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Sponsor: Dunn

Proposed No.: 2015-0503

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- 1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2015-0503, VERSION**
- 2 **1**
- 3 Insert Attachment A. Interlocal Agreement dated December 7, 2015
- 4 **EFFECT: Attaches the agreement to the ordinance.**

INTERLOCAL AGREEMENT BETWEEN KING COUNTY AND THE KING COUNTY FLOOD CONTROL
ZONE DISTRICT REGARDING FLOOD PROTECTION SERVICES

This Agreement is hereby entered into by King County, a home rule charter County in the State of Washington ("County"), and the King County Flood Control Zone District, a quasi-municipal corporation of the State of Washington ("District") (the "Parties" or when singular, the "Party") and shall be effective upon execution by King County and the District.

WHEREAS, the District desires to carry out its mission to provide flood protection projects and services throughout the County as efficiently and effectively as possible;

WHEREAS, prior to the formation of the District in April 2007, the County had a long history of implementing flood protection projects and services in King County, and through its Department of Natural Resources and Parks, had provided a full range of flood protection projects and services;

WHEREAS, following formation of the District in April 2007, the District decided to contract with the County to implement the District's projects and services;

WHEREAS, the Parties entered into an initial Interlocal Agreement Regarding Flood Protection Services for the period January 1, 2008 through December 31, 2008, and replaced it with an Interlocal Agreement Regarding Flood Protection Services effective January 1, 2009 ("2009 Interlocal Agreement");

WHEREAS, the Parties thereafter amended the Interlocal Agreement several times to modify or add terms and conditions and to extend the term through December 31, 2015;

WHEREAS, pursuant to the 2009 Interlocal Agreement, the County provides other services in support of the District, such as, treasury services, finance, budget, real estate, communications, legislative support, clerk, project management, IT services, risk management, and other support services;

WHEREAS, the District's flood protection projects, services and activities, implemented primarily by the County, and the County's floodplain regulatory program have earned the highest Federal Emergency Management Agency (FEMA) flood protection rating of any county in the country, saving businesses and residents hundreds of thousands of dollars annually on flood insurance premiums;

WHEREAS, the District with its dedicated funding source has the financial resources to provide significantly enhanced flood protection projects and services for the benefit of the citizens of the County;

WHEREAS, the Parties, although separate legal entities, share the common goal of helping to protect the citizens of the County from the ravages of flooding;

WHEREAS, the Parties desire to continue the provision of flood protection projects and services by the County to the District;

WHEREAS, because the 2009 Interlocal Agreement already has been amended several times, the Parties desire to enter into a new Interlocal Agreement instead of amending the 2009 Interlocal Agreement once again; and

WHEREAS, the Parties are each authorized to enter into this Agreement pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act) and RCW 86.15.080(8) and 86.15.095.

NOW, THEREFORE, it is agreed by the Parties as follows:

1. Purpose and Scope of the Agreement.

1.1. The purpose of this Agreement is to provide the terms and conditions under which the District shall use its financial resources and policy direction and the County shall use its technical expertise for a program to provide effective and efficient flood protection.

1.2. The scope of the flood protection program shall be funded by District revenues (and revenues obtained for the District by the County), and shall be established by the District's budget and work program.

2. District Obligations and Authority.

2.1. The District shall adopt by resolution an annual work program, capital and operating budget, and six-year capital improvement program (hereafter referred to as the "annual work program and budget"), as prescribed in RCW 86.15.140.

2.2. The District Board of Supervisors ("Board") shall set the policy direction for the District and may adopt procedures and rules to carryout those policies.

2.3. The District shall pay for the costs incurred by the County, consistent with the terms of this Agreement and the annual work program and budget as follows:

2.3.1. The District shall pay the County for all necessary actual costs incurred for providing the services under this Agreement, such as direct labor, employment benefits, equipment rental, sub-contractors, materials and supplies, utilities, permits, capital improvements, financing expenses, and acquisitions.

2.3.2. The District shall pay the County for all approved costs of legal services that are not adversarial to the District and that are provided by the County in its administration and implementation of the annual work program and budget and this Agreement.

