

9995

ORDINANCE NO. _____

AN ORDINANCE authorizing the King County executive to sign an agreement granting The City of Redmond a storm drainage easement and other property rights in Marymoor Park.

STATEMENT OF FACTS

1. King County owns certain land known as Marymoor Park which includes the property described in Exhibits A and B of the storm drainage easement agreement.
2. The City of Redmond previously installed a storm drainage system in Marymoor Park under a county permit.
3. Since the time of the installation, the city has started a storm water utility and has developed a comprehensive stormwater management plan which provides that the system shall remain in its current location.
4. The city has requested that it be granted the rights to permanently operate, access, maintain, and repair the system at its current location in consideration of thirty-nine thousand, eight hundred and eight dollars (\$39,808.00).
5. The King County council may authorize the executive to sell easement interests in county property, including park property, in accordance with the provisions of RCW 36.68.010 and KCC 4.56.
6. It has been recommended by the natural resources and parks division and the real property division that The City of Redmond be granted a permanent easement over the property described in Exhibit A of the agreement and the right to periodically flood the property described in Exhibit B of the agreement,
7. The King County council finds that the rights proposed for conveyance to the city are surplus to the county's foreseeable needs including its foreseeable park needs.
8. The King County council finds it is in the best interests of King County that these property rights be conveyed to The City of Redmond.
9. The county and city are concerned with the protection of the park and surrounding properties.
10. The most expeditious method for conveying these rights and protecting the property is through the execution of the attached easement agreement.
11. The surface water management division and the planning and community development division have approved the system design and technical provisions of the agreement.

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BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The King County council, having determined that the easement rights over the lands described in Exhibit A of the attached agreement and the right to flood the lands described in Exhibit B of the agreement are surplus to the needs of King County, does hereby authorize the King County executive to execute the attached easement agreement granting these rights to The City of Redmond.

INTRODUCED AND READ for the first time this 29th day of April, 1991.

PASSED this 17th day of June, 1991.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Lois North
Chairman

ATTEST:

Gerald A. Peterson
Clerk of the Council

APPROVED this 28th day of June, 1991.

Jim Hill
King County Executive

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EASEMENT AGREEMENT

This EASEMENT AGREEMENT is entered into by and between the City of Redmond, a municipal corporation of the State of Washington, (hereafter "the City") and King County, a political subdivision of the State of Washington, (hereafter "the County"), for and in consideration of the terms and conditions set forth herein.

WHEREAS, the City previously installed a storm drainage system (hereafter "the system") in the County's Marymoor Park (hereafter "the park") under Utility Use Permit No. FS-6-85 issued on March 18, 1986; and

WHEREAS, since the time of the installation the City has started a storm water utility and has developed a comprehensive stormwater management plan for the area; and

WHEREAS, the City's plan provides that the system shall remain in its current location; and

WHEREAS, the City has requested that it be allowed to permanently operate and maintain the system at its current location; and

WHEREAS, the County is willing to grant the City's request subject to the conditions contained herein; and

WHEREAS, the County's and City's first concern is the protection of the park and surrounding properties;

NOW, THEREFORE, the City and County mutually agree as follows:

1. The County hereby grants to the City, its successors and assigns a permanent, non-exclusive storm drainage system easement and right-of-way over, under, across and upon the real property described in attached Exhibit A and incorporated herein by this reference;

Together with the right to periodically flood the real property described in attached Exhibit B, and incorporated herein by this reference, in conjunction with the operation of the storm drainage system.

2. The City shall have the right to access, operate, maintain, repair and remove its system within the Easement Area solely for drainage purposes.

3. In consideration of the granting of the easement and other valuable consideration, the City agrees to pay the County thirty-nine thousand, eight hundred and eight dollars (\$39,808.00) upon execution of this Agreement.

4. The City agrees to the perpetual maintenance and repair of the system. Specifically, the City agrees to clean out the sedimentation basin and remove the sediment whenever at least 30% of the basin's storage capacity is filled. All sediment removed shall be removed from park property and disposed of in an environmentally sound manner. All work shall be done at the City's sole cost and expense.

5. The City shall notify the Marymoor District Supervisor at 296-2962 prior to maintaining, repairing, or removing its system.

6. The system shall be only as shown on the East Marymoor Storm Drain Trunk plans dated January 4, 1985. A copy is attached hereto as Exhibit C and incorporated herein by this reference. The City shall not change the system or use of the easement area.

