

Attachment A

AGREEMENT FOR LEVEE CONSTRUCTION, OPERATION AND MAINTENANCE

Boeing Levee USACE Height Increase and Ecosystem Restoration Project

River Mile 17.09 to 17.85, Right Bank

THIS AGREEMENT for the construction, operation and maintenance of the Boeing Levee height increase project and the Boeing Levee USACE ecosystem restoration project ("Agreement") is entered into on the last date signed below by and between the Parties, the CITY OF KENT, a Washington municipal corporation ("City"), and KING COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi-municipal corporation of the State of Washington ("District") (collectively, the "Parties").

RECITALS

A. King County, Washington, through the Water and Land Resources Division of the King County Department of Natural Resources and Parks ("WLRD"), as service provider to the District pursuant to an interlocal agreement with the District, operates and maintains a major portion of the Green River Levee System.

B. The District Board of Supervisors desires to improve the right bank of the Green River, from River Mile 17.09 to 17.85 by constructing (1) a levee improvement project to increase the height of the levee to achieve the Lower Green River System-wide Improvement Framework's provisional flood protection goal of 500-year, or 18,800 cfs, plus three feet of freeboard, and (2) an ecosystem restoration project described in Exhibit A, which generally consists of re-vegetation and habitat restoration work along this portion of the Green River (collectively, the "Project"). The Project is part of a plan to reduce flood risk to regionally significant economic assets in the City and in the Lower Green River Valley, restore critical salmon habitat for listed Chinook and other salmon species, and support recreational opportunities for the community along the River and its shoreline environment. The Project is planned for construction from 2015 through 2016.

C. The District desires for the US Army Corps of Engineers ("USACE" or "Corps"), in cooperation with the City, to construct the Project as soon as possible, in order to increase flood protection and improve embankment stability, improve salmon and wildlife habitat, and preserve recreational opportunities.

D. By Resolution FCD 2013-14.3, as amended by Resolution FCD 2014-08(“Resolution”), the District Board of Supervisors determined that the flood control improvements included in the Resolution generally contribute to the objectives of the District’s comprehensive plan of development. In the Resolution, the District Board of Supervisors also approved funding for the Project.

F. The Parties desire to enter into this Agreement to establish the terms and conditions for the Project.

AGREEMENT

Based upon the foregoing, the Parties agree as follows:

1. **Incorporation of Recitals—Scope of Agreement.**

- a. All recitals above are hereby incorporated and ratified as part of this Agreement.
- b. This Agreement establishes the terms and conditions for design, construction, installation, operation, maintenance and repair of the Project.

2. **Definition of District.** Unless provided otherwise in this Agreement, the term “District” hereinafter also shall include WLRD in its capacity as service provider to the District.

3. **Design, Construction and Reimbursement.**

a. The Parties acknowledge that the United States Army Corps of Engineers – Seattle District (“Corps”) will design, construct and install the improvements, items and facilities described in **Exhibit A**, attached hereto and incorporated herein by reference (“Project”).

b. The City or the Corps shall obtain and be responsible for all necessary local, state, and federal permits and approvals for the Project, and shall fully comply with all applicable requirements and conditions thereof.

c. The Parties acknowledge and understand that at the effective date of this Agreement funding for the Project is included in the District’s 2014-2019 Six-Year CIP. If the Board of Supervisors of the District fails to appropriate funds for the Project in any annual District budget, the District reserves the right to terminate this Agreement, and if the District does so, the City shall direct the Corps to terminate work immediately on the Project; provided, that until substantial completion of the Project, the District shall continue to accept and review City requests for reimbursement up to the amount of funds appropriated in an approved District budget.

d. The City’s cost and expense for the Project shall be reimbursed pursuant to the procedures, requirements and restrictions of the Reimbursement of City Expenditures paragraph below.

e. The Project area currently includes a river protection easement to King County. The City shall obtain and convey to the District or King County, as determined by the District or King County, all necessary easements or property for design, construction or installation of or access to the Project, using either the form of the standard River Protection Easement in Reference 8P to the King County Surface Water Design Manual, which includes an amendment that allows the City to proceed with any vegetation management work necessary for public safety consistent with **Exhibit B**, or a different form developed by the District or King County for this Project, as determined by the District or King County.

