Available revenue in County's Conservation Futures Fund.

IX ACQUISITION PERIOD

City shall have one year from notification of funding approval by the Clark County Councilor to complete the project. The term of this project shall run from February 12, 2019 to February 11, 2020

The Clark County Councilor may extend the acquisition period at its discretion. To secure an extension, City shall send written notice to the Conservation Futures Program Manager, acting as program staff for the County Council, at least thirty days prior to the end of the acquisition period. The notice shall state the need for an extension and explain the reasons for the request. The program manager shall notify City of the Council's decision within thirty days of receipt of the request, or as soon thereafter as is practicable.

Any project that has not been completed within the acquisition period, and for which no extension has been granted, shall be considered withdrawn and allocated funds shall become available for other projects.

City agrees to notify the Conservation Futures Program Manager of any circumstances or events during the acquisition period (such as an owner indicating he is no longer a willing seller) which will cause the termination of efforts to acquire the subject property.

City, on forms provided, will advise Clark County at least once every six months of their acquisition progress.

X DURATION OF INTERLOCAL AGREEMENT

This agreement shall remain in effect in perpetuity, except as otherwise provided for in the "Acquisition Period" section of this agreement.

XI RELATIONSHIP OF PARTIES

The Clark County Council imposed the Conservation Futures levy to provide a reliable and predictable funding source to help acquire interest in open space, farm land, timber land, and certain classifications of park property. This project, however, is sponsored by the City of Vancouver and not Clark County. The purpose of this agreement is to provide City monetary assistance, which will enable it to complete the project described herein. In return for monetary assistance, County requires that a Deed of Right to the County, as shown in Appendix B, be recorded by City at closing of the acquisition to ensure that the acquired land is managed consistent with the purposes articulated in this agreement. County will not acquire any ownership interest in the subject property by virtue of this agreement or the Deed of Right, nor will County assume any responsibility for improving or managing the property.

City shall be responsible for the management of this project within the terms and conditions of this agreement. Furthermore, Clark County shall not become party to any contract between the City and others by reason of having entered into this agreement.

XII OTHER ORGANIZATIONS

No separate legal or administrative entity shall be created by this agreement.

XIII PERFORMANCE

City agrees to manage the subject property in a manner consistent with the legislative declarations and objectives set forth in RCW 84.34.010-020 and RCW 84.34.200-250 and in Chapter 3.24 of the Clark County Code. Moreover, City recognizes that the County Council is the only legislative authority empowered to impose the Conservation Futures levy and that the County Council, having done so, has the responsibility to assure proper use and administration of the Conservation Futures Fund and has a corresponding interest in the management of all properties acquired with the fund. Therefore City shall operate and maintain the subject property as follows:

- A. The property and any improvements to the property shall be kept safe and clean.

- B. City shall make reasonable effort to control nonconforming uses, such as hunting in wildlife preserves and sanctuaries.
- C. Sanitation and sanitary facilities shall be maintained in accordance with applicable state and local public health standards.
- D. City shall submit to the Conservation Futures Program Manager any plans for improving the subject property to assure statutory compliance and consistency with the Conservation Futures Project Application attached as Appendix A. This does not apply to routine maintenance. Improvements that may be allowed under terms of the statute, the plans for which, in any event, should be submitted to the program manager, include but are not limited to, picnic tables, viewpoints, rest areas, docks, benches, boat launches, restrooms, and parking lots. Work shall not commence without written approval from the Conservation Futures Program Manager. Though County shall be given the opportunity to review plans for improvements, this should not be construed to mean that County shall participate in the funding of improvements.
- E. City shall submit to the Conservation Futures Program Manager any proposals for lease-back agreements, as provided in RCW 84.34.210 easements, rights-of-way, or other conditions or restrictions which limit the use of, or alter the character of, the subject property. Any such proposal shall be reviewed for statutory compliance and consistency with proposed plans and uses as stated in City's project application at the time of funding approval. City shall not conclude any such agreement without written consent of the Conservation Futures Program Manager.
- F. The property shall be kept open for public use at reasonable hours and times of year. County recognizes, however, that appropriate hours may vary considerably depending on the type of interest that has been acquired, and the existence of leaseback or other agreements that might properly limit public access.
- G. The property shall be open for the use of all segments of the public without restriction because of the race, creed, color, sex, sexual orientation, disability, religion, national origin or residence of the user.
- H. Roads, trails, tables, benches, and other improvements shall be kept in reasonable repair throughout their estimated lifetime, as to prevent undue deterioration that would discourage public use.
- I. City should operate and maintain the facility in accordance with all applicable federal, state, and local laws and regulations.

