

**CITY OF AUBURN, KING COUNTY AND KING COUNTY FLOOD CONTROL ZONE DISTRICT INTERLOCAL AGREEMENT FOR CONVEYANCE OF EASEMENTS ASSOCIATED WITH THE REDDINGTON LEVEE EXTENSION AND SETBACK PROJECT**

**THIS INTERLOCAL AGREEMENT** made and entered into, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and among the City of Auburn, a municipal corporation of the State of Washington (hereinafter referred to as the “City”), the King County Flood Control Zone District, a quasi-municipal corporation of the State of Washington (“KC Flood District”) and King County, a political subdivision of the State of Washington (“King County”), as Service Provider to the KC Flood District, under a separate interlocal agreement by and between King County and the KC Flood District. The term “District” shall hereinafter refer to both King County and the KC Flood District collectively; otherwise KC Flood District or King County shall refer to each in their separate capacity.

**WITNESSETH:**

WHEREAS, the KC Flood District and King County are each authorized to provide flood control improvements and flood protection services throughout the geographic area of King County; and

WHEREAS, both the KC Flood District and King County have adopted the 2006 King County Flood Hazard Management Plan, and the Plan recommends a project to set back and extend the Reddington Levee, to be located on the left bank (West) of the Green River in the City, between 26<sup>th</sup> Street NE and S 277<sup>th</sup> Street (“Reddington Levee Project”); and

WHEREAS, the Reddington Levee Project will address significant flood risks to people, property and infrastructure within the City and assist the City in providing important flood protection measures to its citizens; and

WHEREAS, the City holds title to properties, in which the District has the need to acquire interests to allow for the construction, operation and maintenance of the Reddington Levee Project;

WHEREAS, in accordance with the terms of this Agreement, the City is agreeable to conveying the property interests on the lands it holds title to for the purposes of facilitating the construction, operation, maintenance and repair of the Reddington Levee Project; and

WHEREAS, the City and the District desire to work cooperatively to bring about the successful completion of the Reddington Levee Project in a timely and efficient manner;

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**NOW THEREFORE** in consideration of their mutual covenants, conditions and promises, **THE PARTIES HERETO DO HEREBY AGREE** as follows:

1. Purpose of the Agreement.

The purpose of this Agreement is to set forth the conditions under which the City will convey non-exclusive easements to the District in support of the District's Reddington Levee Project.

2. Background.

The District is requesting non-exclusive easement rights to 22.9 acres on seven (7) City-owned parcels for the construction of the District's Reddington Levee Project. The District is proposing to construct the Reddington Levee Project in two phases. Phase 1 is proposed to extend from within the City's Brannan Park (Generally, 26<sup>th</sup> ST NE) north to the north boundary of the plat of Auburn 40 (a.k.a. plat of Monterey Park) and for this phase construction is anticipated to begin in 2013 or 2014. As a result of permitting requirements, this Phase 1 may be further divided into subphases both as to timing and location of construction. The District agrees to consult with the City on any such subphasing decisions. Phase 2 is proposed to extend from the northern terminus of Phase 1, north to S. 277th Street. The funding and timing of Phase 2 has not yet been determined.

This Agreement is intended to address obligations and responsibilities related to both phases of the Reddington Levee Project.

3. Administration.

- a. No new entity is created by this Agreement.
- b. The City and King County shall each appoint a representative to manage activities covered under this Agreement and to work to resolve any conflicts that arise ("Administrators"). The Administrators shall meet as needed. Either Administrator is authorized to convene a meeting with a minimum of seven calendar days written notice to the other, if an in-person meeting is warranted. If a conference phone call is appropriate, it shall be convened with the same written notice and timing.
- c. Any conflict that is not resolved by the Administrators within ten working days of the meeting or conference held to discuss the conflict shall be referred for resolution to the City's Assistant Director of Public Works/City Engineer, or his/her designee, and the King County Division Director of the Water and Land Resources Division. If the conflict cannot be resolved by the City's Assistant Director of Public Works/City Engineer, or his/her designee, and the Division Director of Water and Land Resources Division, it shall be resolved by the City's Director of Public Works, or his/her designee, and the Director of the Department of Natural Resources and Parks of King County.

