ATTACHMENT A

REVISED AGREEMENT FOR LEVEE CONSTRUCTION, OPERATION AND MAINTENANCE

Russell Road Upper Levee – North Reach and South Reach

River Mile 19.25 to 20.4, Right Bank

THIS REVISED AGREEMENT FOR LEVEE CONSTRUCTION, OPERATION AND MAINTENANCE ("Agreement") of the Russell Road Upper Levee – North Reach and South Reach, River Mile 19.25 to 20.4, Right Bank ("Levee") 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 Russell Road Upper Levee – North Reach and South Reach ("Levee") is a key part of the Green River levee system. The District Board of Supervisors desires to improve the Levee by constructing a new secondary earthen levee described and shown in Exhibit A as part of a longer term plan for a setback levee in this area. The secondary levee project will hereafter be referred to as "Project" or "Levee Project". The Levee Project is planned for construction from 2013 through 2016.

C. The District desires to authorize and the City desires to construct the Project as soon as possible, in order to provide for the safety of the residents and businesses that are protected by this levee.

D. By Resolution FCD 2012-09.3, adopted on November 5, 2012, FCD 2013-14.3, adopted on November 12, 2013, and FCD 2014-14.3, adopted on November 3, 2014, the District Board of Supervisors determined that the flood control improvements included in those Resolutions generally contribute to the objectives of the District's comprehensive plan of development. In those Resolutions, the District Board of Supervisors also approved funding for the Project.

E. Pursuant to Resolution FCD 2013-12.1, the Parties entered into the "Agreement for Levee Construction, Operation and Maintenance, Russell Road Upper Levee-North Reach, River Mile 19.5 to 19.8, Right Bank" relating to the North Reach portion of the Project ("North Reach Agreement"). Pursuant to the North Reach Agreement, the North Reach Levee was constructed in 2013.

F. Pursuant to Resolution FCD 2014-02.1, the Parties entered into the "Agreement for Levee Construction, Operation and Maintenance, Russell Road Upper Levee-North Reach and South Reach, River Mile 19.25 to 20.4, Right Bank" relating to the North and South Reaches of the Project ("2014 Agreement"). Pursuant to the 2014 Agreement, construction on a portion of the South Reach Levee located at the James/Russell intersection was started in 2014, and property necessary to construct the South Reach Levee located along the Lakes Community will be acquired.

G. The Parties desire to revise the 2014 Agreement to amend and re-state the 2014 Agreement, and to include construction of the remaining portion of the South Reach Levee along the Lakes Community, which has an anticipated start date in 2015.

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 improvements to the Levee, as that term is defined in the recitals above. This Agreement amends and replaces the "Agreement for Levee Construction, Operation and Maintenance, Russell Road Upper Levee-North Reach and South Reach, River Mile 19.25 to 20.4, Right Bank" executed by the Parties in April, 2014, upon the effective date of this Agreement, as defined in paragraph 16 below.

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. Levee Design, Construction and Reimbursement.

a. The City shall design, construct and install the improvements to the Levee Project described and depicted on Exhibit A, attached hereto and incorporated herein by reference in accordance with this Agreement, subject to the authorizations and restrictions in Exhibit A. In this Agreement, the term "Levee Project" or "Project" shall apply to both the North Reach and

the South Reach, unless the term can and should apply only to a part of the Project or Levee Project.

b. The City shall obtain and be responsible for all necessary local, state, and federal permits and approvals for the Levee 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, all of the estimated cost of the Levee Project is included in the District's 2015-2020 Six-Year CIP. The District reserves the right to terminate this Agreement, and the City shall immediately terminate work upon receipt of notice to terminate; 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 or this Agreement.