XIV USER FEES AND CHARGES

User or other types of fees may be charged in connection with areas that are the subject matter of this contract, provided that the fees and charges are commensurate with the value of recreation services or opportunities furnished and are within the prevailing range of public fees and charges within the state for the particular activity involved.

XV CONVERSION

City for and in consideration of monies coming in whole or in part from Clark County's Conservation Futures Fund, shall record a Deed of Right to County upon closing, and dedicate the property to be acquired under terms of this agreement in perpetuity for the public's use and enjoyment and to promote the purposes of Conservation Futures. The legal description for the Deed of Right shall exclude right of way needed for future road frontage improvements.

The City will not make or permit to be made any use of the real property described in this agreement, or any part of it, which is inconsistent with those chapters of the Clark County Code and Revised Code of Washington that govern the use of Conservation Futures funds, or any use which is inconsistent with the purposes and improvements as described in City's project application at the time of funding approval, unless the Clark County Council consents to the inconsistent use. County shall approve any such conversion only upon conditions where City can assure it will acquire substitute properties which are of equal or greater market value at the time of conversion, which, to the extent feasible, are equivalent in usefulness and location, and which also meet the goals and objectives of the Conservation Futures Program.

XVI REMEDIES

In the event the City fails to comply with any or all of its obligations under this agreement, County stipulates that specific performance shall be the remedy preferred by County.

The remedy of specific performance shall not be the sole remedy and does not serve to exclude any and all other remedies available to County. County may choose to exercise any and all other remedies available, together with, or as an alternative to, specific performance, at the option of County.

XVII REPORTS AND INSPECTIONS

City shall prepare a final report upon completion of this project, or its early termination, and submit said report to the Conservation Futures Program Manager. The report shall include a final accounting of all expenditures and a description of the work

accomplished. If the project is terminated early, the report shall provide a full explanation of the reasons for not completing the project. City also agrees to provide interim status reports to the Conservation Futures Program Manager every six months during the acquisition period.

Property and improvements acquired under terms of this agreement shall be available for inspection by the Conservation Futures Program Manager, or his designee, upon request. As a matter of routine, Clark County shall conduct an on-site inspection approximately once a year to assure that the property is being operated, maintained, and used in accordance with this agreement.

XVIII ASSIGNMENT

This agreement shall not be assignable in whole or in part by the City except with the express written consent of the Clark County Council.

XIX HOLD HARMLESS

City agrees to defend and hold harmless Clark County, Washington, the Clark County Council and any employees thereof from any and all suits at law or equity or claims or demands, or any loss of any nature, including but not limited to costs and attorneys' fees, suffered, or alleged to be suffered, on the premises, or arising out of use, improvements, operation, or management of the subject property except for any suits at law or equity or claims or demands, or any loss of any nature, including but not limited to costs and attorneys' fees, suffered, or alleged to be suffered, on the premises, or arising out of use, improvements, operation, or management of the subject property arising out of the sole negligence of the County.

XX NOTICES

Any notices, requests, consents, approvals, and other communications shall be in writing and shall be deemed to have been sufficiently given for all purposes when delivered or mailed by first class postage or certified mail, postage prepaid, addressed as follows:

A. Notice to Clark County

TO: Conservation Futures Program Manager
Clark County Public Works Department
Parks and Lands Division
4700 NE 78th Street
Vancouver, Washington 98665

B. Notice to City of Vancouver
TO: Director
City of Vancouver
Parks & Recreation Department
415 W 6th Street, PO Box 1995, Vancouver, WA 986

XXI DOCUMENT EXECUTION AND FILING

The City and County agree that there shall be four (4) duplicate originals of this Agreement procured and distributed for signature by the necessary officials of the parties. Upon execution, one executed original of this Agreement shall be retained by the Vancouver City Clerk and one shall be retained by each of the other parties. The Vancouver City Clerk shall cause a copy of this Agreement to be posted on the City website pursuant to Chapter 32, Laws of Washington 2006 (RCW 39.34.040): Upon execution of the originals and posting of a copy on the City's website, each such duplicate original shall constitute an agreement binding upon all parties.

XXII WAIVER

No waiver by either party of any term or condition of this Agreement incorporated in this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.

