

**RESOLUTION NO. 5347**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR RELINQUISHMENT AND QUITCLAIM OF EASEMENT RIGHTS, INCLUDING A USE AGREEMENT WITH KING COUNTY FOR A PORTION OF BRANNAN PARK, ALL RELATED TO BRANNAN PARK**

WHEREAS, on February 19, 2013, the City adopted Resolution No. 4905 which authorized the City to enter into an Interlocal Agreement with King County and the King County Flood Control Zone District for easements associated with the Reddington Levee Extension and Setback Project; and

WHEREAS, pursuant to the Interlocal Agreement, the City, on April 24, 2013, granted a Flood Protection Easement to King County which granted King County a perpetual easement for flood protection purposes; and

WHEREAS, a portion of the Flood Protection Easement area is located on a portion of Brannan Park, a municipal park purchased by the City in 1971 with funds from the predecessor in interest to the State of Washington Recreation and Conservation Office (RCO); and

WHEREAS, the City is responsible for complying with the terms and conditions of the 1971 RCO project agreement and grant program requirements; and

WHEREAS, RCO has determined that the grant of a real property interest in the form of Flood Control Easement has triggered a conversion requirement; and

WHEREAS, RCO has also determined that a Use Agreement that does not amount to grant of a real property interest running with the land in perpetuity would not trigger such a conversion requirement; and

WHEREAS, to resolve the issue and to carry out the intent of the 2013 Flood Control Zone District Interlocal Agreement, King County agrees to relinquish and quitclaim its rights under the Easement back to the City in return for the City agreeing to enter into a Use Agreement with King County for flood protection purposes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. That the Mayor is hereby authorized to execute documents reflecting agreement between the City and King County providing for easement, use and flood protection purposes for and related to Brannan Park, including Relinquishment and Quitclaim of Easement Rights, as well as a Use Agreement with King County for a portion of Brannan Park, which agreement documents shall be in substantial conformity with the documents attached hereto, collectively marked as Attachment "I" and incorporated herein by this reference.

Section 2. That the Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.


CITY OF AUBURN

ATTEST:

\_\_\_\_\_  
NANCY BACKUS, MAYOR

\_\_\_\_\_  
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

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Daniel B. Heid, City Attorney

AFTER RECORDING RETURN TO:  
King County Real Estate Services Section  
500 Fourth Avenue, Suite 830  
Seattle, WA 98104

Reference No: 20140425000455,  
Relinquishor of Easement Rights: KING COUNTY, a political subdivision of the State of Washington  
Property Owner: City of Auburn, a Washington Municipal Corporation  
Tax ID No: 000100-0081

### **RELINQUISHMENT AND QUITCLAIM OF EASEMENT RIGHTS**

This Relinquishment and Quitclaim of Easement Rights is made by King County, a political subdivision of the State of Washington ("King County" or "Relinquishor") in favor of the City of Auburn, a Washington municipal corporation, ("City") (collectively referred to herein as the "Parties").

#### **RECITALS**

A. King County, the Relinquishor herein, is the Grantee of a Flood Protection Easement adjacent to the Green River in the City of Auburn, in King County, Washington, recorded under Auditors File number 20140425000455 (the "Easement") and granted by the City of Auburn ("Grantor"). The property that is subject to the Easement is identified in Exhibit A to the Easement, the Easement area is described in Exhibit B to the Easement, and the Easement area is depicted in Exhibit C to the Easement ("Easement Area"). Each of these Exhibits is attached hereto and incorporated herein by this reference.

B. The City of Auburn is the owner of the underlying fee interest of the Property described in Exhibit A and is the Grantor of the Easement. The Property functions as a City of Auburn municipal park called "Brannan Park", and the park was purchased by the City in 1971 with funds from the predecessor in interest to the State of Washington Recreation and Conservation Office ("RCO"). The City is responsible for complying with the terms and conditions of the RCO project agreement and grant program requirements.

C. The Easement granted King County a perpetual easement for the purposes of (1) accessing and constructing, inspecting, monitoring, reconstructing, maintaining and repairing river bank protection, levees and/or other flood related works, including installing, inspecting and maintaining all vegetation and any other appurtenances thereto, (2) constructing, reconstructing, repairing, maintaining, locating and relocating utilities and stormwater facilities or improvements, and (3) constructing, reconstructing,

repairing, maintaining, locating and relocating trail improvements across, in, under, on, over and upon the Easement Area.