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

e. Except as provided in Section 3(f) below, the City shall obtain and convey to the District or King County, as determined by the District, all necessary easements or property interests for design, construction of or access to the Levee Project. If the property interest is an easement, the City shall use either (1) the form of the standard River Protection Easement in Reference 8P to the King County Surface Water Design Manual, or (2) a different form of River Protection Easement approved by the District. If the property interest is other than an easement, the form of the property interest document shall be approved by the District.

f. For portion of the Levee Project shown on Exhibit C, attached hereto and incorporated herein by reference (also known as the Lakes Community portion of the South Reach Levee), (1) the City shall grant to the District or King County, as determined by the District, a fifteen-foot wide River Protection Easement for the area shown on Exhibit C, in the form of River Protection Easement or alternative Easement form described in Section 3(e) above, (2) the City shall grant to the District or King County a maintenance and inspection easement for the portion of the Levee located in the City's right-of-way shown on Exhibit C and outside of the existing Green River Trail, in a form of easement approved by the District, (3) the District or King County, as determined by the District, shall grant to the City a vegetation management easement between the River Protection Easement and the maintenance and inspection easement, in a form of easement approved by the City, and (4) after receipt of the River Protection Easement, the District or King County, as determined by the District, shall grant to the City a ten-foot wide easement for utilities in the portion of the River Protection Easement that abuts the vegetation management easement. A typical cross section of the existing ground, the City right-

of-way, the vegetation management easement area, and River Protection Easement area is shown on Exhibit D, attached hereto and incorporated herein by reference.

4. Levee Inspection, Maintenance, Operation and Repair Standards. The District shall inspect, operate, maintain and repair the Levee in accordance with this Agreement, which includes Exhibit B, attached hereto and incorporated herein by reference, and with District general standards, requirements and policies for operation, maintenance and repair of Green River levees, as these are determined and applied by the District, provided that the District shall not be obligated to operate, maintain and repair the Levee if FEMA does not approve a risk-based approach to operation, maintenance and repair of the Levee.

5. District Review of Levee Plans and CLOMR Applications. The City shall provide to the District a schedule of the material and significant events and actions for design and bidding of the Project, which events and actions shall include, but not be limited to, the thirty percent (30%), sixty percent (60%) and ninety percent (90%) design phases and the invitation to bid. At least thirty (30) days before City completion of plans and specifications for any design phase, the City shall submit draft plans and specifications to the District for review and comment. At least thirty (30) days before advertising an invitation to bid, the City shall submit to the District for review and comment the plans, specifications and requirements of the invitation to bid and the application (with attachments and exhibits) for a FEMA Conditional Letter of Map Revision ("CLOMR"). The District shall submit any comments within thirty (30) days of receipt of the documents.

6. Additional Activities. The District will provide enhanced monitoring of the Levee through slope stability instrumentation.

7. District Inspections. The District shall have the right to inspect the City's construction of the Levee Project.

8. Contracts for Levee Work. Upon execution of a contract for construction of the Levee Project, the City shall send a copy of the contract to the District.

9. 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 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 maintain any additional documentation that is requested by the District. City contracts and internal documents shall be made available to the District for review and/or independent audit upon request.

10. 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, as applicable, 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 shall waive any applicable bond requirements. If Levee 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 such Levee Project work, and District and WLRD access to and maintenance, operation and repair of the Levee.

11. District Costs and Expenses. The District's budgets for 2013, 2014 and 2015 include $5,987,228 for the Levee Project as described and depicted in Exhibit A. The Project costs shall not exceed this amount without amendment of the District's 2015 budget or approval of such amount in a future annual District budget.

12. 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 July 8, 2013 for property interest or easement acquisition, for restrictive covenant implementation, and for Project design, construction and inspection; provided that the City may not submit, and the District shall not consider, such reimbursement requests for property interest or easement acquisition or restrictive covenant implementation until the City has obtained and conveyed to the District the property interest documents required by paragraph 3.e or the applicable restrictive covenants. The requests shall be in a form and shall contain information and data as is required by the District. In connection with submittal of requests for reimbursement, the District may require the City to provide a status and/or progress report concerning submittal, preparation or completion of any document or work required by this Agreement.

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 in order 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 21 below. After resolution of the dispute, the District shall provide reimbursement as provided in this paragraph 12.

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

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

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

15. Impact on Other Reaches or Segments. The District and the City agree that the improvements to the Levee under this Agreement shall not have a detrimental effect on other segments or reaches of the Green River levee system. The improvements to the Levee shall be deemed not to have such a detrimental effect where the improvements 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.

16. 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 Levee Warranty expires.

17 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.

18. 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 Levee 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.

19. 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 and construction of the improvements to the Levee 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.

20. 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.

21. 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 12 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 21.