4. Levee Inspection, Maintenance, Operation and Repair Standards. The District and the City shall inspect, operate, maintain and repair the Project in accordance with this Agreement, which includes **Exhibit B**, attached hereto and incorporated herein by reference, an Operation and Maintenance Manual for the Project that is approved by the District, and District general standards, requirements and policies for operation, maintenance and repair of Green River levees, as adopted or applied by the District.

5. District Review of Plans. The City shall provide to the District a schedule of the Corps' material and significant events and actions for the design and bidding of the Project, which events and actions shall include, but not be limited to, sixty-five percent (65%), ninety-five percent (95%) and one hundred percent (100%) design stages and the invitation to bid. At least twenty-one (21) days prior to final approval by the Corps of plans and specifications for each of the three design stages, the City shall submit its most recent draft plans and specifications to the District for review and comment. At least twenty-one (21) days prior to issuance of the invitation to bid for the Project, or any part thereof, the City shall submit its most recent draft invitation to bid, including the plans, specifications and requirements of the invitation to bid, to the District for review and comment. The District may submit to the City any comments or concerns regarding the draft plans and specifications for a design stage, and draft plans, specifications and requirements for an invitation to bid. Upon receipt, the City shall submit the District comments and concerns to the Corps, and shall request the Corps to discuss the comments and concerns with the District as soon as possible, but prior to issuance or finalization of a document, as allowed within the Corps process.

6. District Inspections. The District shall have the right to inspect construction of the Project.

7. Contract for Project Work. The City shall request the Corps to send to the District upon execution all contracts for design, installation, construction, inspection and monitoring of the Project, or any part thereof, and if the Corps fails to send such contracts to the District in a timely manner, the City shall send such contracts to the District in a timely manner.

8. Record Drawings; Retention and Review of Documents. The City shall submit to the District record drawings for the Project, in a form and with detail required by the District. The City agrees to work with the Corps to maintain documentation of all planning, design, construction and inspection of the Project sufficient to meet state audit standards for a capital project, recognizing that the costs of the Project are paid for in whole or in part by the City and the District. The City agrees to work with the Corps to maintain any additional documentation that is requested by the District. The City shall work with the Corps to provide contracts and internal documents to the District for review and/or independent audit upon request.

9. Access; Special Use Permit. To the extent that the District's or King County's property interests require and allow, the City shall follow the District and/or King County processes for obtaining any necessary special use permits, consistent with King County special use permit procedures and standards, and shall obtain such permits for any City access to and construction and inspection work on the Levee. The District or King County shall waive any applicable bond requirements. If Project work involves access to and use of real property for which neither the District nor King County has real property interests or rights, the City shall be responsible for obtaining real property rights sufficient for City access to and construction and inspection of the Project work, and District and WLRD access to and maintenance, operation and repair of the Project work, improvements and facilities.

10. District Costs and Expenses. The total cost to the District for the Project shall not exceed \$3,539,762 without prior authorization of the District.

11. Reimbursement of City Expenditures.

a. No more than once a month, the City shall submit requests for reimbursement of City costs and expenses incurred on or after November 12, 2013 for design, construction, installation, inspection, and monitoring of the Project. The requests shall be in a form and shall contain information and data as is required by the District.

b. The District shall review the requests to confirm that they are reimbursable and payable under this Agreement. The District shall endeavor to complete such review within thirty (30) days of receipt of a request to determine whether they are reimbursable and payable under this Agreement. The District shall forward the approved reimbursement to the City within forty-five (45) days of the City request.

c. The District may postpone review of a City request for reimbursement where all or any part of the request is inaccurate or incomplete. The District shall notify the City of any inaccuracies or incompleteness within thirty (30) days of receipt of the request. The City shall provide the requested information or data within thirty (30) days of the request for such information or data. If the request is still inaccurate or incomplete in the opinion of the District,

the dispute shall be resolved in accordance with paragraph 20 below. After resolution of the dispute, the District shall provide reimbursement as provided in this paragraph 11.

d. The District may postpone payment of any request for reimbursement, up to a maximum of five percent (5%) of the request, where the City is delinquent in submittal, preparation or completion of any document or work required by this Agreement.