XXIII AMENDMENT

The provisions of this Agreement may be amended with the mutual consent of the parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the authorized agents of both parties.

XXIV RATIFICATION

Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

XXV SEVERABILITY

If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

XXVI ENTIRE AGREEMENT

This Agreement contains all of the agreements of the parties with respect to the subject matter covered or mentioned therein, and no prior agreements shall be effective to the contrary.

The City of Vancouver and Clark County agree to the terms and conditions of this Inter-Local Agreement and its exhibits as listed above by signing below:

ADOPTED this 19th day of February, 2019.

ATTEST: 

Rebecca Messinger
Clerk to the Board

APPROVED AS TO FORM, ONLY
Anthony F. Golik
Prosecuting Attorney

By: 
Amanda Migchelbrink
Deputy Civil Prosecutor

COUNTY COUNCIL
FOR CLARK COUNTY, WASHINGTON
By: 
Eileen Quiring, Chair

By: _____
Temple Lentz, Councilor

By: _____
Julie Olson, Councilor

By: _____
John Blom, Councilor

By: _____
Gary Medvigy, Councilor

CITY OF VANCOUVER,
a municipal corporation


Eric Holmes, City Manager



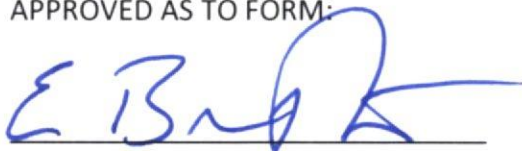
Attest:

A handwritten signature in blue ink, appearing to read "Carrie Lewellen", written over a horizontal line.

Natasha Ramras, City Clerk

By: Carrie Lewellen, Deputy City Clerk

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "E. Bronson Potter", written over a horizontal line.

E. Bronson Potter, City Attorney

**APPENDIX A TO INTERLOCAL AGREEMENT
BETWEEN CLARK COUNTY AND THE CITY OF VANCOUVER
CONSERVATION FUTURES APPLICATION – FENTON PROPERTY**



proud past, promising future

CLARK COUNTY
WASHINGTON

Conservation Futures Project Application / Summary FUNDING CYCLE [2019]

SUBMITTAL DATE: December 20, 2018

PROJECT NAME: Fenton Property Acquisition

SPONSOR INFORMATION

Organization Name: City of Vancouver Parks and Recreation

Agency Address: PO Box 1995, Vancouver, WA 98668

Agency Jurisdiction: City of Vancouver

Contact Name: Monica Tubberville

Contact Phone: 360-487-8353

Contact E-Mail Address: monica.tubberville@cityofvancouver.us

PROJECT LOCATION

Property Address: 16800 NE Fourth Plain, Vancouver, WA

Tax Identification Number(s): 159095000, 159163000

Major Street / Intersection Nearest Property Access Point: East of 162nd Avenue, North side of Fourth Plain Blvd., east of 166th Avenue.

Property Description (type of land use): Approximately 44.78 acres consisting of 22.5 acres of flat grass lands historically used for grazing and hay production, and 22.28 acres of wooded wetland including Oregon White Oaks.

Section: 12 NE Quarter Township: 2 N Range: 2 E

EXISTING CONDITIONS

Number of Parcels: 2 parcels

Addition: NA

Total Project Acres: 44.78 acres

Zoning Classification(s): Light Industrial (IL)

Existing Structures/Facilities (No. / Type): Single Family Residence with multiple out buildings.

Current use: Agriculture



- Watershed Name: Upper Lacamas
- Waterfront Access and type: Adjoining Lacamas Creek Tributary
- Body of Water: None directly on site
- Shoreline (lineal ft.): 0
- Historical / Cultural Features: Preliminary results of the archaeological and cultural assessments did not reveal significant findings.
- Owner Tidelands/Shore lands: NA
- Active Agriculture; Currently leased for agriculture
- Threatened / Endangered species present: Potential Oregon White Oaks
- Utilities on property (list all known): Sewer, Electrical, Communication Lines
- Potable water available on site: Well; Water Service; Is there a water right?

SITE DESCRIPTION (Discuss physical characteristics of proposed acquisition):

The site consists of approximately 44 acres, half of which is predominantly open grasslands and the eastern half a wooded wetland paralleling a bordering tributary of Lacamas Creek. There is a subtle, but visible bench delineating the upland area historically used for hay and grazing.