22. Trail Design. If the City removes the existing embankment and trail, the City shall obtain permits for and shall design and construct a trail on top of the new levee in accordance with King County Park regional trail standards. The City shall submit plans for the trail to King County Parks for review coincident with District plan review at each design phase. This City trail construction requirement does not necessarily preclude the District from designing and constructing a trail on top of the new levee in accordance with King County Park regional trail standards, once the existing levee crest and embankment have been fully improved (including trail removal, grading and vegetation). If the District designs and constructs the trail, the City agrees to process all applicable permits and approvals and shall not unreasonably deny, delay, nor place unreasonable conditions on such permits and approvals.

23. Entire Agreement; Amendment. This Agreement, together with its Exhibits A through D, 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.

24. 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.

25. 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: Tim LaPorte, Public Works Director

220 Fourth Avenue South

Kent, WA 98032

Phone: (253)856-5500

Email: tlaporte@KentWA.gov

To District: Mark Hoppen, Executive Director

516 Third Avenue, Room 1200, W-1201

Seattle, WA 98104

Phone: (206) 477-2985

Email: Mark.Hoppen@kingcounty.gov

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.

26. 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

By:_____
Suzette Cooke
Its: Mayor

DATE:_____

APPROVED AS TO FORM:

By:_____
City Attorney

KING COUNTY FLOOD CONTROL ZONE DISTRICT

By:_____
Reagan Dunn
Its: Board Chair

DATE:_____

APPROVED AS TO FORM:

By:_____
Legal Counsel

EXHIBIT A

Description of the Russell Road Upper Levee - North Reach and South Reach Project

The Russell Road Upper Levee is located along the right bank (easterly side) of the Green River between River Mile 19.25 and 20.4, which is approximately from S 231st Way to the Riverbend Golf Complex (see Figure 1). The Russell Road Upper Levee, which includes the North Reach and South Reach, protects properties within the cities of Kent, Tukwila and Renton. Multi-family residences and single family residences, the City's Maintenance Operations Facility, Russell Woods Park, Neely-Soames Historic Homestead and Riverbend Golf Complex are located adjacent to the Levee.

Before the completion of improvements to the North Reach section of the Levee in 2013, the North Reach, approximately 1,190 linear feet, did not meet slope and stability requirements and needed improvements to meet FEMA accreditation standards. This section of Levee is located between RM 19.5 and 19.8. This section of Levee is on the outside of a sharp bend in the river and the slope of the riverbank has indications of minor slumping of soils. This recently constructed section of the Levee provides greater than 3 feet of freeboard above the predicted 100-year flood event, which exceeds FEMA standards for accredited levees

The South Reach, approximately 1,800 lineal feet, does not meet slope and stability requirements and needs improvements to meet FEMA accreditation standards. This section of Levee is located between RM 20.1 to 20.4, which is located on a sharp outside bend in the Green River and has indications of minor slumping in the soils. Once constructed, this section of the Levee will provide greater than 3feet of freeboard above the predicted 100-year flood event, which exceeds FEMA standards for accredited levees.

District funds for the South Reach section of the Levee will allow construction of this section of the Levee along the Lakes Community, the City's Public Works Maintenance Operations Facility, Parks Maintenance Facility and Riverbend Golf Complex. District funds previously appropriated have allowed construction of the North Reach portion of the Levee, the setback levee at West James Street and Russell Road, and the acquisition of necessary properties and easements to complete the work.

For both the North and South Reach, the Project will allow for future re-vegetation and habitat restoration work along the river between the ordinary high water line and the trail in areas where the Levee will be constructed. In the areas where the Levees are installed, mid-slope terraced areas or benches may be constructed where feasible and native vegetation will be planted above the ordinary high water line as part of a future phase. This Agreement does not provide for the property acquisition or project planning or design for that future phase.