12. Project Warranty. The City shall warrant the materials, work and function of the Project for five (5) years after the City and District's acceptance of construction of the Project, or any discrete and separate portion thereof.

13. Compliance with Laws and Regulations. The City and the Corps shall be responsible for compliance with all applicable laws and regulations, and obtaining all required permits, approvals and licenses in connection with the Project.

14. Impact on Other Reaches or Segments. The District and the City agree that the Project improvements, items and facilities shall not have a detrimental effect on other segments or reaches of the Green River levee system. The Project improvements, items and facilities shall be deemed not to have such a detrimental effect where they fully protect the conveyance capacity and storage volume of the floodplain during base flood (100-year flood) conditions, as demonstrated by compliance with King County flood hazard regulations, which are Sections 21A.24.230 through 21A.24.260 of the King County Code. It is understood by the District and the City that there may be a backwater effect of the Project improvements, items and facilities in that the hydraulic modeling results show a small rise in floodway and floodplain water surface elevations in areas within an 800 foot segment of the Project.

15. Duration—Effective Date. This Agreement shall take effect on the date on which the second party signs this Agreement, and shall remain in effect until the Project warranty of paragraph 12 expires.

16. Third Parties. This Agreement and any activities authorized hereunder shall not be construed as granting any rights or privileges to any third person or entity, or as a guarantee or warranty of protection from flooding or flood damage to any person, entity or property, and nothing contained herein shall be construed as waiving any immunity to liability to the City, the District and/or King County, granted under state statute, including Chapters 86.12 and 86.15 RCW, or as otherwise granted or provided for by law.

17. Liens and Encumbrances. The City acknowledges and agrees that it will not cause or allow any lien or encumbrance arising from or related to the Project work authorized by this Agreement to be placed upon the real property interests of King County and the District. If such lien or encumbrance is so placed, King County and the District shall have the right to remove such lien and charge back the costs of such removal to the City.

18. Indemnification. To the maximum extent permitted by law, the City shall defend, indemnify and hold harmless the District and King County, and all of their officials, employees, principals and agents, from any and all claims, demands, suits, actions, losses, costs, reasonable attorney fees and expenses, fines, penalties and liability of any kind, including injuries to persons or damages to property, arising out of, or as a consequence of, the design, construction and installation of the Project improvements, items and facilities under this Agreement. As to all other obligations under this Agreement, to the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party, and all of its officials, employees, principals and agents, from any and all claims, demands, suits, actions, fines, penalties and liability of any kind, including injuries to persons or damages to property, arising out of or relating to any negligent acts, errors or omissions of the indemnifying Party and its contractors, agents, employees and representatives in performing these obligations under this Agreement. However, if any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the District or its contractors, employees, agents, or representatives, and the City or its contractor or employees, agents, or representatives, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its contractor or employees, agents, or representatives. This indemnification provision shall not be construed as waiving any immunity granted to the City, the District, or King County, under state statute, including chapters 86.12 and 86.15 RCW, as to any other entity.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under industrial insurance, Title 51 RCW, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

19. Insurance. Each Party recognizes that the other is self-insured and accepts such coverage for liability arising under this Agreement. Should any Party choose not to self-insure, that Party shall maintain and keep in full force and effect a policy of general liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence with an additional excess liability policy of not less than Ten Million Dollars (\$10,000,000) and will provide the other Party with a certificate of insurance and additional insured endorsement that will name the other Party as an additional insured.