D. RCO has determined that the grant of the real property interest in the form of the Easement has triggered a conversion requirement with respect to the Easement Area, but that a use agreement that does not amount to a grant of a real property interest running with the land in perpetuity would not trigger such conversion requirement.

E. King County is agreeable to relinquishing and quitclaiming its rights under the Easement back to the City of Auburn, in exchange for the City agreeing to enter into a use agreement with King County for access to and use of the Easement Area for flood protection purposes. The City of Auburn is agreeable to accepting the relinquishment and quitclaim of easement rights and to entering into a use agreement for the Easement Area, substantially in the form of the Use Agreement attached hereto as Exhibit D.

NOW, THEREFORE, in consideration of the mutual benefits described herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, King County hereby agrees that right, title and interest in the Easement is to be relinquished and quitclaimed to the City of Auburn and terminated under the following terms and conditions.

1. The Recitals above are hereby incorporated herein and made a part hereof.
2. King County hereby relinquishes and quitclaims all right, title and interest in the Easement recorded under Auditor's File Numbers 20140425000455 to the City of Auburn, upon execution by both Parties of the Use Agreement, substantially in the form of that attached hereto as Exhibit D.
3. The City of Auburn, as the fee owner of the Easement Area, hereby accepts and approves the relinquishment and quitclaim by King County of all King County's right, title and interest in the Easement to the City of Auburn, and hereby consents to the termination of any and all obligations and rights of the City of Auburn, and any and all obligations and rights of King County, under the terms of the Easement, upon execution of the Use Agreement, substantially in the form of that attached hereto as Exhibit D.
4. The City of Auburn (the City herein) shall, on or before \_\_\_\_\_[date], sign a Use Agreement, substantially in the form of that attached hereto as Exhibit D, for the area owned by the City that is necessary for King County to meet its flood protection purposes.
5. The Parties agree that this Relinquishment and Quitclaim of Easement Rights shall not be recorded until the Use Agreement, as referred to in Paragraphs 2, 3, and 4 above, is fully executed.

This Relinquishment and Quitclaim of Easement Rights shall inure to the benefit of and be binding upon the heirs, executors, administrators, and successors in interest and assigns of King County and the City of Auburn.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

KING COUNTY, WASHINGTON

APPROVED AS TO FORM:

\_\_\_\_\_  
(name)  
Real Estate Services Division

\_\_\_\_\_  
Senior Deputy Prosecuting Attorney

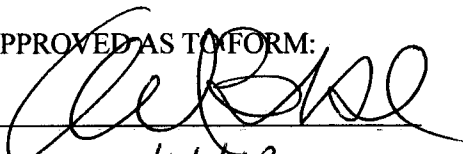
DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

CITY OF AUBURN

APPROVED AS TO FORM:

\_\_\_\_\_  
DATED: \_\_\_\_\_

\_\_\_\_\_  
  
DATED: 2/14/18

STATE OF WASHINGTON    )  
                                      )SS  
COUNTY OF KING        )

I certify that \_\_\_\_\_, signed this instrument, and on oath stated that \_\_\_\_\_ was authorized by the King County Executive to execute the instrument, and acknowledged it as the Manager of the Real Estate Services Section of the Facilities Management Division of the Department of Executive Services of King County, Washington to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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

STATE OF WASHINGTON     )  
  )SS  
COUNTY OF KING         )

I certify that \_\_\_\_\_, of the City of Auburn, a Washington municipal corporation, executed the within and foregoing instrument, and acknowledge said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned; and on oath stated that he was qualified and acting on behalf of the City of Auburn and was authorized to execute said instrument on behalf of the City of Auburn.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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

**EXHIBIT A**

## PROPERTY SUBJECT TO THE EASEMENT

### LEGAL DESCRIPTION

That portion of the William H. Brannan Donation Land Claim No. 37, in Section 6, Township 21 North, Range 5 East, W.M., in King County, Washington, described as follows:

Beginning at a point South 0°59'00" East 157.60 feet from the Northwest corner of said donation claim;  
Thence North 89°19'00" East 1,117.00 feet to the true point of beginning;  
Thence North 89°19'00" East 1083.10 feet to the West bank of the Green River (formerly "White River");  
Thence along said West bank South 17°24'00" West 59.50 feet;  
Thence South 6°48'00" West 242.70 feet;  
Thence South 1°25'00" West 184.50 feet;  
Thence South 17° 53'00" East 153.10 feet;  
Thence South 6°28'00" East 260.00 feet;  
Thence South 12°25'00" East 298.90 feet;  
Thence South 89°19'00" West 1,148.30 feet, more or less, to a point from which the true pint of beginning bears North 0°59'00" West;  
Thence North 0°59' 00" West 1,183.69 feet, more or less, to the true point of beginning;