PROPOSED DEVELOPMENT IMPROVEMENTS: In the short term, the city proposes to remove the structures and evaluate the best alternative for interim use until funding is available for development as a community park. In the long term, following repaying the acquisition loan and our sites will be on development as a community park, including a strong component of environment interpretation and viewing platforms/boardwalks in the wetland area where appropriate.

PROPOSED USES ON SITE: Agricultural lease and community park development.

PROJECT PARTNERS:

- For purchase, list names: City of Vancouver
- For use of site, list names: City of Vancouver, and a potential partnership with ESD (adjoining school campus) and Clark County Parks.

TYPE OF INTEREST:

Warranty Deed: SWD Easement: NA

Other (please describe): Water Rights (well)

Project requires relocation of residents: Yes No

PROJECT COST:

Estimated Total Cost: \$5,341,724

Estimate Based on:

The appraised value of the total area was \$5,725,000. The seller donated the 22.28 acre wetland area, appraised at \$334,000. In addition, they reduced the purchase price by \$225,105 to reflect the estimated penalty from the Current Use Program that was waived as a result of selling to the City of Vancouver for park and open space purposes.

The remaining costs are based upon the negotiated purchase price and closing costs; contract due diligence proposals for wetlands, cultural/archaeological, appraisal/appraisal review, ESA, and survey; and estimates for Level 1 clean-up costs (demolition, septic and well decommissioning).

Will other agencies/groups contribute to project? Yes No Unknown

Name of Contributor: Due to competing private interests for site rezoning and development for single family residential, immediate site acquisition was time sensitive in order to secure one of the last remaining sites in this area that is suitable for a future park. This park district is the most underserved area of the city with over a 200 acre deficit.

The site will be purchased with existing City of Vancouver park impact fees available from Park Impact Fee District C/5 supplemented by a ten-year loan from the City of Vancouver General Fund. Closing is scheduled to occur between January 15, 2019 and February 15, 2019.

We hope to expedite repayment of the loan through grants and pursue additional partnerships for future community park development, wetland area enhancements and interpretation. Grants will be pursued through multiple grant programs administered by RCO and other organizations as they arise. A Waiver of Retroactivity was approved by RCO to enable the city to pursue an acquisition reimbursement grant within the next two grant cycles. Washington Fish and Wildlife has shown some preliminary interest because of the Oregon White Oaks and this partnership will be pursued further.

Amount of Contribution: \$3,495,724 will be paid through PIF. The remaining balance of \$1,846,273 will be funded through a ten year loan from City of Vancouver General Fund.

Total Estimated Request from Conservation Futures: \$1,000,000, or the maximum available from uncommitted funds.

Attach separate sheet with all anticipated:

- Revenues for project, including donations, in-kind services, grants, partnerships, and other contributions
- Expenses for project, including permits, fees, staff time,