7. The system shall serve only the area within the natural drainage basin. That basin is described in attached Exhibit D and incorporated herein by this reference. The discharge rate from all new development shall show through drainage analysis that it will not exceed the design of the system as defined by the King County Surface Water Drainage Manual.

8. At any time, the County may, in its sole discretion, test, study, retest, or cause to be tested or studied the water quality of and ecological integrity of the system. Subjects for such tests and studies may include, but are not limited to, water quality, hydrology, vegetation, soils, and wildlife. The City shall reimburse the County for all reasonable costs and expenses the County incurs related to such activity. Except in the case of an emergency, the County will consult with the City prior to contracting for or engaging in any testing.

9. In the event of an emergency, including a water quality emergency, the City will take immediate steps to perform any necessary repairs and mitigate any damage. If the City fails to take any necessary action, the County may do the work and the City shall reimburse the County for all reasonable costs and expenses the County incurs related to such activity upon receipt of a written demand.

10. If the City becomes aware of a non-emergent or potential problem with the system, the City shall notify the County in writing within ten working days. The City and County shall then meet to establish what mitigative measures the City shall take. If the parties do not meet or cannot agree within a reasonable period of time not to exceed 60 days, the County may, but shall not be obligated to, enter on the easement area and perform such mitigative measures and the City agrees to pay the costs and expenses thereof to the County upon receipt of a written demand. Any sums owing under this paragraph or any other paragraph of this Agreement shall bear interest at the maximum rate allowed by Washington State Law beginning 30 days after sending of the written demand.

11. For development projects within the natural drainage basin approved by the City after the date of this Agreement, the City agrees to require and to review, inspect, and enforce sediment, erosion, water quality and retention/detention controls, including on-site controls, on all projects. The controls to be used for new construction in the drainage basin shall be determined by City and County staff upon execution of this document. A wet pond or, to the extent allowed by the King County Surface Water Drainage Manual, a wet vault shall be required on all new projects. Additional controls may be required by mutual agreement between City and County based on information developed from activities described in Paragraph 8 of this Agreement. The City further agrees that it will not waive these requirements for any projects in the basin. For such projects approved by the City prior to the date of this Agreement, the City agrees to inspect and enforce and to not waive all sediment, erosion, water quality and retention/detention controls, including on-site controls, previously required by the City.

12. The City agrees to provide pedestrian and equestrian access over the control weir at the South end of the old railroad grade at its sole expense. The means of access shall be of a design approved by both the City and the County.

13. The City and County state that they are not aware of any contamination on the easement area at this time and that the system may have the potential for environmental contamination.

The City also acknowledges that the County is not making and has not made any representations or warranties, express or implied, about the effectiveness of the system.

14. The City agrees to indemnify and hold harmless the County as provided herein to the maximum extent possible under law except as stated below. Accordingly, the City agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless the County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to the City's exercise of rights and privileges granted by this Agreement or the County's earlier permit except to the extent of the County's negligence. The City's obligations under this section shall include:

(a) Indemnification for such claims that arise from the sole negligence of the City, the concurrent negligence of both parties except to the extent of the County's negligence, or the negligence of one or more third parties.

(b) The duty to promptly accept tender of defense and provide defense to the County at the City's own expense.

(c) Indemnification of claims made by the City's own employees or agents.

(d) Waiver of the City's immunity under the industrial insurance provisions of Title 51 RCW but only to the extent necessary to indemnify the County, which waiver has been mutually negotiated by the parties.

In the event it is determined that RCW 4.24.115 applies to this Agreement, the City agrees to defend, hold harmless, and indemnify King County to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of King County to the full extent of the City's negligence. The City agrees to defend, indemnify, and hold harmless the County for claims by the City's employees and agrees to waiver of its immunity under Title 51 RCW but only to the extent necessary to indemnify the County, which waiver has been mutually negotiated by the parties.

15. Except in amounts normally expected in urban runoff that has been treated in conformance with the highest and best management practices or not less than in conformance with the Surface Water Drainage Manual standards, the City shall not generate, release, spill, store, deposit, transport, or dispose of (collectively "Release") any hazardous substances, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances, hazardous materials, toxic substances of any pollutants, or substances defined as hazardous or toxic in accordance with applicable federal, state, and local laws and regulations in any reportable quantities ("Hazardous Substances") in or about the Premises. In the event, and only in the event, the County approves such Release of Hazardous substances on the Premises, the City agrees that such Release shall occur safely and in compliance with all applicable federal, state, and local laws and regulations. The City shall indemnify, hold harmless, and defend the County from any and all claims, liabilities, losses, damages, cleanup costs, response costs, and expenses, including reasonable attorney's fees arising out of or in anyway related to the Release by the City, or any of its agents, representatives, or employees, or the presence of such Hazardous Substances in, on or about the Premises occurring at any time after the March 17, 1986 except to the extent of the County's negligence.