Except those portions thereof conveyed to King County for John Reddington Co. Road by deeds recorded under Auditor's file numbers 2776025 and 2776026;

And, except portion, if any, lying within 26th Street Northeast (Also known as South 303rd Street);

And except that portion described as follows:

Commencing at the Northwest corner of said Donation Claim No. 37;  
Thence North 89°19' East along the North line thereof, 1,117 feet;  
Thence South 0°59' East, parallel to the West line thereof, 728.6 feet to the point of beginning;  
Thence South 0°59' East 612.27 feet;  
Thence North 89°17'14" East 505 feet;  
Thence Westerly along a curve to the right, the radius of which is equal to 538.42 feet through a central angle of 10°42'23", a distance of 100.61 feet;  
Thence South 89°19' West 220 feet;  
Thence westerly along a curve to the left, the radius of which is equal to 336.345 feet through a central angle of 13°33'51" a distance of 79.63 feet;  
Thence South 75°45'09" West 9.505 feet;  
Thence westerly along a curve to the right, the radius of which is equal to 336.345 feet through a central angle of 13°33'51" a distance of 79.63 feet;



Thence South  $89^{\circ}19'$  West 10.00 feet to the point of beginning. (Being known as Great Western Addition Division No. I)

And being the same as described in Warranty Deed recorded under Recording Number 7111010246, records of King County.

## **EXHIBIT B**

### **EASEMENT AREA**

All that portion of the above described Exhibit "A", located in the Southeast Quarter of Section 6, Township 21 North, Range 5 East, Willamette Meridian, King County, Washington, lying easterly of the following described line:

Commencing at engineers station 0+00.00 point on the Levee Alignment Survey recorded under Recording Number 20121017900001, Records of King County;

Thence N11°03'14"W a distance of 13.24 feet to the beginning of a curve concave to the southwest the radius point of which bears S78°56'46"W, 37.90 feet distant;

Thence along said curve through a delta angle of 48°56'36" a distance of 32.38 feet to a point on the easterly boundary line of the property described in Exhibit "A," at engineers station 0+45.62 on said Levee Alignment Survey and the TRUE POINT OF BEGINNING;

Thence continuing along said curve through a delta angle of 09°05'35" a distance of 6.01 feet;

Thence N69°05'25"W a distance of 97.06 feet to the beginning of a curve concave to the northeast the radius point of which bears N20°54'35"E, 112.50 feet distant; thence along said curve through a delta angle of 69°56'48" a distance of 137.34 feet;

Thence N02°53'41"E a distance of 186.69 feet to the beginning of a curve concave to the west the radius point of which bears S89°36'42"W, 659.86 feet distant;

Thence along said curve through a delta angle of 08°50'56" a distance of 101.91 feet;

Thence N12°31'14"W a distance of 256.63 feet to the beginning of a curve concave to the east the radius

point of which bears N 78°23'02" E, 315.34 feet distant;

Thence along said curve through a delta angle of 20°21'52" a distance of 112.08 feet;

Thence N07°49'02"E a distance of 239.99 feet to the beginning of a curve concave to the east the radius point of which bears S 84°10'18" E, 117.61 feet distant;

Thence along said curve through a delta angle of 14°19'40" a distance of 29.41 feet;

Thence N16°58'24"E a distance of 66.40 feet;