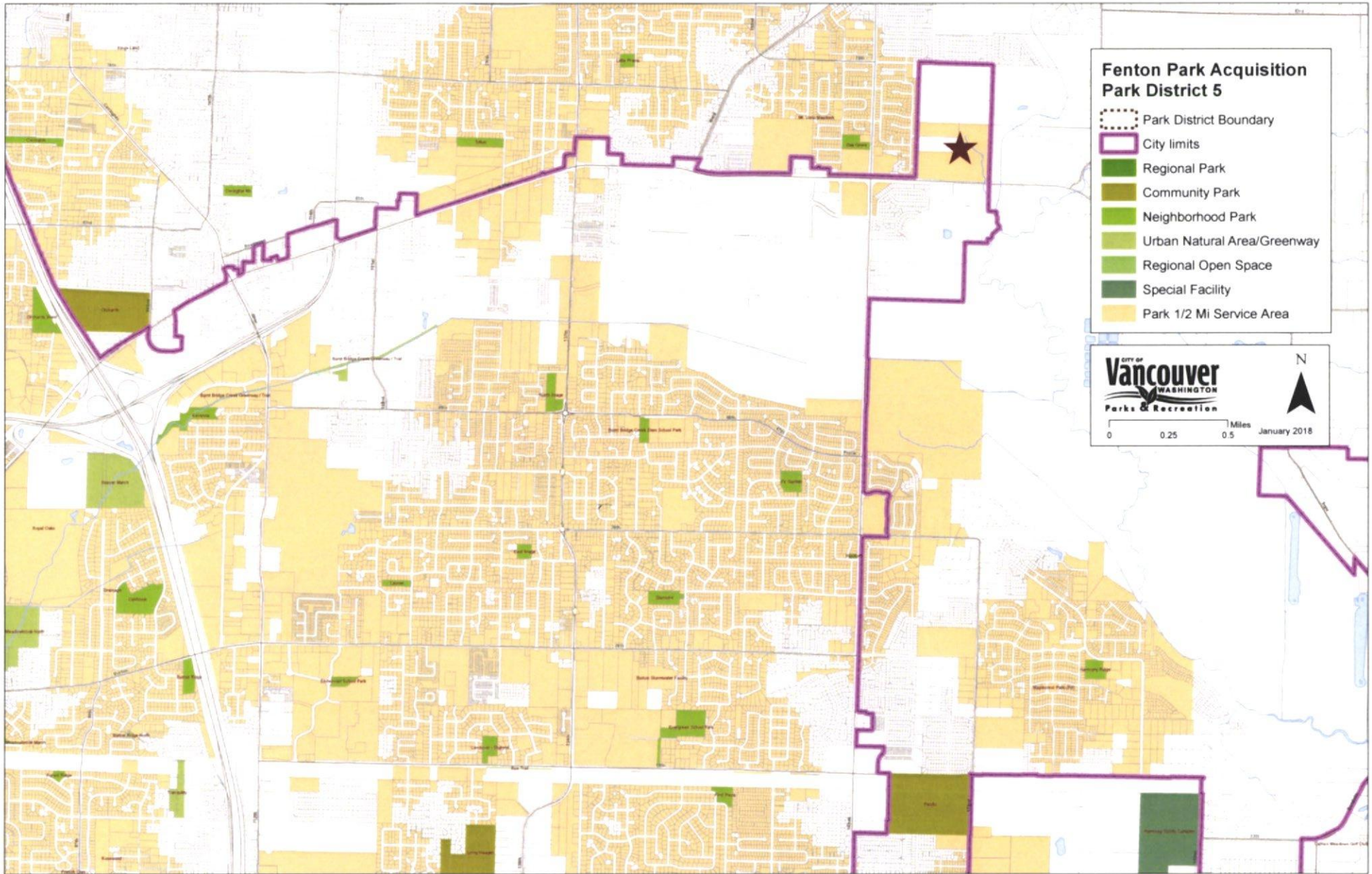


PROJECT MAINTENANCE PLAN (brief summary of maintenance approach):

The city anticipates continuation of the agricultural lease for the grassland area as an interim use, with occasional special events scheduled following harvesting (if compatible), e.g., movies in the park, etc. Grants and partnerships will be pursued for acquisition support as well as enhancements, interpretation, and restoration of the wetland area and ultimately community park development.

The site adjoins an elementary/middle school campus and ESD is interested in use and management partnerships to maximize opportunities for environmental education and joint use. Details of the agreement will be explored prior to site is development.