2.3.3. The District shall pay the County for administrative overhead costs for the services provided by the County to the District. The administrative overhead costs shall be determined in accordance with the Overhead Cost Allocation Policy adopted as part of the County's Comprehensive Financial Management Policies, as currently in effect and as amended, and with the overhead costs in the adopted County budget.

2.4. In accordance with RCW chapter 42.56, the District shall respond to requests received by the District for District public records. The District shall notify the County of such requests as soon as possible, but in any event within two (2) business days.

2.5. The District shall cooperate fully in executing documents necessary for the County to provide services under this Agreement.

2.6. The District shall provide services of the District's legal counsel as necessary to carry out the annual work program and budget, and this Agreement.

2.7. The District shall provide services of the District's accountant to ensure accountability and independent reporting of financial statements.

2.8 Pursuant to RCW 42.24.080, the District, acting through either its Executive Committee or the Board, may upon request of the County, approve an advance payment to the County for services under this Agreement.

3. County Obligations and Authority.

3.1. Unless otherwise directed by the District, the County shall make available the Clerk of the County Council to serve as Clerk of the District ("Clerk of the Board") and to provide services to the District that are similar to the services provided by the Clerk of the Council to the County Council.

3.2. The County shall perform or contract for the performance of all services necessary or convenient to carry out the annual work program and budget, and this Agreement, including but not limited to the following:

3.2.1. Maintain accounts and records, including labor, property, financial and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed by the County pursuant to this Agreement.

3.2.2. As directed by the Executive Director, provide support for the District's Advisory Committee and Basin Technical Committees so that recommendations regarding the annual work program and budget are transmitted by August 31 of each year consistent with the legislation establishing the District (Ordinance 15728 section 7B).

3.2.3. Make available to the District during regular business hours all records related to this Agreement that are not privileged.

3.2.4. Implement a file retrieval system to respond to requests for County records related to this Agreement in a timely way.

3.2.5. Maintain and preserve records in accordance with applicable federal, state, and county retention schedules.

3.2.6. Upon receipt by the County of a public records disclosure request under Chapter 42.56 RCW that would require disclosure of County or District public records related to this Agreement, advise the Clerk of the Board and the District Executive Director of such request as soon as possible, but in any event within two (2) business days. In consultation with the District, the County is authorized to respond to such requests on behalf of the District.

3.2.7. Make concerted efforts to apply for and obtain federal, state and local grants and matching funds.

3.2.8. Notify the District Executive Director at least thirty (30) calendar days prior to submitting an application for federal, state or local grants and matching funds that relate to the work of the District, its annual work program and budget; provided, that the notice period may be less for applications involving emergency work or services.

3.2.9. Notwithstanding anything to the contrary herein, if there is a threat of imminent harm to property or public safety, respond on behalf of the District and immediately inform the District Executive Director of emergency actions taken, or which may be required.

3.2.10. Provide services of attorneys in the County Prosecuting Attorney's Office as necessary to carry out the annual work program and budget and this Agreement.

3.2. 11. Comply with all applicable policies, laws, rules and regulations, obtain all applicable permits, certifications and accreditations, and prepare and submit all applicable plans, reports and any other required information to regulatory agencies and bodies.

3.3. If requested by the District, within available resources, the County shall provide within the time and in the manner requested by the District, the following services and tasks:

3.3.1. Provide other support services to the District that are similar to those provided by County agencies to the County Council, including, but not limited to policy analysis of legislation and budgets, technical services, briefings, presentations, and other information and communications.

3.3.2. Provide additional technical expertise and personnel that is not otherwise required by this Agreement.

3.3.3. Provide electronic and paper copies of all contracts signed by the County in carrying out the annual work program and budget and this Agreement.

3.3.4. Provide management and administrative services relating to matching funds and grants.

3.4. The County shall consult regularly with, obtain input from and receive direction from the District Executive Director on implementation of the annual work program, customer service, planning and policy development, stakeholder engagement, public outreach, property acquisition, partnership opportunities and other program activities and issues that may arise.

3.5. The County shall keep the Supervisors of the affected Council geographic districts informed about key milestones related to project implementation within their districts.

3.6. The County may modify or reprioritize capital projects in the District's approved annual work program, provided the following process is followed:

3.6.1. Any projects that are substituted for projects on the approved annual work program must be on the District's approved six-year capital improvement program list.