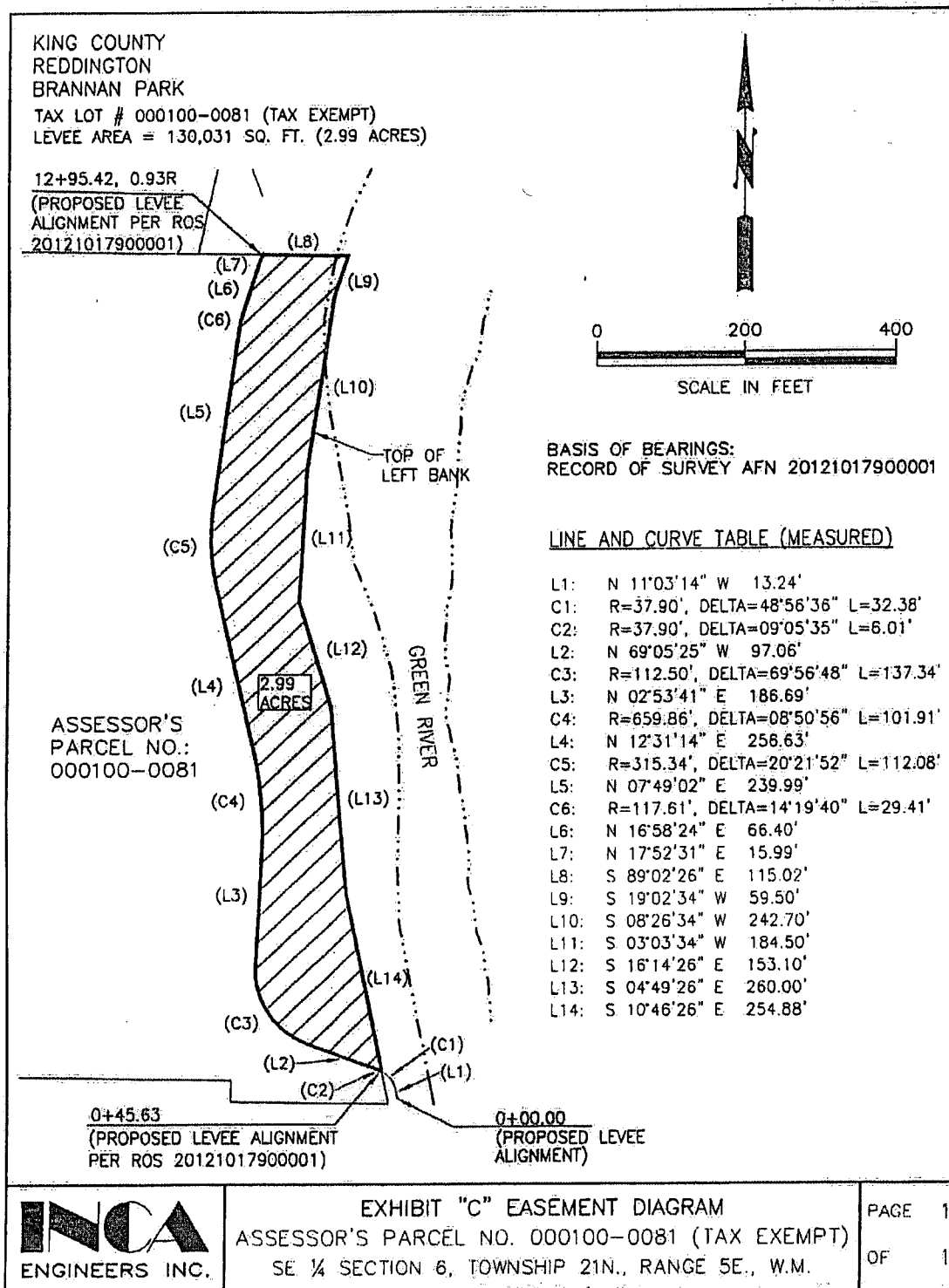
Thence N17°52'31"E a distance of 15.99 feet to a point on the north line of the property described in Exhibit "A," opposite engineers station 12+95.42 on said Levee Alignment Survey and 0.93 feet easterly measured at right angles therefrom, and the TERMINUS OF THIS LINE.

Containing 130,031 square feet (2.99 acres).

Note: Basis of bearings for this Exhibit B description is Record of Survey filed under Recording Number 20121017900001.

# EXHIBIT C

## EASEMENT DIAGRAM



## **EXHIBIT D**

### **USE AGREEMENT**

#### **USE AGREEMENT FOR PORTION OF BRANNAN PARK**

The City of Auburn, a municipal corporation of the State of Washington ("City"), as owner of the property legally described in Exhibit 1, attached hereto and incorporated herein by this reference ("Property"), hereby enters into this Use Agreement for Portion of Brannan Park ("Use Agreement") with King County, a political subdivision of the State of Washington, whereby King County is granted the right to use of a portion of the Property, as described in Exhibit 2 and depicted in Exhibit 3, attached hereto and incorporated herein by this reference ("Use Area"), for river protection purposes, as more fully specified herein.

