

12/14/93  
PM:kk

Introduced by: Sims

Proposed No.: 93-911

ORDINANCE NO. **11180**

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AN ORDINANCE allowing King County to enter into a long-term use and/or lease agreement with the University of Washington for property at the Harborview Medical Center campus.

PREAMBLE:

In accordance with KCC 4.56.150, as amended, and KCC 4.56.180, as amended, the King County council may adopt an ordinance permitting the county executive to enter into an agreement, exempt from fair market value requirements, with certain governmental entities for use of County property and into a lease for up to a fifty year term when the property to be leased is to be used for a hospital or a medical training and research facility, provided that extensive improvements are required in order to use the property for its intended use.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The King County executive is hereby authorized

to grant a use and/or lease agreement, in substantially the same form as is attached, for a parcel of ground, which is legally described below, on the Harborview Medical Center campus in Seattle, Washington 98104, for the purpose of constructing a medical training and research facility.

Lots 4, 5, and 8, Block 83 Terry's 2nd Addition, as recorded in Volume 1 of Plats, page 89, records of King County Washington.

INTRODUCED AND READ for the first time this 13<sup>th</sup> day of December, 1993.

PASSED this 20<sup>th</sup> day of December, 1993.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Anthony Seyer  
Chair

ATTEST:

Gerald A. Oster  
Clerk of the Council

APPROVED this 30<sup>th</sup> day of DECEMBER, 1993.

Don Hill  
King County Executive

Attachments:

- A. Use Agreement

USE AGREEMENT  
AT  
HARBORVIEW MEDICAL CENTER CAMPUS

This USE AGREEMENT (the Agreement) is between the BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON, an agency of the State of Washington, (the University) and KING COUNTY, a political subdivision of the State of Washington.

I.  
Consideration and Term.

The University agrees to construct, maintain and operate a Research and Training Facility on the real property described below (the Property), which is located on the campus of Harborview Medical Center (HMC). HMC is owned by King County and operated by the University pursuant to a management agreement between the Harborview Medical Center Board of Trustees, with the approval of King County's legislative authority, and the University.

Lots 4, 5, and 8, Block 83, Terry's 2nd Addition, as recorded in Volume 1 of Plats, page 87, records of King County, Washington.

The Research and Training Facility will serve the needs of and benefit both King County and the University by improving the ability of the University to attract and keep the highest quality personnel in the medical and related fields; will provide, for the first time, adequate research and teaching facilities at HMC; will strengthen the long-standing relationship between the University and King County at HMC; and will ensure that patients at HMC and King County's priority patient groups in particular receive the highest quality care and treatment.

King County grants the University use of the Property for the sole purpose of constructing and operating said Research and Training Facility and for no other use without the prior written consent of King County, pursuant to King County Code (KCC) 4.56.150 E, as amended. All improvements constructed on the Property pursuant to this Agreement shall be owned by the University.

This Agreement will be effective upon the authorized signature of both Parties to the Agreement, but the University shall not have beneficial occupancy of the Property until the University has relocated the liquid oxygen tanks and hospital emergency power generators currently on the Property (see paragraph 2 below) and until satisfactory accommodation is made by King County for the HMC's shipping and receiving functions now on the Property. Right-of-Entry onto the Property, prior to beneficial occupancy, is granted to the University, its employees and agents for activities related to architectural design and for other studies that may be necessary, provided that the equipment and functions vital to HMC's operations are not interfered with or hampered.

The Agreement will remain in effect for as long as the Property is used for the purposes specified in this Agreement and the University and HMC maintain a management agreement for the operation of the medical center. If the University ceases to have a management agreement with HMC for the operation of the medical center, King County, pursuant to KCC 4.56.180, as amended, will lease the Property to the University for an amount determined to be the fair market value of the Property, exclusive of the value of the University's improvements. The term of said lease will be fifty years, provided, however, that the University's right to occupy the Property under the terms of said lease and this Use Agreement shall not, in combination, exceed sixty years. If the University enters into such a lease with the County, all terms of KCC 4.56.180, as amended, shall apply.