3.6.2. The County shall notify the District Executive Director and the Board Chair in writing of the proposed modification or reprioritization, providing background information on, and the rationale for, the proposed change, including estimated applicable costs.

3.6.3. The proposed modification or reprioritization must be approved by either the Board or the District Executive Committee if the Board has authorized the Executive Committee to approve modifications or reprioritizations.

3.7 Pursuant to RCW 42.24.080, the County may request the District to approve an advance payment for services under this Agreement. The request shall be submitted in writing to the District Executive Director and shall include information to support the request.

4. Procedure for Preparation of Budget and Work Program.

Not later than August 31 of each year, the County shall prepare and submit for review by the District a proposed annual work program, a proposed capital and operating budget, a proposed six-year capital improvement program, a proposed subregional opportunity fund allocation, and any other annual work program and budget document requested by the District Executive Director for the subsequent calendar year. The County shall provide supporting information for such documents in a form and in such detail as is required by District Executive Director. The District Executive Director may request additional information, which the County shall provide in a timely manner, but not more than five (5) business days after receiving the request. However, the District Executive Director shall grant reasonable extensions of time based on the circumstances, and may request expedited responses with respect to needed financial information.

5. Monitoring and Adjusting Annual Work Program and Budget.

5.1. Through the invoicing process and reporting requirements of this Agreement, the County shall keep the District apprised of any foreseeable need to amend the annual budget or annual work program.

5.2. If the County believes that the cost of complying with or carrying out the annual work program will likely exceed the annual budget, the County shall as soon as possible

prepare and submit to the District Executive Director a proposed amendment to the annual budget or annual work program.

5.3 The District shall consider the proposed amendment in a timely manner, and may by resolution amend the annual budget and/or provide for adjustments to the annual work program or six-year capital improvement program.

6. County Engineer.

6.1. The Director of the Department of Natural Resources and Parks shall identify and appoint a person who shall act as and carry out the duties of the county engineer under RCW 86.15.060. Prior to the appointment of any person to serve as county engineer under the terms of this Agreement, the Director of the Department of Natural Resources and Parks shall provide the District Executive Committee or its designee with an opportunity to meet the candidate and provide input on the appointment. The Director of the Department of Natural Resources and Parks shall notify the Clerk of the District and the District Executive Director in writing of any resignation or termination of the person serving as the county engineer under the terms of this Agreement.

6.2. The parties agree that the county engineer under RCW 86.15.060 is not the county road engineer under Chapter 36.80 RCW. The scope of the county engineer's duties and responsibilities shall be consistent with the provisions of RCW 86.15.060 and all resolutions adopted by the District.

7. Public Outreach and Media Relations.

7.1. To ensure clear and consistent communications with the public and outside agencies; all communications with the public and outside agencies regarding District and County flood protection services and programs shall identify such services and programs as "District" services and programs, and shall be handled in accordance with communications protocols, policies, and plans developed by the Parties and approved by the District Executive Committee.

7.2 All products developed by the County and paid for with District funds or grant funds obtained on behalf of the District shall acknowledge the District.

8. Authority to Execute Agreements.

8.1. The Board shall authorize and approve all agreements to which the District is a party, unless provided otherwise by a District resolution. However, the Director of the Department of Natural Resources and Parks is authorized to sign the following

agreements on behalf of the District without further authorization and approval of the District:

8.1.1. Agreements with third parties related to the design, acquisition, construction, and construction management of flood protection capital projects that are included in an annual work program or the approved six-year capital improvement program, including without limitation, any agreement or real property document required by the U. S. Army Corps of Engineers or by any federal, state or local agency.

8.1.2. Agreements with the Federal Emergency Management Agency for reconstruction or repair of flood protection capital projects.

8.1.3. Agreements for the award of grants or matching funds that are consistent with applications for such grants or matching funds.

8.1.4 Agreements in the name of the County that are not included in Sections 8.1.1 through 8.1.3 above and that are necessary or convenient to carry out the annual work program; provided that Agreements in excess of \$100,000 shall be submitted to the Executive Director for review prior to signature.