**Recitals:**

- A. Brannan Park, a municipal park owned and operated by the City for park recreation purposes, is adjacent to the Green River and has been threatened by flooding when the river reaches flood stages.
- B. King County, as service provider to the King County Flood Control District ("District") has constructed through District funding a flood protection facility along a portion of the Green River, called the Reddington Setback Levee Project ("Project").
- C. A portion of the Project has been built in the Use Area, and provides enhanced flood protection to Brannan Park and other portions of the City.
- D. In order to operate, maintain and repair the Project, King County needs access to the Use Area to engage in the activities described in Paragraph 2 below.
- E. Upon the completion of construction of the Project, grass and landscaping in the Use Area were installed, such that a compatible use with other Brannan Park grassed and landscaped areas has been achieved.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City as the owner of the Property and King County as the entity responsible for the Project, hereby agree as follows:

- 1. The Recitals above are hereby incorporated herein and made a part hereof.
- 2. The City grants King County the right to use the Use Area for the purposes of (a) accessing and constructing, inspecting, monitoring, reconstructing, maintaining and repairing river bank protection, levees and/or other flood related works, including installing, inspecting and maintaining all vegetation and any other appurtenances thereto, (b) constructing, reconstructing, repairing, maintaining, locating and relocating utilities and stormwater facilities or improvements, and (c)

constructing, reconstructing, repairing, maintaining, locating and relocating trail improvements across, in, under, on, over and upon the Use Area.

3. Upon undertaking any of the actions provided for in Paragraph 2 above, the County shall return the area impacted by such activities to the prior grassed and landscaped condition, provided that such restorative measures can be reasonably undertaken without compromising the flood protection features of the Project.
4. King County shall have reasonable ingress and egress upon the Property to access the Use Area.
5. King County shall have the right at such time as may be necessary and in the exercise of its reasonable discretion, to enter upon the Property and to have unimpeded access to, in and through the Use Area for the purposes of undertaking the activities described in Paragraphs 2, 3, and 4 above.
6. The City agrees not to plant non-native vegetation within the Use Area and not to remove or otherwise alter any improvements installed by the County, including any native vegetation that maybe planted and any flood protection works that may be constructed, within the Use Area, without obtaining the prior approval of the County.
7. For the purposes of this Use Agreement, the term “native vegetation” shall mean vegetation comprised of plant species, other than noxious weeds (as identified on the State of Washington noxious weed list found at Washington Administrative Code Chapter 16-750, as amended from time to time), which are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur at the site.
8. Neither the City nor the County under the terms of this Use Agreement are obligated to future maintenance, repair or other action related to the Project. This Use Agreement and/or any flood related works constructed or to be constructed within the Use Area shall not be construed as granting any rights to any third person or entity, or as a guarantee of any protection from flooding or flood damage, and nothing contained herein shall be construed as waiving any immunity to liability granted to the City and the County by any state statute, including Chapters 86.12 and 86.15 of the Revised Code of Washington, or as otherwise granted or provided for by law.
9. This Use Agreement is of indefinite duration, and may only be terminated by the City upon written notice being delivered to the County at least sixty (60) days prior the termination date on the basis that the County has breached the terms of this Use Agreement. If the breach is curable, the County may cure the breach within the 60 day period and provide notice of such cure within the 60 day period.

The Parties agree to engage in arbitration before undertaking any litigation with regard to the terms of this Use Agreement or its breach.

10. The rights, conditions, and provisions of this Use Agreement shall inure to the benefit of and be binding upon the successors in interest and assigns of the City and the County.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

KING COUNTY, WASHINGTON

APPROVED AS TO FORM:

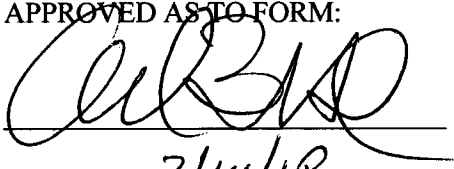
\_\_\_\_\_  
DATED: \_\_\_\_\_

\_\_\_\_\_  
DATED: \_\_\_\_\_

CITY OF AUBURN

APPROVED AS TO FORM:

\_\_\_\_\_  
DATED: \_\_\_\_\_

  
DATED: 2/14/18

## EXHIBIT 1

### PROPERTY SUBJECT TO THE USE AGREEMENT

#### LEGAL DESCRIPTION

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Beginning at a point South 0°59'00" East 157.60 feet from the Northwest corner of said donation claim;  
Thence North 89°19'00" East 1,117.00 feet to the true point of beginning;  
Thence North 89°19'00" East 1083.10 feet to the West bank of the Green River (formerly "White River");  
Thence along said West bank South 17°24'00" West 59.50 feet;  
Thence South 6°48'00" West 242.70 feet;  
Thence South 1°25'00" West 184.50 feet;  
Thence South 17° 53'00" East 153.10 feet;  
Thence South 6°28'00" East 260.00 feet;  
Thence South 12°25'00" East 298.90 feet;  
Thence South 89°19'00" West 1,148.30 feet, more or less, to a point from which the true pint of beginning bears North 0°59'00" West;  
Thence North 0°59' 00" West 1,183.69 feet, more or less, to the true point of beginning;

Except those portions thereof conveyed to King County for John Reddington Co. Road by deeds recorded under Auditor's file numbers 2776025 and 2776026;

And, except portion, if any, lying within 26th Street Northeast (Also known as South 303rd Street);

And except that portion described as follows:

Commencing at the Northwest corner of said Donation Claim No. 37;  
Thence North 89°19' East along the North line thereof, 1,117 feet;  
Thence South 0°59' East, parallel to the West line thereof, 728.6 feet to the point of beginning;  
Thence South 0°59' East 612.27 feet;  
Thence North 89°17'14" East 505 feet;  
Thence Westerly along a curve to the right, the radius of which is equal to 538.42 feet through a central angle of 10°42'23", a distance of 100.61 feet;  
Thence South 89°19' West 220 feet;  
Thence westerly along a curve to the left, the radius of which is equal to 336.345 feet through a central angle of 13°33'51" a distance of 79.63 feet;  
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Thence westerly along a curve to the right, the radius of which is equal to 336.345 feet through a central angle of  $13^{\circ}33'51''$  a distance of 79.63 feet;  
Thence South  $89^{\circ}19'$  West 10.00 feet to the point of beginning. (Being known as Great Western Addition Division No. I)  
And being the same as described in Warranty Deed recorded under Recording Number 7111010246, records of King County.



## EXHIBIT 2

### RIGHT TO USE AREA

All that portion of the above described Exhibit "1", located in the Southeast Quarter of Section 6, Township 21 North, Range 5 East, Willamette Meridian, King County, Washington, lying easterly of the following described line:

Commencing at engineers station 0+00.00 point on the Levee Alignment Survey recorded under Recording Number 20121017900001, Records of King County;

Thence N11°03'14"W a distance of 13.24 feet to the beginning of a curve concave to the southwest the radius point of which bears S78°56'46"W, 37.90 feet distant;

Thence along said curve through a delta angle of 48°56'36" a distance of 32.38 feet to a point on the easterly boundary line of the property described in Exhibit "1," at engineers station 0+45.62 on said Levee Alignment Survey and the TRUE POINT OF BEGINNING;

Thence continuing along said curve through a delta angle of 09°05'35" a distance of 6.01 feet;

Thence N69°05'25"W a distance of 97.06 feet to the beginning of a curve concave to the northeast the radius point of which bears N20°54'35"E, 112.50 feet distant;

thence along said curve through a delta angle of 69°56'48" a distance of 137.34 feet;

Thence N02°53'41"E a distance of 186.69 feet to the beginning of a curve concave to the west the radius point of which bears S89°36'42"W, 659.86 feet distant;

Thence along said curve through a delta angle of 08°50'56" a distance of 101.91 feet;

Thence N12°31'14"W a distance of 256.63 feet to the beginning of a curve concave to the east the radius

point of which bears N 78°23'02" E, 315.34 feet distant;

Thence along said curve through a delta angle of 20°21'52" a distance of 112.08 feet;

Thence N07°49'02"E a distance of 239.99 feet to the beginning of a curve concave to the east the radius point of which bears S 84°10'18" E, 117.61 feet distant;

Thence along said curve through a delta angle of 14°19'40" a distance of 29.41 feet;

Thence N16°58'24"E a distance of 66.40 feet;

Thence N17°52'31"E a distance of 15.99 feet to a point on the north line of the property described in Exhibit "1," opposite engineers station 12+95.42 on said Levee Alignment Survey and 0.93 feet easterly measured at right angles therefrom, and the TERMINUS OF THIS LINE.

Containing 130,031 square feet (2.99 acres).

Note: Basis of bearings for this Exhibit 2 description is Record of Survey filed under Recording Number 20121017900001.

# EXHIBIT 3

## DIAGRAM OF RIGHT TO USE AREA