Upon termination of this Agreement or of a lease between the University and the County, or a successor agreement (see paragraph 10, "Assignment or Sublease"), all the improvements on the Property shall become the property of King County. No compensation for such improvements shall be due the University, ~~however King County, at its sole discretion, may require the University, at the University's expense, to remove the improvements.~~

## II. Terms and Conditions.

1. **Condition of Property:** The University has inspected and knows the condition of the Property and understands and agrees that the Property is taken for use by the University on an "as is" basis, without any obligation on the part of King County to make any changes, improvements, or to incur any expenses whatsoever for maintenance or repair of the Property, except as specifically provided herein.

The University and King County acknowledge that they are aware of potential environmental concerns resulting from an underground storage tank(s) (UST) buried on the Property and that, at a later date when the facts have been more thoroughly investigated, the University and King County will negotiate a mutually acceptable manner of mitigating any environmental hazards caused by the UST and the sharing of the attendant mitigation costs, should the University elect not to terminate this Agreement as provided for in this Agreement.

2. **Improvements and Alterations.** Upon the effective date of this Agreement, King County shall not be required to pay rent on, demolish or remove or pay the costs of demolition or removal of any structures or other improvements, fixtures or equipment remaining on the Property, except that the King County shall be responsible for relocating the fixtures and equipment related to HMC's shipping and receiving functions at King County's cost. Pending implementation of a plan for the relocation of the liquid oxygen tanks and hospital emergency power generators on the Property, said tanks and generators will remain in place and the University will take no action which will interfere with or interrupt either the operation, maintenance, or repair of such equipment. Prior to construction on the Property, the University shall submit a plan for relocating the generators and liquid oxygen tanks to King County for approval, which shall not be unreasonably withheld. Upon approval, the University shall implement said plan at its sole expense. At a minimum, the plan shall ensure that there will be no interruption or diminution of services to HMC as a result of the relocation.

During design development, a formal presentation of the project shall be made to the King County Design Commission for its review and comment. Design Commission comments provided to the University within fifteen days from the presentation shall be considered by the University; provided that nothing herein shall be deemed to divest the University of final approval authority for the design.

3. **Compliance with All Laws and Regulations:** In using the Property, the University shall comply with all applicable laws, ordinances and regulations of any and all authorities having jurisdiction. The University is solely responsible for securing and paying for all necessary land use approval, environmental approval, building permits and any other permits required for the project.

4. **Utilities:** The University shall pay all taxes and assessments levied against the Property and all costs, expenses, fees, services, and charges of all kinds for heat, light, water, gas, and telephone, and for all other public utilities used on said Property so that the same shall not become a lien against the Property.
5. **Indemnity and Hold Harmless:** The University will defend, indemnify and save King County, its elected and appointed officials, employees and agents from and against any damage, costs, claim or liability arising from willful or negligent acts or omissions of the University, its employees or agents, arising out of the activities or operations of the Facility by the University, or arising out of the Property except where such damage, costs, claim or liability results from the willful or negligent acts or omissions of King County or its officials, agents or employees.
6. **Insurance.**
- A. **Property:** At the time of beneficial occupancy and for the duration of the period that this Use Agreement is in effect, the University will carry fire and extended coverage insurance in an amount equal to the full insurable value of all improvements, structures and buildings located on the Property. The policy will include King County as a loss payee to the extent of its interest in the Property. To the extent a loss is covered by insurance, King County and the University mutually release each other from liability and waive all rights of recovery against each other.
- B. **Liability:** Pursuant to RCW 28B.20.250 et.seq., for the duration of this Agreement the University will provide by purchase in insurance, by self-insurance, or by any combination of arrangements, coverage against claims for injuries to persons or damages to property which may arise from, or in connection with the use of the Property by the University, its regents, officers, employees, agents and students. Any deductibles or self-insured retentions will be the sole responsibility of the University, which will maintain its liability program at its sole cost and expense. King County accepts the University's statutory liability program as satisfactory.
- C. **Proof of Coverage:** Certificates of insurance or self-insurance coverage will be provided to King County prior to the commencement of activities associated with this Agreement and upon request thereafter.
7. **Advances by King County for the University:** If the University fails to pay any obligations, fees, taxes or assessments, King County will mail notice to the University of its failure to pay. Twenty (20) days after mailing notice, if the University's obligation remains unpaid, King County may pay these obligations at the University's expense. Upon written notification to the University of any costs incurred by King County under this paragraph, the University will reimburse King County within twenty (20) days. Nothing herein shall be deemed to prohibit the University from having the right, at its own expense, in its own name and/or in the name of King County, to object to the legality or validity of any tax or assessments on the Property or improvements thereon.
8. **Non-Waiver:** The Parties agree that this Agreement is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both Parties recognize that time is of

the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be waiver of any subsequent default. Waiver of a breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement, unless stated to be such through written approval by King County, which shall be attached to the original Agreement.