4. City's Obligations:

- a. The City agrees to provide the District with easements in accordance with the compensation and consideration described below on the following parcels and as shown on the map at Exhibit A:

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<b>City-Owned Parcels</b>		<b>Easement Acreage</b>
	Reddington Levee Setback and Extension Phase 1	
1	Former Crista Ministries, Parcel #0004000098	6.92
2	StormWater Facility - Bioswale Tract, Parcel #7338001230	3.85
3	Brannan Park, Parcel #0001000081	2.99
4	Riverpoint Plat Park- Tract "D," Parcel #7338221190	3.50
5	Auburn 40 Plat Park – Tract "E," Parcel #0301402420	3.25
	Reddington Levee Setback and Extension Phase 2	
6	Trail Run Plat Park - Tract "O," Parcel #8669180500	0.92
7	Trail Run Plat Park -Tract "P," Parcel #8669180500	1.47
<b>Total</b>		<b>22.90</b>

5. District's Obligations:

a. City Stormwater Utility (Enterprise Fund) Land

- (1) The District shall pay the City the sum of One Hundred Forty Two Thousand, Five Hundred Eleven Dollars and No Cents (\$142,511.00) for the 10.77 acres of easement encumbrances on the City stormwater-utility owned, former Crista Ministries Parcel (Parcel #0004000098, 6.92 acres), and the Stormwater Facility-Bioswale Tract (Parcel #733001230, 3.85 acres).
- (2) In addition, the District will be responsible for replacing the equivalent functionality of the existing bioswale located on Parcel #7338001230, hereafter referred to as "stormwater quality swale" or "swale". The replacement facility shall be on the landward side of the Levee. The District's responsibility shall include all necessary land use or construction permitting, design, construction, inspection, and one year of post-construction performance monitoring, so that there will be no additional expense to the City on this item. The District's replacement of the swale shall include the following:
  - (i) Be completed in general conformance with the City's Public Facility Extension (FAC) process.
  - (ii) "Equivalent functionality" shall mean that the swale has a similar length, cross-section and hydraulic characteristics (travel time and flow depth) as the design of the existing water quality treatment facility shown on Auburn's construction drawings for project number C8049A, which provides treatment for flow rates up to 7.7 cfs and accommodates a discharge conveyance capacity of 25 cfs from the existing Brannan Park Storm Drainage pump station. The parties agree that

the new swale and associated pipes will be designed to treat 7.7 cfs of flow and accommodate a discharge from the pump station at a flow rate of 15 cfs, provided the pump station can be modified to discharge an additional 10 cfs of flow directly to the river in a manner acceptable to the City. City and King County staff may agree to alternative or additional equivalent functionality criteria.

- (iii) The City shall have the opportunity to review and comment on the plans developed by the District for the swale replacement prior to finalization, permitting and approval. The District shall cooperate and work to incorporate City's comments prior to finalization, permitting and approval. Additionally, the City shall have the opportunity to inspect the construction and provide comments.
- (iv) The District shall sequence its project activities to ensure that the full equivalent functionality of the existing bioswale is in place by the completion of the corresponding phase or subphase of construction that results in the removal of the existing bioswale facility. The District may install temporary measures; however, treatment functionality must be maintained throughout construction. Upon completion of construction of the bioswale, the one year monitoring period shall begin.

b. Parkland Washington State Recreation and Conservation Office (RCO) Conversion

- (1) The District shall fully fund the City's obligation to satisfy the RCO conversion requirements for the 2.99 acres at Brannan Park (Parcel #0001000081) and shall work with the City to replace the Brannan Park acres with 2.99 acres at another location acceptable to the City.
- (2) The City and King County shall determine whether any proposed replacement property is "available and in an acceptable location and configuration" using the following process: The City and King County shall cooperate to determine suitable areas based on areas not needed for replacement of the River Mobile Home Park due to Reddington Levee Project displacement, and based on existing easements and restrictions and existing stormwater facilities affecting the former Crista Ministries parcel. The potential for relocating any existing easements and restrictions or existing stormwater facilities currently affecting the former Crista Ministries parcel may also be evaluated and accomplished by King County. The location and configuration of the replacement City park land shall be determined in consultation with the City Director of Parks, Arts and Recreation. The City shall initiate and process a boundary line adjustment or other land use process through the City's development review to transfer ownership of the property from City's stormwater utility to the City's general fund.
- (3) If property on the former Crista Ministries site is available to satisfy the conversion, the District shall fund all City costs associated with converting the stormwater

property including but not limited to:

- (i) Conduct a new appraisal (under the process described in (4) below),
- (ii) Perform the process required for any boundary line adjustment, if needed, and
- (iii) Negotiate and complete title work and petition process with RCO.

In the event that the former Crista Ministries site is not available or acceptable, then the parties will seek a mutually agreeable solution to replace the Brannan Park Property.

- (4) If the District acquires the former Crista Ministries property, it shall pay the City the fair market value as determined using the following process: The District shall, at its sole expense, obtain an appraisal. If the City disagrees with the appraisal, it may hire its own appraiser at its own expense. If the two appraisals are within 10 percent of each other, the parties agree to split the difference between the two appraisals. If they are not within 10 percent, each appraiser will jointly select a third appraiser, whose appraisal value shall be the final value used and whose appraisal preparation cost shall be split equally between the City and District.

c. Trail Improvements.

- (1) As consideration for lost park land from the City's park resources, the District shall, at its sole expense, design and construct a paved trail on the entire length of the Phase 1 of the Reddington Levee Project, so that the top of the levee meets King County's multi-use paved trail specifications and so that the trail is consistent with the design of the Green River Trail. After construction, the trail shall become part of the County's regional Trail System, and the County shall be responsible for the operation and maintenance of the trail. The trail shall contain a minimum of three separate public access points that conform to the slope requirements of the Americans with Disabilities Act (ADA), as mutually agreed upon by the City and District, with the purpose of allowing the public to access the trail at the top of the levee from current or planned public roads or trails within the immediate vicinity of the Reddington Levee Project. In the event that the configuration of the Reddington Levee Project generates the need for the trail to be utilized by the City to access its utility facilities, then the parties will seek a mutually agreeable solution for such access including the creation or addition of access points from the trail or from other locations to said facilities, subject to approval of King County Parks.
- (2) If the District constructs Phase 2 of the Reddington Levee Project, the District agrees to pave, at its sole expense, the top of the Phase 2 levee to the same specifications stated in Section 5c(1) above for use as a recreational trail.
- (3) The City agrees to convey, at no additional cost to the District, except for the consideration specified in Section 5.a., easements to the District over the City-owned parcels necessary for the District to complete the District's Reddington Levee Project and to complete said trail improvements.

- (4) If and when the District constructs Phase 2 of the Reddington Levee Project, the City will convey easements for the Reddington Levee Project needed from Trail Run Plat Park - Tracts "O" and "P," when the District has a confirmed date to begin Phase 2 construction.
- (5) For each phase of the Project, the City will retain rights to the levee top trail over city owned property and for accessing the levee trail at a minimum of three (3) mutually agreed upon selected points along the trail and retain rights for pedestrian and hand-carry boat access to the water of the Green River. Easement locations will be coordinated by the District during the design phase prior to construction with City and King County Parks approval of final levee plans that illustrate public access points.
- (6) The District agrees to exercise its best efforts in helping the City acquire rights in real property that would allow the City, at its sole expense, to construct a temporary trail on District or other property for the purposes of connecting the north end of the Phase 1 trail to the public trail along 277<sup>th</sup> Street. To the extent that King County has or obtains real property interests in the location of such proposed temporary trail, King County agrees to undertake a good faith effort to convey to the City rights sufficient to allow the construction and maintenance of such temporary trail. If Phase 2 of the Reddington Levee Project is not constructed, the Parties will work towards finding a means that would allow the public to continue use of the temporary trail. If Phase 2 of the Reddington Project is constructed, the Parties agree that such rights of the City referred to in this subsection 6 shall terminate upon construction of a connecting trail as part of Phase 2 of the Project or upon District construction of the regional trail segment.