8.2. Except as provided for in Sections 8.1 through 8.4 above, the County in implementing the capital projects in the annual work program and budget, shall undertake all actions, including but not limited to design, permitting, acquisition, and construction, in its own name, with the understanding that such projects after completion shall be transferred to the District, consistent with the terms of Sections 9.2 and 9.3 below.

9. Property Ownership.

All real property and interests therein acquired either by the District or the County on behalf of the District shall be in the name of the District, except as follows:

9.1. The real property and interests therein shall be in the name of the County or the District, if required by any federal or state agency pursuant to applicable laws, regulations or agreements.

9.2. Before and during design, construction and construction management of a flood protection capital project included within the annual work program, the County may acquire by negotiation, or condemnation if authorized by the District, all real property interests that are necessary for the project. The County may acquire such real property interests in its name only, unless required otherwise by the District or unless

provided otherwise by any federal or state agency pursuant to applicable laws, regulations or agreements. After County acceptance of such capital project, the County and the District shall enter into appropriate real property documents to transfer such real property interests to the District, in accordance with RCW 86.15.080, or to entities designated by the District, reserving through recorded instrument unto the County, as appropriate, access rights for the purpose of land management, maintenance and the exercise of regulatory authority.

9.3. Any real property acquired by the County pursuant to any County buyout and relocation program shall be in the name of the County. Following the County's acquisition of such property, the County and the District shall enter into appropriate real property documents to transfer such real property to the District, in accordance with RCW 86.15.080, or to entities designated by the District, reserving through recorded instrument unto the County, as appropriate, access rights for the purpose of land management, maintenance and the exercise of regulatory authority.

10. Invoices.

10.1. The County shall submit invoices to the District for the cost of services and expenditures on capital projects and program services to implement the annual work program. The invoices shall include all actual costs, plus administrative overhead costs as defined in Section 2.3.3. and shall be in a form and shall contain information and data as required by the District Executive Director.

10.2. The County shall submit invoices to the Executive Director and Clerk of the District within thirty (30) days after the closing of the billing month in which the services are provided and the capital project expenditures are incurred. The District shall review and pay the invoice within sixty (60) days of receipt in accordance with procedures established by District resolution, if any. However, the District may postpone payment of the invoice if it is inaccurate or incomplete, in the opinion of the District. The District shall notify the County of any inaccuracy or incompleteness within thirty (30) days of receipt of the invoice. The County shall provide the requested information within thirty (30) days of the request. The District shall pay an invoice within thirty (30) days of the submittal of all requested information, and invoices that are not paid within that time are subject to statutorily-authorized interest charges.

10.3. The County shall include as part of the monthly invoices any modification or reprioritization of capital projects in the District's annual work program as approved in accordance with Section 3.5.

10.4. The Parties may agree to include additional performance measures as part of the invoice.

10.5 District payments shall be made via inter-fund transfer consistent with instructions from the County.

11. Performance Reports.

11.1. The County shall submit financial and performance reports to the District by April 30 and October 31 of each year, outlining and summarizing implementation of the annual work program, in a form and general content approved by the District Executive Director. The reports shall generally reflect County budgetary practices and BARS requirements.

12. Legal Relations.

12.1. No Third Party Rights. It is understood and agreed that this Agreement is solely for the benefit of the Parties and gives no right to any other Party or person.

12.2. No Joint Venture. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other Party.

12.3. Independent Contractor. The County is an independent contractor with respect to the services and responsibilities under this Agreement, and nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties.

12.4. Jurisdiction and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Washington. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

12.5. Indemnification. 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, which arise out of or are related to any negligent acts, errors, omissions of the indemnifying Party and its contractors, agents, employees and representatives in performing 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 County 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.

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.

12.6. Prevailing Party Costs. In the event either Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.

12.7. Insurance.

12.7.1. The County and the District shall provide insurance or self-insurance. Unless provided otherwise by the Board, the District authorizes and directs the County to procure and maintain insurance on the District's behalf at the District's expense, including without limitation, the additional costs in insurance charges and costs incurred by the County for the District to be included as an insured in the County's self-insurance program and/or any insurance coverage provided for the benefit of the District, its Board, officers, employees, agents and volunteers. The County shall endeavor to procure insurance for the District with the same coverage and in the same amounts as is provided generally by the County for its officers, employees and agents. Prior to securing or renewing insurance for the District, the County shall consult with the District Executive Director.