9. **Liens:** The University shall keep the Property and its improvements free from any liens arising out of any work performed, materials furnished, or obligations incurred by the University.

10. **Assignment or Sublease:**

A. The University shall not assign or transfer this Agreement or any interest therein, nor sublet the whole or any part of the Property, nor shall this Agreement or any interest thereunder be assignable or transferable by operation of law, or by any process or proceeding of any court or otherwise without obtaining the prior written consent of King County. If King County shall give its consent to any assignment or sublease, this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without King County's consent.

B. If the University desires to assign, transfer, or sublease any portion of this Agreement or any interest therein, the University shall notify King County in writing of said desire to assign or transfer and the details of the proposed agreement at least sixty (60) days prior to the proposed date of assignment, transfer, or sublease to a third party. The notification shall include but not be limited to a financial statement of the proposed assignee, including but not limited to a full disclosure of the monetary payment or any other considerations involved, and an affidavit from the proposed assignee stating he has examined this Agreement, understands this Agreement, agrees to assume and be bound by all of the University's obligations and covenants under this Agreement, the same as if it were the original party of the Agreement hereunder, and the proposed date of assignment, transfer or sublease.

C. King County will review the request and respond with either an approval or disapproval of the request not later than twenty (20) days prior to the proposed date. Disapproval of any such request shall be final and binding on the University and not subject to any arbitration.

11. **Condemnation:**

A. King County and the University will immediately notify the other in writing of the receipt of notice of any proceedings with respect to a condemnation or intent of any authority to exercise the power of eminent domain.

B. If all of the Property and improvements thereon are taken by any lawful authority under the power of eminent domain making it impossible for the University to carry out its planned function upon the Property, this Agreement terminates as of the date condemner takes possession, and the University shall have a claim and interest in or to any award of just compensation in an amount equal to the fair market value of the University's improvements established pursuant to condemnation.

12. **Anti-Discrimination:** In all services or 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 University shall not violate any of the terms of R.C.W. 49.60, Title VII of the Civil Rights Act of 1964, King County Code 12.16.020, or any other applicable federal, state, or local law or regulations regarding non-discrimination. Any violation of this provision shall be considered a violation of a material provision of this provision and shall be grounds for cancellation, termination, or suspension, in whole or in part of the Agreement by King County, and may result in ineligibility for further King County agreements. The University will also comply with other anti-discrimination laws or requirements of any and all jurisdictions having authority.
13. **Heirs, Agents, and Assigns:** Without limiting any provisions of this Agreement pertaining to assignment and subletting, the provisions of this Agreement bind the heirs, successors, agents and assigns of any of the parties to this Agreement.
14. **Captions:** The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
15. **Cumulative Remedies:** No provision of this Agreement precludes King County from pursuing any other remedies for the University's failure to perform its obligations.
16. **Attorney's Fees/Collection Charges:** In the event legal action is brought to enforce any of the terms, conditions, or provisions of this Agreement, the prevailing party shall be entitled to 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. In addition to all other charges, the University shall pay a charge of \$150.00 to King County for preparation of a notice of default.
17. **Hazardous Substances:**
- A. Definition.
- (i) Any toxic substances or waste, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances.
- (ii) Any dangerous waste, hazardous waste, or hazardous substance as defined in:
- Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereinafter amended (42 U.S.C. § 9610 et seq.);
  - Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. § 6901 et seq.);
  - Washington Model Toxics Control Act, as now or hereinafter amended (R.C.W. Chs. 70.105, 70.105A and 70.105D); and

- Regulations, administrative rulings or direction which implement these statutes; or
- (iii) Any pollutants, contaminants, substances, as defined above, posing a danger or threat to public health or welfare, or to the environment, which are regulated or controlled by any federal, state and local laws and regulation, as now or hereafter amended.