6. Preparation and recording of easements.

- a. The District will prepare drafts of all easement documents in a form acceptable to the City.
- b. The District will be responsible for recording all easements, and for providing copies to the City.

7. Indemnification.

The City and the District agree that each shall indemnify and hold the other party and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the indemnified party arising out of, in connection with, or incident to the execution of this Agreement and/or the indemnifying party's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the indemnified party, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the indemnifying party; and provided further, that nothing herein shall require the indemnifying

party to hold harmless or defend the indemnified party, its agents, employees and/or officers from any claims arising from the sole negligence of the indemnified part, its agents, employees, and/or officers. No liability shall attach to any party by reason of entering into this Agreement except as expressly provided herein. 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 by the City, King County, and/or the KC Flood District, granted under state statute, including Chapters 86.12 and 86.15 of the Revised Code of Washington (RCW), or as otherwise granted or provided for by law.

8. Waiver of Subrogation.

The parties hereby mutually release each other from liability and waive all right of recovery against each other for any loss caused by fire or other perils which can be insured against under fire insurance contracts including any extended coverage endorsements thereto which are customarily available from time to time in the State of Washington, provided, that this paragraph shall be inapplicable to the extent that it would have the effect of invalidating any insurance coverage of any party.

9. Compliance with rules and regulations

The parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

10. Assignment

The parties shall not assign this Agreement or any interest, obligation or duty therein without the express written consent of the other parties.

11. Attorney's fees

If any party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by another party with respect to this Agreement, and in the further event that one or more parties shall substantially prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's or parties' reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

12. NOTICES

All notices and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

To King County::

To the City:

Christie True, Director,

Dennis Selle, Asst. Public Works

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King County DNRP  
201 S Jackson Street, Suite 700  
Seattle, WA 98104-3855

Director/City Engineer  
25 W. Main Street  
Auburn, WA 98001

To the KC Flood District:

Kjris Lund  
Executive Director  
516 Third Avenue Room 1200  
Seattle, WA 98104

or to such other respective addresses as any party hereto may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing. Notices may be provided by electronic mail, and shall be considered to have been given on the day after the electronic mail message is sent.

### 13. NONDISCRIMINATION

Each of the parties, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or the presence of any sensory, mental or physical handicap be discriminated against or receive discriminatory treatment by reason thereof.

### 14. MISCELLANEOUS

- a. All of the covenants, conditions and agreements in this Agreement shall extend to and bind the legal successors and assigns of the parties hereto
- b. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in accordance with RCW 36.01.050.
- c. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- d. The duration of this Agreement shall extend until the completion of the construction of Phase 2 of the Reddington Levee Project. Notwithstanding the preceding sentence, in the event that the parties mutually agree in writing after construction of Phase 1 of the Reddington Levee Project that the construction of Phase 2 of the Reddington Levee Project should be postponed indefinitely, then this Agreement shall terminate upon the

- date of the execution of such writing.
- e. The performances of the duties of the parties provided hereby shall be done in accordance with standard operating procedures and customary practices of the parties.
- f. Unless otherwise specifically provided herein, any real property to be held in connection herewith, if applicable, shall be held as the separate property of the party or parties in whose name(s) the property is/was acquired.
- g. No provision of this Agreement shall relieve any party of its public agency obligations and or responsibilities imposed by law.
- h. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect, unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time either party shall have the right to terminate the Agreement.
- i. This Agreement constitutes the entire agreement among the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by all of the parties.
- j. Pursuant to RCW 39.34.040, a copy of this Agreement shall be filed with the Auburn City Clerk, recorded with the King County Auditor, or made available on the City or County web sites, in the sole discretion of the Parties.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

**KING COUNTY**

**CITY OF AUBURN**

By: \_\_\_\_\_

\_\_\_\_\_  
Peter B. Lewis, Mayor

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

Danielle Daskam, City Clerk

Approved as to form:

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

\_\_\_\_\_  
Daniel B. Heid, City Attorney

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**KING COUNTY FLOOD CONTROL  
ZONE DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney for KC Flood District

**EXHIBIT A**

**MAP**