20. Dispute Resolution. The Parties will seek to resolve any disputes under this Agreement as follows:

a. For disputes involving cost reimbursements or payments, as provided for in paragraph 11 above, submittal of all relevant information and data to an independent Certified Public Accountant and/or a Construction Claims Consultant, if agreed upon by the Parties, for a non-binding opinion as to the responsibility.

b. If the foregoing does not result in resolution and for all other disputes, the Parties may mutually select any informal means of resolution and resort will otherwise be had to the Superior Court for King County, Washington.

c. Each Party will be responsible for its own costs and attorney's fees in connection with the dispute resolution provisions of this paragraph 20.

21. Trail Design. If any impacts to the Green River Trail occur during construction and installation of the Project, the City shall work with the Corps to design and construct and obtain permits for fixing or replacing the Trail to meet King County Parks regional trail standards.

22. Entire Agreement; Amendment. This Agreement, together with its Exhibits A and B, represents a full recitation of the rights and responsibilities of the Parties and may be modified only in writing and upon the consent of both Parties. Should any conflict exist between the terms of this Agreement and the terms of the Exhibits, this Agreement shall control.

23. Binding Nature. The rights and duties contained in this Agreement shall inure to the benefit of and are binding upon the Parties and their respective successors in interest and assigns.

24. Notices, Communications and Documents. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by either Party (collectively, "notices") shall be in writing and shall be validly given or made to the other Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by facsimile transmission with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) business days after the deposit thereof in the United States Mail. If such notice is sent by facsimile transmission, it shall be deemed given at the time of the sender's receipt of electronic confirmation. Each such notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To City: Phone: () _____
 Email: _____
 Fax: () _____

To District :

Phone: () _____

Email: _____

Fax: () _____

Any Party may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other Party.

25. Authority. The undersigned warrant that they have the authority duly granted by their respective legislative bodies to make and execute this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective on the last date signed below.

CITY OF KENT

**KING COUNTY FLOOD CONTROL
ZONE DISTRICT**

By: _____

Suzette Cooke

Its: Mayor

By: _____

Reagan Dunn

Its: Board Chair

DATE: _____

DATE: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

City Attorney

By: _____

Legal Counsel

EXHIBIT A

Description of the Boeing Levee USACE Height Increase and Ecosystem Restoration Project

General Description

The Project is located on City property, deeded to the City for recreation and open space purposes. The Project is located on the right bank (easterly side) of the Green River between River Mile 17.09 and 17.85, which is approximately from South 200th Street on the north end, to South 212th Street which is near the south limits of the Project (see Figure 1). The Project area is located just south of Three Friends Fishing Hole Park and includes Boeing Rock Park.

The Project is multi-objective in scope and will reduce flood risk, provide environmental habitat restoration, and preserve the recreational interest for the community. Successful completion of this key partnership Project between the Corps, the District, and the City will benefit the region and local community.

Description of Levee Height Increase Part of Project

The existing setback levee in the Project area protects industrial, manufacturing, and commercial business properties within the cities of Kent, Tukwila and Renton. It is approximately 4,500 linear feet in length, was constructed in 2000 and was improved in 2012-13 to meet FEMA accreditation standards. The levee height increase part of this Project will increase the height of the setback levee to achieve 18,800 cfs, plus three feet of freeboard protection.

Description of Ecosystem Restoration Part of Project

The ecosystem restoration part of the Project will consist of re-vegetation and habitat restoration work along the Green River, on embankment, in upland areas along an existing trail, and in areas where the levee is currently constructed. The Project improvements, items and facilities include:

- Extensive riparian plantings to provide a vegetative armoring of the River embankment and to shade the River to reduce in-water temperatures.
- Excavation of alcoves to widen the River channel to create additional flood storage and conveyance, and to provide salmon habitat.
- Installation of large woody debris along the River's edge to protect the alcove areas and to provide habitat for salmon and other wildlife.
- Provision of recreational opportunities along the River and its shoreline, including: preservation and relocation of two existing trails (the Green River Trail and an existing

gravel trail or “middle trail” located between the river and the Green River Trail), preservation of Boeing Rock Park, which is located along the riverbank; grading and selective plantings to allow scenic overlooks and view corridors into the river and surrounding areas; a new trailhead parking facility; upland meadows; and other recreational amenities.