16. It is hereby agreed that no waiver of any condition or covenant in this easement or any breach thereof shall be taken to constitute waiver of any subsequent breach.

17. The County and the City will give each other immediate written notice of the receipt of notice of any condemnation proceedings and of the intention of any authority to exercise the power of eminent domain.

If all or part of the premises are taken by any lawful authority under the power of eminent domain, the City will have no claim or interest in or to any award of just compensation except that the City will be entitled to an amount equal to the fair market value of its interest in any improvements and property rights taken by the condemnor, but not to exceed the amount of that part, if any, of the award attributable to the value of the improvements and the amount actually paid to the County for those property rights.

It is understood and agreed that the City shall not be party to any negotiation or proceedings at law wherein the County claims compensation other than that which is defined statutorily as constituting "just compensation."

18. In all activities, and all hiring or employment made possible by or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, sexual orientation, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The City shall not violate any of the terms of R.C.W.49.60, Title VII of the Civil Rights Act of 1964, or any other applicable federal, state, or local law or regulations regarding non-discrimination.

19. No provision of this agreement precludes the County from pursuing any other remedies for the City's failure to perform its obligations.

20. In the event legal action is brought by either party to enforce any of the terms, conditions or provisions of this Agreement, the prevailing party shall recover against the other party, in addition to the costs allowed by law, such sum as the court may adjudge to be a reasonable attorney's fee.

21. In using the premises and in maintaining the system, the City agrees to comply with all applicable laws, ordinances and regulations, from any and all authorities having jurisdiction. The City specifically agrees to comply and pay all costs associated with achieving such compliance without any notice of requirement or requirements from the County, and that the County does not waive this section by giving notice of demand for compliance in any instance.

22. If the City abandons the easement area, the City shall promptly restore the property to a condition at least as good as that existing prior to the installation of the system. Compliance with this term shall be within the sole discretion, reasonably exercised, of the County, by its Manager of the Natural Resources and Parks Division. If the City fails to complete the restoration, the County may, but shall not be obligated to, enter on the easement area and complete it. The City agrees to pay the County all of the County's reasonable costs and expenses associated with the restoration upon receipt of a written demand. Any unpaid sums under this paragraph shall bear interest at the maximum rate allowed by Washington State Law.

23. This Agreement touches and concerns the development of the property and shall constitute a covenant running with the property described in Exhibits A and B. This Agreement shall be binding on the County and City, their successors, and assigns.

24. Any notice to be given, document to be delivered, or payment to be made by either party to the other, shall be delivered in person or mailed by certified letter and addressed to the City or County at the following addresses:

CITY: Mayor
 City of Redmond
 15670 N.E. 85th Street
 Redmond, Washington 98052-3584

With a courtesy copy to:
 City of Redmond
 Public Works Department
 15670 N.E. 85th Street
 Redmond, Washington 98052-3584

COUNTY: County Executive
 King County, Washington
 400 King County Courthouse
 Seattle, Washington 98104

With a courtesy copy to:
 King County Natural Resources and Parks Division
 Luther Burbank Park
 2040 - 84th Avenue S.E.
 Mercer Island, Washington 98040

And: King County Real Property Division
 500A King County Administration Building
 Seattle, Washington 98104

25. This Agreement shall not be changed without the approval of King County's legislative and executive authorities.

26. If any term or provision of this Agreement or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and shall continue in full force.

By accepting and recording this Agreement, the City and County mutually covenant and agree to the terms and conditions contained herein.

KING COUNTY - GRANTOR:

CITY OF REDMOND - GRANTEE:

By _____

By _____

Its _____

Its _____

Date _____

Date _____

STATE OF WASHINGTON)
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____, to me known to be the _____ of King County, is the person who appeared before me, and said person acknowledged that _____ signed this instrument, on oath stated that _____ was authorized to execute the instrument on behalf of the County, and acknowledged it as the _____ of King County to be the free and voluntary act of the County for the uses and purposes mentioned in the document.