FIGURE 1:

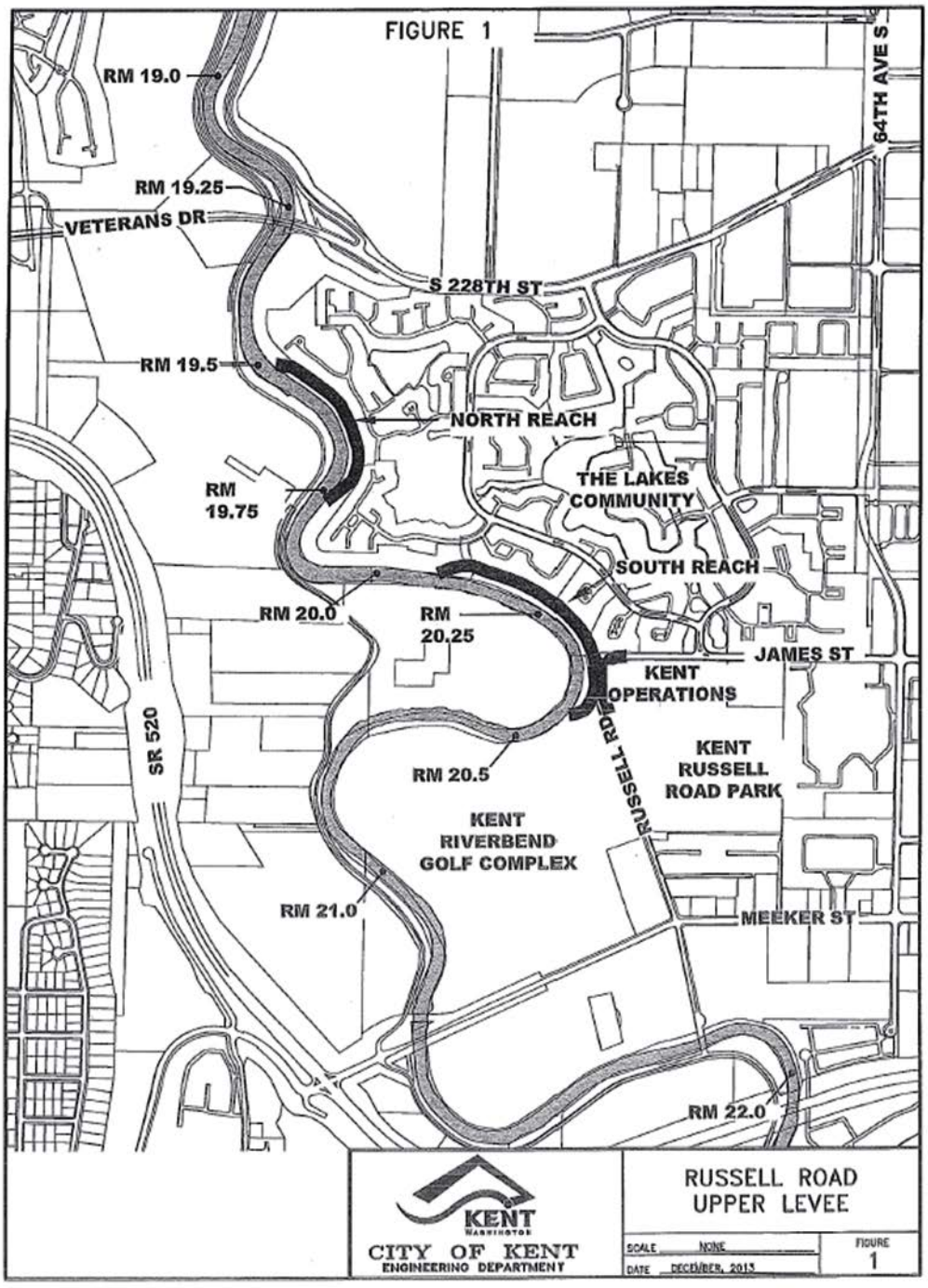
FIGURE 1
RM 19.0
RM 19.25
VETERANS DR
S 228TH ST
64TH AVE S
RM 19.5
NORTH REACH
RM 19.75
THE LAKES COMMUNITY
SOUTH REACH
RM 20.0
RM 20.25
JAMES ST
KENT OPERATIONS
SR 520
RUSSELL RD
KENT RUSSELL ROAD PARK
RM 20.5
KENT RIVERBEND GOLF COMPLEX
RM 21.0
MEEKER ST
RM 22.0
KENT WASHINGTON
CITY OF KENT
ENGINEERING DEPARTMENT
RUSSELL ROAD UPPER LEVEE
SCALE NONE
DATE DECEMBER, 2013
FIGURE 1

EXHIBIT B

Levee Inspection, Maintenance, Operation and Repair

1. The District shall maintain and operate the Levee 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 a risk-based approach is not acceptable to FEMA, and as a result FEMA fails to issue a CLOMR or LOMR for the Levee, the District shall not be obligated to operate and maintain the Levee.

