

Recorded Requested by and
When Recorded Mail To:

City of Mount Vernon
PO Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273
Attention: Mount Vernon Public Works Director



200910080144

Skagit County Auditor

10/8/2009 Page 1 of 13 4:20PM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PUBLIC TRAIL EASEMENT AGREEMENT
(City of Mount Vernon/Skagit County Diking District No. 3)
Assessor's Tax Parcel Number(s): Parcel 26643

19-34-04 NE

Grantor: Skagit County Diking District No. 3 referred to as "Trail Easement Grantor"
Grantee: The City of Mount Vernon or "Trail Easement Grantee"

This Trail Easement Agreement ("**Agreement**") is entered into by and between Skagit County **Diking District No. 3**, a special purpose district (hereafter "District" or "Trail Easement Grantor"), and the **City of Mount Vernon**, a municipal corporation ("Trail Easement Grantee" or the "City").

Recitals

A. The District, holder of an easement by deed recorded under Auditor's File No. 8011170032 is an owner of interest in that certain real property located in the County of Skagit, State of Washington, which is more particularly described in the legal description attached hereto as Exhibit A incorporated herein by this reference (the "**Trail Easement Area**").

B. Trail Easement Grantee has completed final design for a downtown flood hazard reduction project ("the Project") consisting of flood walls, stop logs, and levee improvements which will reduce the flood hazard to meet FEMA Flood Insurance Rate Map and national flood insurance program conditions for removing Mount Vernon's historical downtown from the floodplain which has a greater than 1% chance of flooding in any water year and City is acquiring necessary easements to property including the Flood Hazard Reduction Easement Area in order to construct the Project.

C. The Project also calls for a public trail, which is more particularly described in the legal description attached hereto as Exhibit A incorporated herein by this reference (the "**Trail Easement Area**"), which shall be located riverward of the flood wall and stop logs or on top of improved levees and which shall serve as a recreational amenity to the Project attracting economic development.

D. District has entered into an interlocal agreement with the City to permit the City to construct the Project. In return the City will convey land and improvements of the Project flood elements to District upon completion of the Project while City retains non-flood related interests including the public trail subject to the terms of their interlocal agreement.

E. Trail Easement Grantor District desires to grant and Trail Easement Grantee the City desires to obtain a perpetual, non-exclusive easement for public trail passage over, upon and across the Trail Easement Area.

Agreement

Section One. Recitals.

The foregoing recitals are incorporated herein as if fully set forth herein.

Section Two. Trail Easement

A. Easement.

Trail Easement Grantor the District convey and warrant to Trail Easement Grantee, the City, an easement for public trail passage over, through, upon and across the Trail Easement Area, as legally described on Exhibit "A" attached hereto and incorporated herein by this reference and as shown in the schematic site plan. The Trail Easement shall be subject to terms and conditions expressed here and to any further conditions required by compliance with a Determination of Significance under SEPA Chapter 43.21C RCW or Mitigated Determination of Non-Significance. The Trail Easement is conveyed for the benefit of the Trail Easement Grantee, the Trail Easement Grantee's municipal corporate successors and the public. The Trail Easement shall be revocable for cause by the District in the event of Trail Easement Grantee's failure to use good faith efforts regulate and enforce terms and conditions as to purpose, time of use or any limitation to avoid conflict with the diking and drainage use of the Trail Easement. Needs of the District for flood fighting, maintenance and repair, expansion or improvement of the dike or flood damage reduction works and interior drainage of the District shall take priority and temporarily suspend any interest granted to the City when such interest would interfere with any District function. District agrees to notify the City as soon as reasonably possible of its needs in advance except in circumstances justifying emergency use by District's in its discretion.

B. Scope of Easement- Grantee's Obligations.

For consideration of the conveyance of the Trail Easement Area described in Exhibit "A", Trail Easement Grantee covenants as follows:



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1. Use of Trail Easement.

Trail Easement Grantee and the public shall have the right to use the Trail Easement for pedestrian and other non-motorized travel purposes. Motorized use of the Trail Easement shall be prohibited, except when such use is in conjunction with trail construction or maintenance, or in cases requiring emergency evacuation of persons requiring assistance. Notwithstanding the above, Trail Easement Grantee may allow for the use of single-occupant electric wheelchairs on the trail or similar personal ambulatory devices for physically disabled persons. Trail Easement Grantee's use of the Trail Easement shall not extend in any manner to access up and over the slopes of any levee or dike and shall be limited to only the Trail Easement Area and entry at designated points of access.