12.7.2. Unless provided otherwise by the Board, the County is authorized to investigate and review all claims against the District, including associated allocated expense payments, which are not covered by insurance or self-insurance or which are within the self-insurance retention or deductible. After investigation and review, the County shall consult with the District Executive Director regarding the claim. The Board shall approve the payment of any authorized claim, and nothing in this Agreement shall be construed as requiring the County to pay any claims against the District.

12.7.3. Nothing in this Agreement shall be construed to modify or amend any provision of an insurance policy or any coverage through a self-insurance or joint insurance program. If there is a conflict between this Agreement and the

provisions of any such policies or coverage, the provisions of any such policies or coverage shall control.

12.8 Survival. The provisions of Sections 12.4, 12.5, and 12.6 shall survive any termination of this Agreement.

13. Duration, Performance, and Termination.

13.1 This Agreement shall take effect on January 1, 2016 and shall remain in effect through December 31, 2016. The District may extend this Agreement once for two (2) years by sending notice to the County of its intention to extend this Agreement on or before July 31, 2016.

13.2 If a Party fails to perform its obligations as described in this Agreement, the Parties shall use their good faith efforts to resolve the failure to perform using the dispute resolution process of Section 14. If the dispute cannot be remedied, either Party may elect to terminate this Agreement by giving written notice of termination to the other Party not less than one hundred and eighty (180) days prior to the effective date of the termination; except that if the District fails to make payment as required in this Agreement, the County may provide written notice of termination not less than thirty (30) days prior to the effective date of termination.

13.3 Failure to require full and timely performance of any provision of this Agreement shall not waive the right to insist upon complete and timely performance thereafter.

14. Dispute Resolution.

14.1 Should a dispute arise between the Parties out of or related to this Agreement, a Party shall notify the other Party in writing of any dispute that the respective Party believes should be resolved. The Parties shall communicate regularly and commit to act in good faith to resolve the dispute.

14.2 If the dispute cannot be remedied within thirty (30) days after written notice, the Parties shall consider submitting the matter to a mutually agreed upon non-binding mediator. The Parties shall share equally in the cost of the mediator.

15. Administration and Identification of Contacts.

15.1 This Agreement shall be administered by the District Executive Director and the Division Director of the Water and Land Resources Division of the Department of Natural Resources and Parks, who shall be contacted as follows:

Executive Director
King County Flood Control District
516 3rd Avenue, Room W1201
Seattle, Washington 98104

Division Director of Water and Land Resources Division
King County Department of Natural Resources and Parks
201 South Jackson Street, Suite 600
Seattle, Washington 98104

16. General Provisions.

16.1. Entire Agreement. This Agreement, including its attachments, is a complete expression of its terms, and any oral representation or understandings not incorporated in this Agreement are excluded. Any modification, amendment, or clarification to this Agreement shall be in writing and signed by both Parties. Copies of such shall be attached to this Agreement and by this reference are made a part of this Agreement as though full set forth in this Agreement.

16.2. Severability. If any provisions of this Agreement are held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated.

16.3. Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither Party shall be deemed in default hereunder nor liable for damages arising from its failure to perform any duty or obligation hereunder if such delay is due to causes beyond the Party's reasonable control, including, but not limited to acts of God, acts of civil or military authorities (including failure of civil authorities to timely process permits or provide utilities), fires, floods, windstorms, earthquakes, strikes or labor disturbances, civil commotion, delays in transportation, governmental delays or war.

16.4. Authorization and Listing. This Agreement has been duly authorized by King County Ordinance and King County Flood Control Zone District Resolution. The District shall list this Agreement on its website, and the County may list this Agreement on its website, in accordance with RCW 39.34.040.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed.

KING COUNTY

Dow Constantine
King County Executive

Dated

Approved as to Form:

Dan Satterberg
King County Prosecuting Attorney

By: _____
Senior Deputy Prosecuting Attorney

Dated

KING COUNTY FLOOD CONTROL ZONE DISTRICT

Reagan Dunn
Chair of the King County Flood Control District

Dated

Approved as to Form:

By: _____
Rod P. Kaseguma
Inslee, Best, Doezie, and Ryder, P.S.

Dated