- Relocation of existing utilities, as needed, to construct the project.

EXHIBIT B

Project Inspection, Maintenance, Operation and Repair

Introduction

This Exhibit applies to the existing setback levee located landward of the restoration features, the height increase to the levee, and upland improvements, items and facilities of the Project. The existing setback levee, plus the height increase shall be referred to in this Exhibit as “Levee.” The City shall require the Corps to prepare a separate operations and maintenance manual, with input from the District and the City. The manual shall apply towards engineered logjams, alcoves, riparian plantings and other related Project improvements, items and facilities, and shall be approved by the District. The recreational features of the Project are also separate from this Exhibit.

Rules

1. After expiration of the 5-year warranty period for the Project, the District shall maintain and operate the Project, except the park, overlooks, parking lot, and recreational elements, consistent with the District’s Flood Hazard Management Plan Policy PROJ-6, Flood Protection Facility Design and Maintenance Objectives (or its successor) which states as follows:

“[The District] should construct new flood protection facilities and maintain, repair or replace existing flood protection facilities in such a way as to:

- Require minimal maintenance over the long term,
 - Ensure that flood or channel migration risks are not transferred to other sites,
 - Protect or enhance aquatic, riparian and other critical habitats, and
 - Protect or enhance multiple beneficial uses of flood hazard area.”
2. Levee maintenance and operation shall be based on a risk-based analysis approach. If FEMA rejects a risk-based approach for Levee maintenance and operation and for that reason fails to issue a CLOMR or LOMR for the Levee, the District shall not be obligated to operate and maintain the Levee.
 3. The Levee crest shall be maintained to provide for unimpeded vehicular access at all times, including access by heavy construction equipment and earth-hauling machinery.

4. The landward and riverward Levee slopes may be mowed and maintained in grass cover.
5. The 15-foot maintenance access and inspection area along the landward Levee toe may be mowed and maintained in grass cover.
6. Upon acceptance of completed Levee construction by the District, the Levee, as constructed to these standards, shall be inspected by the District prior to leaf emergence each spring, at low-flow conditions in the late Summer or early Fall, prior to the onset of fall rains and seasonal high flows, and during and immediately following flood events at Phase III (9,000 cfs) or greater.
7. All structural features of the Levee shall be inspected by the District for deterioration or damage, including the presence of any slope erosion, washouts, slumping, slides, or sloughing, and any conditions noted shall be included in prioritization of District and/or King County maintenance and repair needs, and in performance of maintenance and repair actions at the earliest appropriate opportunity.
8. All vegetation on the levee slopes, benches, or along the lower embankment shall be inspected by the District for erosion of the riverward embankment in the root zone, and appropriate corrective action shall be taken where such conditions may be present.
9. The District and/or King County shall perform continuing Levee patrols during all Phase III or greater flood events.
10. Damaged or impaired Levee conditions observed by the District during flood patrols shall be evaluated for emergency repair actions.
11. Any emergency repairs performed will be inspected by the District at the next low-water period for evaluation of permanent repair needs or additional measures required to restore the function and integrity of all affected locations.
12. The District and/or King County shall prioritize repairs consistent with the adopted policies of the District's Flood Hazard Management Plan, or its successor.
13. The City shall be responsible for all local drainage inspections and maintenance. The District and King County shall not assume any responsibility for stormwater management activities.
14. After giving the District at least forty-eight (48) hours notice, the City may trim and maintain vegetation on the Levee in order to foster public safety for park and trail users.

FIGURE 1