2. Construction and Maintenance of Trail Easement.

Trail Easement Grantee may delineate and construct a pedestrian trail that is contained within the Trail Easement area, and connected to the City's trail system. In no event shall the Trail Easement area consist of or include the slopes of a dike nor shall Trail Easement Grantee have access up and over the slopes of a dike except at designated points of access. In the event of the construction of the pedestrian trail, Trail Easement Grantee shall maintain said trail for its intended purpose; provided, that nothing herein shall require Trail Easement Grantor to undertake or perform any particular construction of the trail, or prevent the Trail Easement Grantor District from making improvements to the Trail Easement premises for Diking or flood damage reduction purposes. Trail Easement Grantee shall prepare plans and specifications for the construction of the same and submit same to District's approval which shall not be denied without good cause. Good cause includes but is not limited to plans or specifications that allow a trail which occupies more than the Trail Easement Area or threatens the capacity of the local sponsor to manage flood control works maintenance in keeping with standards published by the U S Army Corps of Engineers, Federal Emergency Management Agency or other agencies with jurisdiction over District or the Trail Easement Area. No construction activity shall commence until said plans and specifications are approved by District. District shall either approve of said plans or reject stating the grounds thereof of said plans within forty-five (45) days of submission by the City. Trail Easement Grantee shall pay for construction and maintenance of the trail including the installation and maintenance of any fencing. However, fencing shall only be allowed upon explicit approval from District which shall review such requests according to all applicable PL-84-99 eligibility requirements and engineering manuals. As long as the trail is used for trail purposes, the Trail Easement Grantee will maintain the trail in a condition that allows this use and that does not cause adverse impacts on the levee, floodwall, stop logs, sandbags and other flood works within the Flood Hazard Reduction Easement Area and its interior drainage. Trail Easement Grantee, upon approval of District, which shall not be withheld without good cause, may erect or post signage in the Trail Easement Area relating to the trail and/or its use, provided that the signage will include a flood hazard warning which tells users must vacate the trail when the Skagit River reaches or exceeds flood stage as determined by appropriate public officials or Department of Emergency Management subject to trespass and arrest in the event of refusal. All work on portions of the trail



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within the Trail Easement Area, including all construction, operation, and maintenance activities, shall be conducted in accordance with the trail easement. The trail will be constructed in a manner that creates and maintains a drivable surface. District shall have complete access for ingress and egress over said trail and drivable service in order to carry out its purposes and functions including but not limited to use by any District equipment, contractors, cooperating agencies, and volunteers when necessary for carrying out its construction, operation, and maintenance functions.

3. Monitoring of Trail Easement.

Trail Easement Grantee and its designated personnel shall monitor the use of the trail and shall take reasonable action to prohibit, prevent and discourage unauthorized use by means including, but not limited to, user education, arrest, detention, citation, seizure of unauthorized motor vehicles and their operators when encroachment or trespass on a levee slope or damage to flood hazard reduction works occurs. For areas within and adjoining, but outside the Trail Easement, littering, dumping, destruction of vegetation, including vegetation covering a levee slope, unlawful use of alcohol or drugs, loitering, or any interference with District functions shall be monitored and controlled actively by the Trail Easement Grantee.

In conjunction with the public's use of the Trail Easement, Trail Easement Grantee shall cooperate with Trail Easement Grantor in establishing and enforcing reasonable hours of use of the Trail Easement; provided, however, that nothing herein shall be considered as requiring Trail Easement Grantee to establish and enforce rules of use which are inconsistent with or impermissible under the City of Mount Vernon's Municipal Code, or ordinances and/or other regulations, state or federal law pertaining to the use of trails. Nothing in this agreement shall impair or interfere with performance of the diking function of the District. Trail Easement Grantee's exercise of its police powers in adopting, establishing or enforcing any rule or ordinance regarding use of public ways, such as sidewalks, nature paths, shall not obstruct use of the Trail Easement by District personnel monitoring conditions relative to construction, maintenance, and operation of the levee.