Fenton Park Acquisition Park District 5

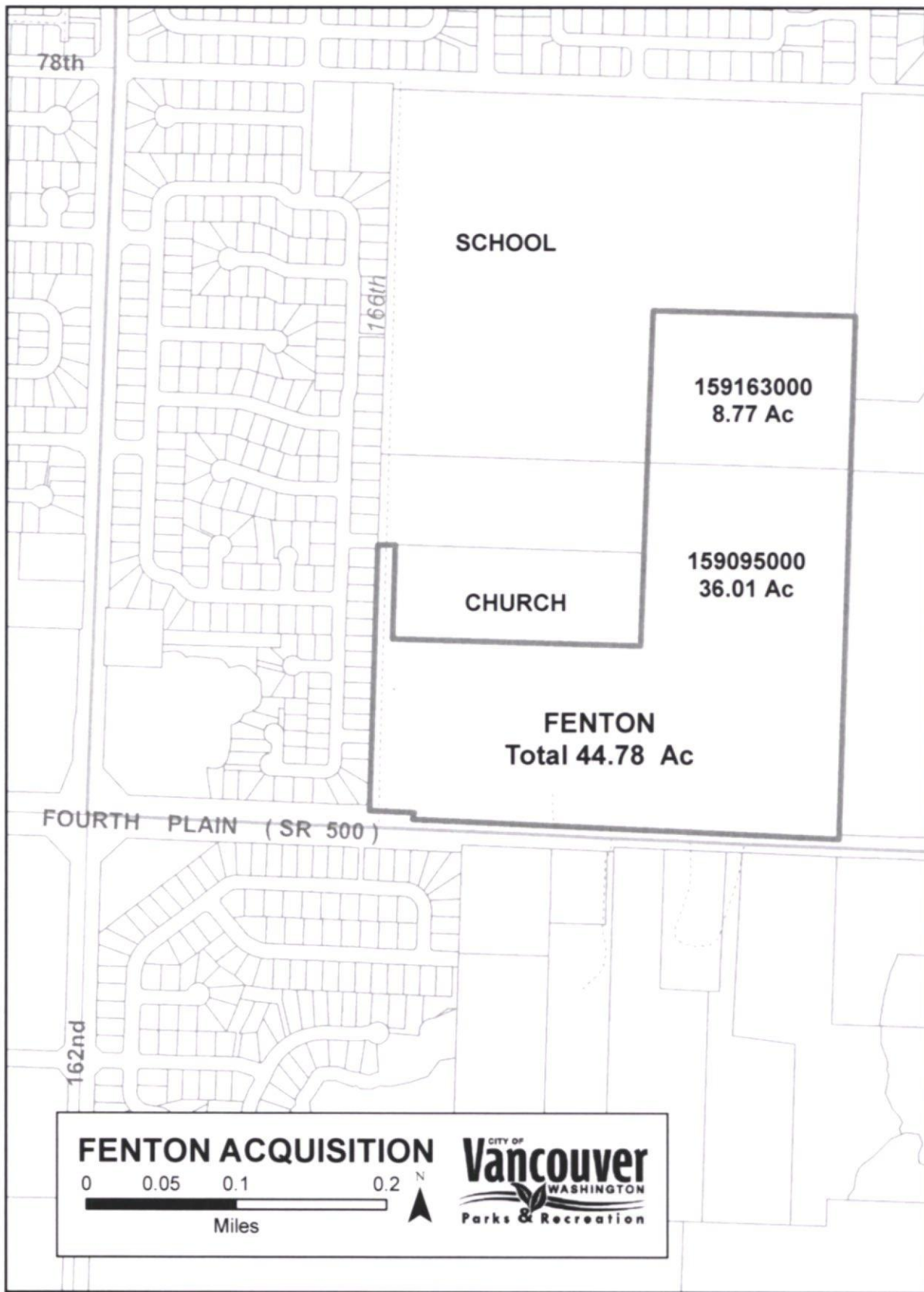
- ⋯ Park District Boundary
- ▭ City limits
- Regional Park
- Community Park
- Neighborhood Park
- Urban Natural Area/Greenway
- Regional Open Space
- Special Facility
- Park 1/2 Mi Service Area