3. The upper 1/3 of the riverward slope above the OHWM may be mowed and maintained in grass cover.

4. 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.

5. The landward Levee slope may be mowed and maintained in grass cover.

6. The 15-foot maintenance access and inspection area along the landward Levee toe may be mowed and maintained in grass cover.

7. 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.

8. 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.

9. 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.

10. The District and/or King County shall perform continuing levee patrols during all Phase III or greater flood events.

11. Damaged or impaired Levee conditions observed by the District during flood patrols shall be evaluated for emergency repair actions.

12. 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.

13. 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.

14. 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.

15. The Levee shall meet the following minimum Factors of Safety for potential slope failure mechanisms when determined by the methodologies described in USACE Publications EM 1110-2-1902 and EM 1110-2-1913, as follows:

    - End of Construction FS=1.3
    - Steady State at full stage: FS=1.2
    - Steady State at intermediate stage: FS=1.2
    - Seepage and Heaving: FS=1.2
    - Rapid Drawdown from full stage: FS=1.4
    - Seismic: FS=1.0

EXHIBIT C

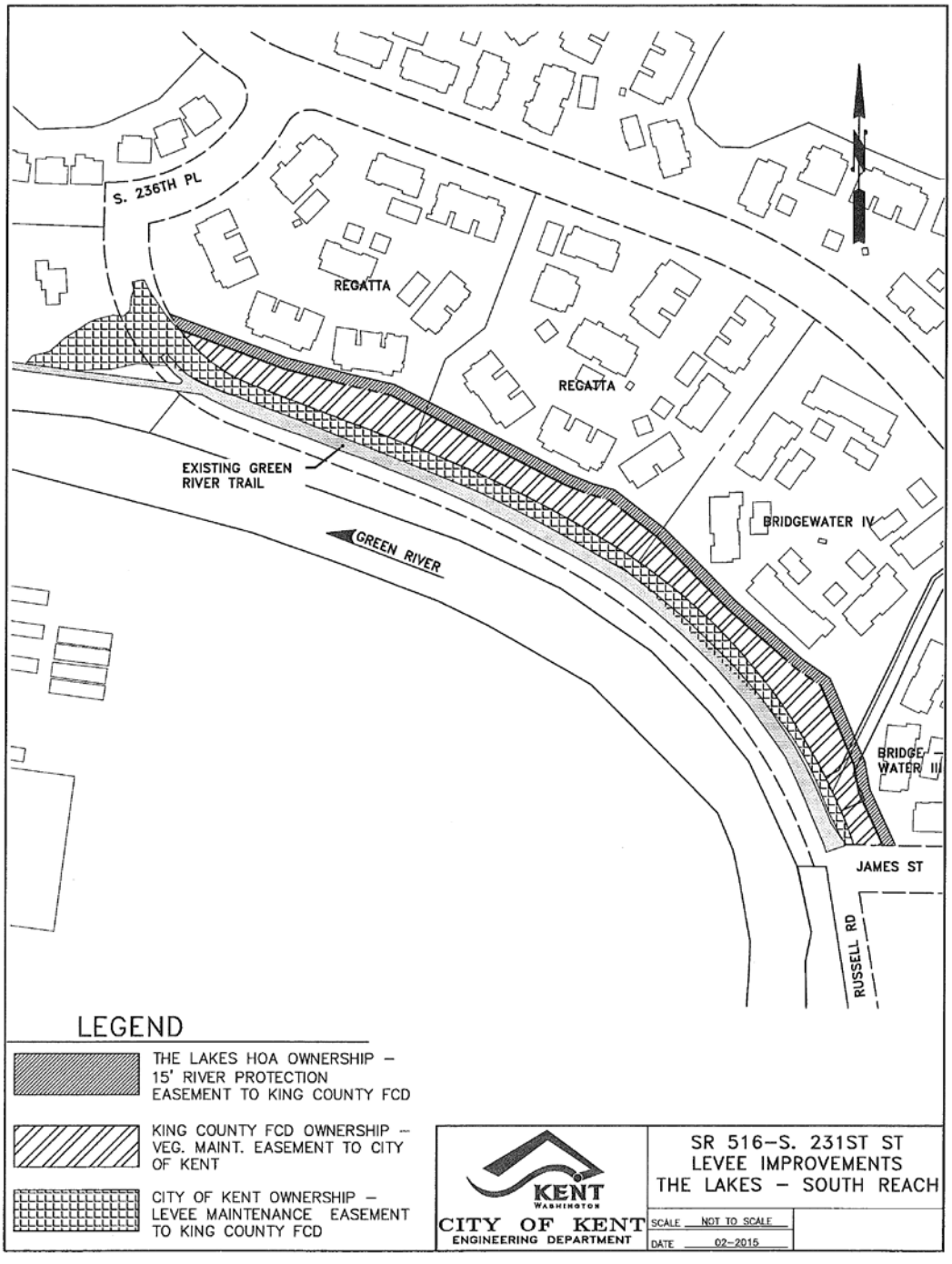

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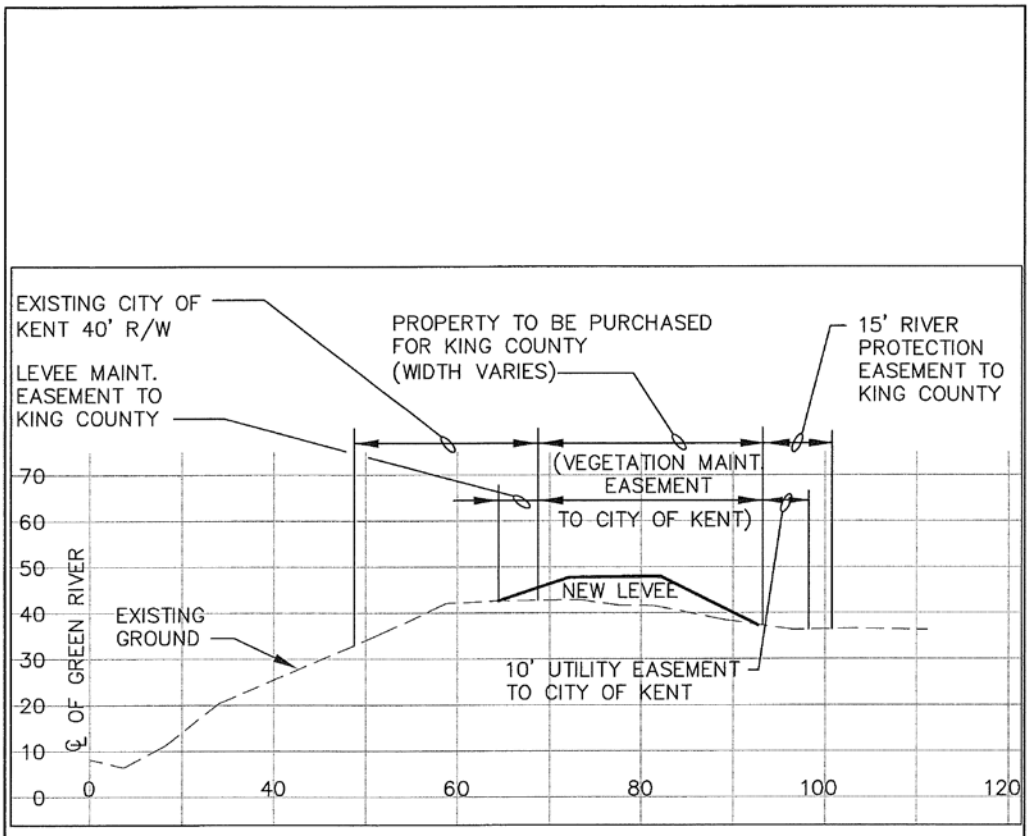
EXHIBIT D



TYPICAL SECTION

KENT WASHINGTON
CITY OF KENT
ENGINEERING DEPARTMENT

SR 516–S. 231ST ST
LEVEE IMPROVEMENTS
THE LAKES – SOUTH REACH

SCALE NOT TO SCALE
DATE 02–2015

G:\Design\09-3006 RUSSEL RD LEVEE\dwg\CIVIL 3D\REACH 2\PRE COMBINED\FIG FOR INTERLOCAL.dwg, 2/5/2015 4:22:03 PM