4. Right of Ingress/Egress.

Trail Easement Grantee shall have the right, without notice and without the institution of any suit or proceeding at law or equity, at all times as may be necessary, to enter the Trail Easement Area for purposes of repairing, maintaining and monitoring the trail; provided however, Trail Easement Grantee's right to access shall be subordinate to the needs of the District for flood fighting, maintenance and repair, expansion or improvement of the dike and interior drainage. In the event of any conflict, District's needs shall take priority and may temporarily suspend any rights of access granted to the City when such interest would interfere with any District function.

C. District's Use of Trail Easement.



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The Trail Easement Grantee's use of the Trail Easement Area shall not in any way impair the District's use of the Trail Easement Area necessary for carrying out its purpose and functions required for emergencies, repairs, rebuilding and maintenance to the any flood hazard reduction work, as it is now, or as it may be built to meet higher standards of flood protection (the "Permitted Work"). Any damage or destruction to the trail as a result of the District's carrying out its purposes and functions in operating, constructing reconstructing or maintaining the dike or flood damage reduction works shall be at the sole cost and expense of the Trail Easement Grantee and shall not impose any liability on the District barring damages that occur as a result of District's negligence. Unless required in the event of emergency, or construction disclosed in advance, the District shall not construct, install or place any permanent structure or obstruction of any kind, including fences and gates, over upon, or within the Trail Easement Area, without approval by the Trail Easement Grantee which shall not be denied absent good cause. All parties to this Agreement agree that nothing in the Flood Damage Reduction Works and Trail Easement agreement shall limit the work to repair, replace, maintain or use of the Flood Damage Reduction Easement Area or Trail Easement Area to fight floods or impair District's ability to perform its duties under the Rehabilitation and Inspection Program, as a local sponsor or eligibility for any federal program including the Flood Control and Coastal Emergency Act (P.L. 84-99 and as amended 33 USC 701n) and the Stafford Disaster and Emergency Assistance Act (P.L. 93-288 and as amended). All parties acknowledge that time is of the essence in the contracting process, and that no relocation liability for trail improvements is assumed by District for the benefit of Trail Easement Grantee, or the public. If building a new project or new flood control work requires destruction of any trail improvements which have been made by the Trail Easement Grantee, then Trail Easement Grantee shall be entitled to recover the fair market value of its interest in the property in the event any new flood control work or new project results in extinguishing or reducing the fair market value of Trail easement Grantee's interest.

D. Default/Remedies

1. Notice/Opportunity to Cure.

If any party (the "Claimant") determines that the other party (the "Breaching Party") is in violation of the terms and covenants in the Agreement or that a violation is threatened, the Claimant shall deliver written notice to the Breaching Party of such violation and demand corrective action sufficient to cure the violation and, where the violation involves damage to the Trail Easement Area, to restore the portion of the Trail Easement Area so damaged unless Paragraph C above of this Agreement applies. If the Breaching Party fails to cure the violation within thirty (30) days after receipt of the notice from the Claimant, or under circumstances where the violation cannot be reasonably cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period and to thereafter diligently pursue such cure to completion, the Claimant may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Trail Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms



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of this Trail Easement or by reason of injury to the Trail Easement, to require the restoration of the Trail Easement Area to the condition that existed before the damage and to pursue any other remedies provided in this Trail Easement or available at law or in equity. Nothing in this provision prevents any party from taking immediate action to protect the public including but not limited to the removal of unauthorized persons and property from the Trail Easement Area.

2. Costs Advanced by Claimant.

Without limiting the Breaching Party's liability for a violation of the Trail Easement, Claimant, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective action which restores the Trail Easement for safe use. If Claimant, in its sole discretion, determines that circumstances require immediate corrective action to prevent injury or mitigate significant damage to or inconvenience to the public using the Trail Easement Area, the Claimant may take such immediate corrective action as it deems appropriate and may pursue its remedies under this paragraph without prior notice to the Breaching Party and without waiting for the period provided for cure to expire. Corrective action shall not change the design characteristics or specifications for construction and maintenance of the dike or permanently modify points of access used by pedestrians or equipment.