Given under my hand and official seal this _____ day of _____, 19_____.

NOTARY PUBLIC in and for the State of

Washington, residing at _____.

STATE OF WASHINGTON)
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____, to me known to be the _____ of the City of Redmond, is the person who appeared before me, and said person acknowledged that _____ signed this instrument, on oath stated that _____ was authorized to execute the instrument on behalf of the City, and acknowledged it as the _____ of the City of Redmond to be the free and voluntary act of the City for the uses and purposes mentioned in the document.

Given under my hand and official seal this _____ day of _____, 19_____.

NOTARY PUBLIC in and for the State of
Washington, residing at _____.

Approved as to Form:

Deputy Prosecuting Attorney

City Attorney

Date

Date

CITY OF REDMOND
SPECIAL USE PERMIT
U-33-89

EXHIBIT "A"

LEGAL DESCRIPTION Easement Area

That portion of Government Lot 1, Section 18, Township 25 North, Range 6 East, W.M., in King County, Washington, described as follows:

Commencing at the Northwest corner of said Section 18; thence South $88^{\circ}53'52''$ East, a distance of 600.00 feet to the East line of the West 600.00 feet of said Government Lot 1; thence South $01^{\circ}11'30''$ West along with said East line 222.00 feet to the Southwest corner of a tract of land conveyed to James E. Hubbart by deed recorded under Auditor's File No. 2870531; thence South $88^{\circ}53'52''$ East along the south line of said tract to an intersection with the westerly right-of-way line of the Burlington Northern Railway; said point being the Southeast corner of the Hubbart tract and the true point of beginning; thence North $88^{\circ}53'52''$ east, along the South line of said Hubbart tract, 21.35 feet; thence South $12^{\circ}01'29''$ East 222.91 feet; thence South $33^{\circ}37'40''$ West 41.97 feet; thence South $11^{\circ}06'07''$ East 17.59 feet; thence South $69^{\circ}36'03''$ East 42.44 feet; thence South $10^{\circ}44'41''$ East 91.75 feet; thence South $37^{\circ}06'46''$ East 241.00 feet; thence North $66^{\circ}54'00''$ East 22.06 feet more or less to an intersection with a line which is 10 feet westerly, as measured at right angles, and parallel with the westerly right-of-way boundary of the Burlington Northern Railway; thence northwesterly along said parallel line to a point which bears $S88^{\circ}53'52''E$ from the TRUE POINT OF BEGINNING and the southeast corner of said Hubbart Tract; thence $N88^{\circ}53'52''W$ along the south line of said Hubbart Tract to the TRUE POINT OF BEGINNING.

CITY OF REDMOND

EXHIBIT "B"

LEGAL DESCRIPTION
Area Subject To Flooding

That portion of Government Lot 1, Section 18, Township 25 North, Range 6 East, W.M., in King County, Washington, described as follows:

Commencing at the northwest corner of said Section 18; thence S88°53'52"E along the north line of said Government Lot 1, a distance of 600.00 feet to the east line of the west 600.00 feet of said Government Lot 1; thence S01°11'30"W along said east line 222.00 feet to the southwest corner of a tract of land conveyed to James E. Hubbart by deed recorded under Auditor's File No. 2870531; thence S88°53'52"E along the south line of said tract 320.00 feet to the TRUE POINT OF BEGINNING; thence S03°17'00"E 250.00 feet; thence S13°56'00"E 822.00 feet; thence S06°30'00"W 820.00 feet, more or less, to the shoreline of Lake Sammamish; thence easterly following the shoreline to a point on a line, which intersects the lake shoreline, said line bears S47°34'35"W from a point on the northeasterly margin of the Burlington Northern Rail Road right-of-way and bears S41°00'00"E 654.00 feet south of the north line of Government Lot 3, said point being established by S.C. No. 622008; thence N47°34'35"E 60 feet more or less on said line to an intersection with a line which is 10 feet westerly, as measured at right angles, and parallel with the westerly right-of-way boundary of the Burlington Northern Railway; thence northwesterly along said parallel line to a point which bears S88°53'52"E from the TRUE POINT OF BEGINNING and the southeast corner of said Hubbart Tract; thence N88°53'52"W along the south line of said Hubbart Tract to the TRUE POINT OF BEGINNING. Less that portion of land described under "Special Use Permit" No. U-33-89. See EXHIBIT "B" for legal description.