CITY OF
Vancouver
WASHINGTON
Parks & Recreation

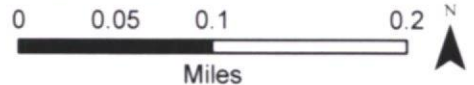
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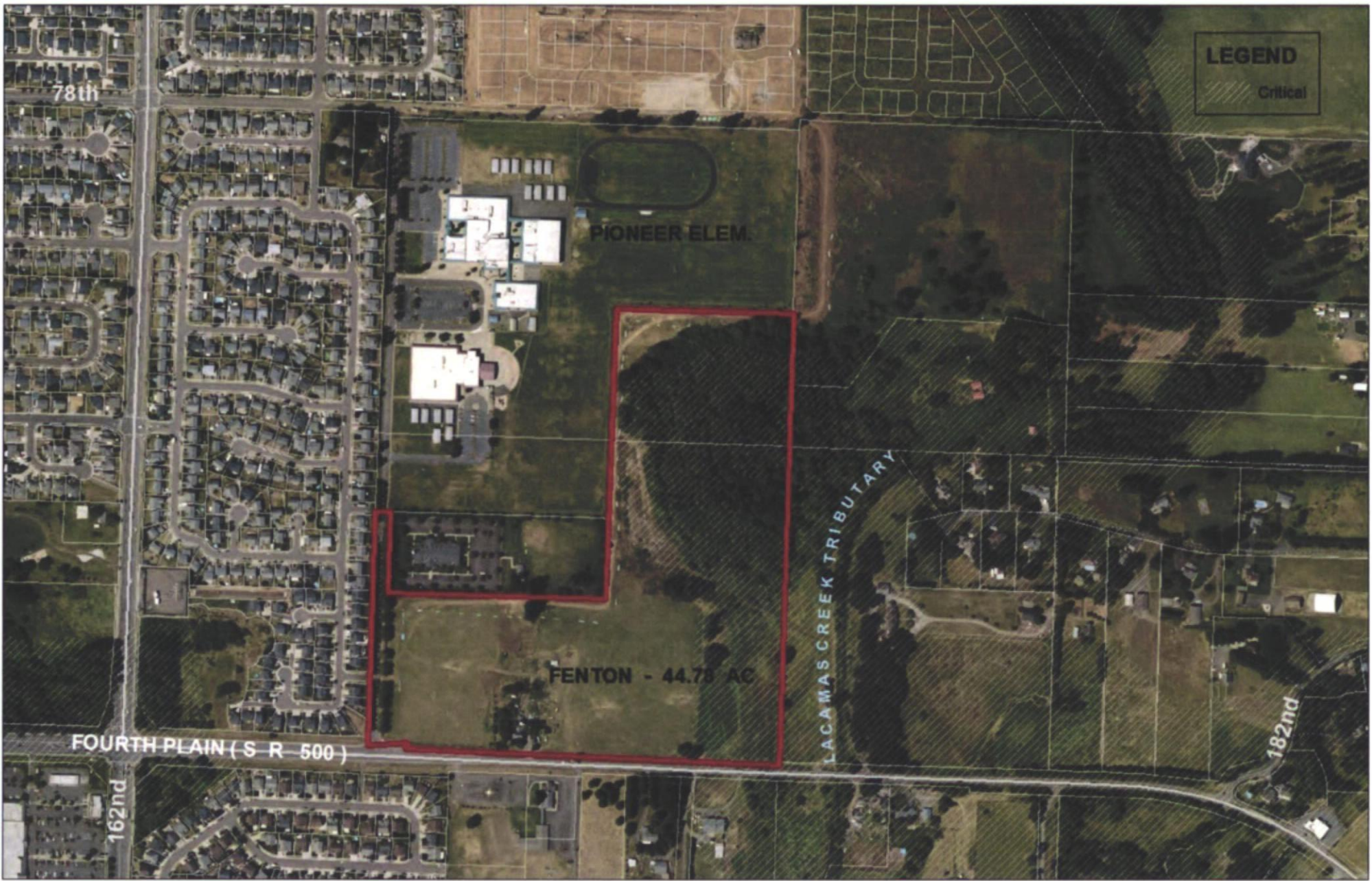
January 2018

N



FENTON ACQUISITION





78th

PIONEER ELEM.

LEGEND
Critical

FENTON - 44.75 AC

LACAMAS CREEK TRIBUTARY

FOURTH PLAIN (S R 500)

162nd

182nd

**APPENDIX B TO INTERLOCAL AGREEMENT
BETWEEN CLARK COUNTY AND THE CITY OF VANCOUVER
DEED OF RIGHT – FENTON PROPERTY**

When Recorded Return To:

City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995
Attention: _____

**City of Vancouver Deed of Right For Public Use of Land
Acquired Under the Clark County
Conservation Futures Program**

The City of Vancouver, for and in consideration of monies coming in whole or in part from the Conservation Futures Account, as established by Chapter 3.24 of the Clark County Code, and in fulfillment of terms contained in the Interlocal Agreement identified below, conveys and grants to Clark County, Washington, individually and as the representative of all the people of Clark County, the right to use the real property described as <<abbreviated legal description>> further described below forever for those purposes described in the Interlocal Agreement signed by the City of Vancouver on the ____ day of _____ and by Clark County on the ____ day of _____, _____, and which is entitled _____.

The City of Vancouver will not make or permit to be made any use of the real property described in its deed, or any part of it, which is inconsistent with those chapters of the Clark County Code and Revised Code of Washington that govern the use of Conservation Futures Funds, or any use which is inconsistent with the purposes and improvements as described in the City's project application at the time of funding approval, unless the Clark County Councilor consents to the inconsistent use. Clark County shall approve any such conversion only upon conditions where the City of Vancouver can assure it will acquire substitute properties which are of equal or greater market value at the time of conversion, which, to the extent feasible, are equivalent in usefulness and location, and which also meet the goals and objectives of the Conservation Futures Program.

The real property covered by this deed is described in Exhibit A attached hereto and is incorporated by this reference.

This deed shall in no way modify or extinguish the functions of the signatory parties under the terms and conditions set forth in the aforementioned Interlocal Agreement.

Dated this ____ day of _____, 2019.