E. Judicial Termination of Easement/Condemnation.

1. The Trail Easement constitutes a subordinated real property interest vested in Trail Easement Grantee. If circumstances arise in the future that render the purpose of the easement impossible to accomplish, notwithstanding compliance with all conditions of the Trail Easement by Trail Easement Grantee, or in the event of condemnation or other exercise of eminent domain by any governmental authority or by voluntary transfer in lieu thereof (collectively "Condemnation") and if by reason of such Condemnation continued use of the Trail Easement for its intended purposes is rendered impossible or impracticable, the Trail Easement may be terminated or extinguished in whole or in part, but only by judicial proceedings in a court of competent jurisdiction. If all or any portion of the Trail Easement Area is taken or lost in Condemnation, then Trail Easement Grantee and Trail Easement Grantors shall share the proceeds from such Condemnation sale, in proportion to their respective interests, as determined by a fair market value appraisal or as otherwise agreed to by the parties.

2. If all or any portion of the Trail Easement Area is taken by Condemnation, the Trail Easement Grantors and Trail Easement Grantee shall act jointly to recover the full fair market value of the portion of the Trail Easement Area so taken or acquired, together with all direct and incidental costs and damages resulting from the taking. All expenses reasonably incurred by Trail Easement Grantors and Trail Easement Grantee in connection with such taking or voluntary transfer will be reimbursed to them.



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respectively, out of the amount recovered except appraisal fees and expert consulting fees for the exclusive benefit of one party.

Section Three. Mutual Indemnification.

Notwithstanding its limitation of liability statutorily provided pursuant to RCW 4.24.200; RCW 4.24.210, Trail Easement Grantee, the City agrees to defend, indemnify and hold Trail Easement Grantor harmless from any and all claims, causes of action, damages, liability and expenses, including reasonable attorney's fees arising out of or resulting from: (a) use of the trail or Trail Easement by Grantee and/or public; (b) the acts or omissions of the Trail Easement Grantee and or its officials, agents, contractors or employees in exercising any of the rights or obligations set forth within the Trail Easement; and/or (c) the creation by Trail Easement Grantee or its employees or agents, of conditions within the Trail Easement Area that result in an actual or alleged violation of any federal, state, or local environmental law in any way affecting, involving or relating to the Trail Easement Area; provided, that Trail Easement Grantee's indemnification obligations hereunder shall not extend to claims, damages, liabilities or expenses to the extent resulting from or attributable to Trail Easement Grantor's negligence or intentional misconduct.

District agrees to indemnify, defend and hold Trail Easement Grantee harmless from any and all claims, damages, liability and expenses, including reasonable attorney's fees, arising out of or resulting from (a) any Permitted Work (as defined in Section Two Paragraph C), construction, maintenance, pruning or improvement by Trail Easement Grantor District or District's employees, agents, contractors, subcontractors, or officials on or adjacent to the Trail Easement; (b) the breach of District of any covenant in this Trail Easement; and/or (c) the actual or alleged violation of any federal, state, or local environmental law by any person, in any way affecting, involving or relating to Trail Easement Grantor's property interest; provided, that Trail Easement Grantor's indemnification obligations hereunder shall not extend to claims, damages, liabilities or expenses resulting from or attributable to Trail Easement Grantee's negligence or intentional misconduct.

Section Four. Notices.

Any notices, demand, request, consent, approval, or communication that either party desires, is required or permitted to give to the other party pursuant to this Trail Easement (collectively, "Communications") shall be in writing and delivered either in person, by



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private courier or process server, or by certified US mail (postage prepaid) to the address of the receiving party stated in the opening paragraph of this Trail Easement, or to such other address as either party may from time to time designate by written notice to the other. The initial contact information for the respective parties is as follows:

Diking District No. 3

Skagit County Diking District No. 3
PO Box 324
Conway, WA 98238

With copies to:

Gary Jones, Attorney for District 3
415 Pine Street
Mount Vernon, WA 98273

910 Cleveland Avenue
Mount Vernon, WA 98273

City of Mount Vernon

Mount Vernon City Parks Director:
Larry Otos
PO Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273

With copies to:

Kevin Rogerson, City Attorney
PO Box 809

Section Five. Covenant Running with the Land.

The Public Trail Easement Agreement all easements, covenants, terms and conditions contained herein are intended to and shall run with the land and shall be binding upon Grantors and Grantees and their respective successors, heirs and assigns.

Section Six. Venue and Choice of Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the laws of the State of Washington.

Section Seven. Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement is declared severable.