B. Compliance with all Laws.

Any Hazardous Substance, as defined in subsection 17A above, generated, disposed, released, stored, used, sold, transported or handled in any manner (collectively referred to as Release) shall be released safely and in compliance with all applicable federal, state, and local laws and regulations. The University shall defend, indemnify and hold King County harmless from any and all claims, liabilities, lawsuits, damages, and expenses, including reasonable attorney's fees (hereinafter "Claim") for bodily injury or death, property damage or loss, or clean-up costs, fees, penalties or charges arising out of this Agreement to the extent such injury, death, damage, loss, or costs are caused by the Release of any Hazardous Substances by the University or any of its agents, representatives or employees in, on, or about the Property or the migration of any such Hazardous Substances from the Property occurring during the term of this Agreement.

King County acknowledges that the building to be constructed on the Property is to be used for a medical research and training facility and there may be medical waste handled and/or generated in this facility. The University agrees to take reasonable care to contain all disease-producing substances within the facility and to take reasonable care with the removal and disposal of medical waste and/or medical waste materials. "Reasonable care" is defined as the accepted standards recommended by the Center for Disease Control for use in health care facilities.

The University shall be fully and completely liable to King County for any and all clean-up costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to the University's use, disposal, transportation, generation and/or sale of medical waste in or about or the migration of medical waste from the Property, common areas, or buildings during the term of this Agreement or any successor agreements or leases with the University or its Assignee. The University shall indemnify, defend, and save King County harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon King County (as well as King County's attorney's fees and costs) as a result of the University's use, disposal, transportation, generation and/or sale of medical waste.

Upon the University's default under this Section, King County shall be entitled to the following rights and remedies:

- (i) At King County's option, to terminate this Agreement upon sixty day's notice of default with opportunity to cure such default; and/or

(ii) To recover any and all damages associated with the default, including but not limited to clean-up costs and charges, civil and criminal penalties and fees, diminution of value of the Property any and all damages and claims asserted by third parties and King County's attorney's fees and costs.

18. Right to Terminate:

- A. Until December 31, 1997, the University, at its option, shall have the right to terminate this Agreement if, in the opinion of the University, funding sufficient to construct the improvements contemplated herein is not obtained by the University, provided that if the University has made any excavations or other alterations to the Property, other than the removal of the liquid oxygen tanks and/or emergency generators, the University shall restore the Property to a condition acceptable to King County. King County shall be reasonable in its acceptance of any such necessary restoration of the Property.
- B. Until December 31, 1997, should the University or King County discover any environmental hazards or other impediments on the property which, in the opinion of the University or King County, would make the Property not feasible for the use specified in this Agreement, the University or King County shall have the right to terminate this Agreement, provided that if the University has made any excavations or other alterations to the Property, other than the removal of the liquid oxygen tanks and/or emergency generators, the University shall restore the Property to a condition acceptable to King County. King County shall be reasonable in its acceptance of any such necessary restoration of the Property.

19. Severability: 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 will continue in full force.

COUNTY OF KING  
STATE OF WASHINGTON

BOARD OF REGENTS  
University of Washington

By: \_\_\_\_\_  
Tim Hill Date  
King County Executive

By: *William P. ...* 12/7/93  
Date  
Its: Executive Vice President

Approved as to form:

Approved as to form:

By: \_\_\_\_\_  
Robert I. Stier Date  
Senior Deputy Prosecuting  
Attorney

By: *Michael Green*  
Assistant Attorney General

Authorized by Council Motion No. 8853



STATE OF WASHINGTON )

) ss

COUNTY OF KING )

11180

On this day personally appeared before me TALLMAN TRASK III  
to me known to be the Executive Vice President  
of the University of Washington  
that executed the foregoing instrument, and  
acknowledged the said instrument to be the free and voluntary act  
and deed of said corporation for the uses and purposes therein  
mentioned and that he was authorized to execute the said  
instrument.

GIVEN under my hand and official seal this 7<sup>th</sup>  
day of December, 19 93.

[Signature]  
NOTARY PUBLIC in and for the  
State of Washington residing at  
Seattle  
My appointment expires 8/16/96

STATE OF WASHINGTON )  
COUNTY OF KING ) ss

I certify that \_\_\_\_\_  
signed this instrument, on oath stated that he was authorized by  
the \_\_\_\_\_ to execute the  
instrument, and acknowledged it as the \_\_\_\_\_  
of King County, Washington to be the  
free and voluntary act of said County for the uses and purposes  
mentioned in the instrument.

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

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington residing at  
\_\_\_\_\_  
My appointment expires \_\_\_\_\_.