Section Eight. Counterparts. The Parties may execute this Flood Hazard Reduction Works and Public Trail Easement Agreement in one or more counterparts; provided, that all counterparts shall be regarded as one integrated document. Each counterpart shall be deemed an original instrument as against any party who has signed it.



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Section Nine. Effective Date. For the purposes of this Agreement, the date on which the last party executes this Agreement and delivers it to the City to be recorded shall hereinafter be the "Effective Date."

DIKING DISTRICT NO. 3

A Washington Municipal Corporation

By: David J. Olson

Commissioner

Dated: 9.10.09

By: B. J. Smith

Commissioner

Dated: 9.10.09

By: _____

Commissioner

Dated: _____

CITY OF MOUNT VERNON

A Washington Municipal Corporation

By: Bud Norris

Bud Norris, Mayor

Dated: 9-15-09

Attest: Alicia D. Hushcka

Alicia D. Hushcka, Finance Director

Dated: 9-15-09

Approved as to Form:

Kevin Rogerson

Kevin Rogerson, City Attorney

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

OCT 08 2009

Amount Paid \$ _____
Skagit Co. Treasurer
By MF Deputy

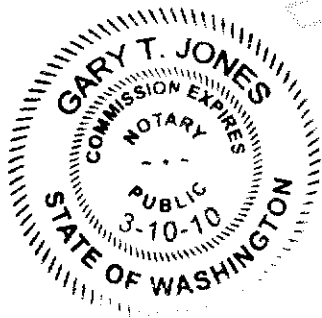


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STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify on this 10 day of Sept, 2009, that I know or have satisfactory evidence that before me personally appeared David J. Olson and Brian Smith to me known, respectively, to be the Commissioners of Diking District No. 3, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal the day and year last above written.



Gary T. Jones
NOTARY PUBLIC in and for the State of
Washington, residing at Mount Vernon
My Commission Expires: 3/10/2010



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EXHIBIT "A"
(Legal Description of Trail Easement Area with Site Map)



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LEGAL DESCRIPTION
TRAIL EASEMENT - PARCEL "B":

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 34 NORTH, RANGE 04 EAST, W.M., CITY OF MOUNT VERNON, SKAGIT COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL "B", AS RECORDED UNDER AUDITOR'S FILE No.9607020044, IN VOLUME 18 OF SURVEYS, PAGES 118 AND 119, RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE NORTH 88-24-47 WEST, ALONG THE NORTH LINE THEREOF, A DISTANCE OF 35.30 FEET TO THE INTERSECTION WITH A POINT ON A CURVE TO THE RIGHT WHENCE THE CENTER BEARS SOUTH 83-54-49 WEST, A DISTANCE OF 500.00 FEET, AND THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05-12-39, AN ARC LENGTH OF 45.47 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 00-52-31 EAST, A DISTANCE OF 195.09 FEET TO THE INTERSECTION WITH THE NORTH LINE OF TRACT "A", CITY OF MOUNT VERNON SHORT PLAT No. MV-7-81, AS RECORDED UNDER AUDITOR'S FILE No. 8207220017, IN BOOK 6 OF SHORT PLATS, PAGES 4 AND 5, RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE NORTH 88-24-47 WEST, ALONG THE NORTH LINE THEREOF, A DISTANCE OF 14.05 FEET TO THE INTERSECTION WITH A POINT ON A CURVE TO THE LEFT WHENCE THE CENTER BEARS SOUTH 89-51-05 WEST, A DISTANCE OF 500.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00-43-36, AN ARC LENGTH OF 6.34 FEET TO THE POINT OF TANGENCY, THENCE NORTH 00-52-31 WEST, A DISTANCE OF 172.46 FEET TO A POINT OF CURVATURE OF A CURVE TO THE LEFT WHENCE THE CENTER BEARS SOUTH 89-07-29 WEST, A DISTANCE OF 500.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07-05-47, AN ARC LENGTH OF 61.93 FEET TO THE INTERSECTION WITH THE NORTH LINE OF A STATUTORY WARRANTY DEED TO SKAGIT COUNTY DIKING DISTRICT No.3, AS RECORDED UNDER AUDITOR'S FILE No. 8011170032, RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE SOUTH 88-24-47 EAST, ALONG THE NORTH LINE THEREOF, A DISTANCE OF 15.78 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 3,413 SQUARE FEET, OR \pm 0.078 ACRES, MORE OR LESS.



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