

DRAFT ID

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4/25/16

5/23/16 FLOOD BOARD MEETING

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Sponsor: Dunn

Proposed No.: FCD2016-06

DU → passed 9-0

- 1 AMENDMENT TO FCD RESOLUTION FCD2016-06, VERSION 1
- 2 Delete Attachment A. Agreement Regarding Alternatives and Property Acquisition,
- 3 Milwaukee II Levee Improvement Project, River Mile 24.04 to 24.25, Right Bank, and
- 4 insert Attachment A. Agreement Regarding Alternatives and Property Acquisition,
- 5 Milwaukee II Levee Improvement Project, River Mile 24.04 to 24.25, Right Bank dated
- 6 4-25-16.
- 7 **EFFECT: *Replaces the agreement with a new version to respond to comments by the***
- 8 ***City of Kent.***

AGREEMENT REGARDING ALTERNATIVES AND PROPERTY ACQUISITION

Milwaukee II Levee Improvement Project

River Mile 24.04 to 24.25, Right Bank

THIS AGREEMENT REGARDING ALTERNATIVES AND PROPERTY ACQUISITION ("Agreement") relating to the Milwaukee II Levee, River Mile 24.04 to 24.25, Right Bank, is entered into on the last date signed below by and between 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, 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 Milwaukee II Levee ("Levee") is a key part of the Green River levee system. The District desires to improve the Levee to provide improved flood protection and scour protection, to enable certification and secure necessary land rights (the Levee improvement will hereafter be referred to as the "Project"). The area of the Project is the right bank of the Green River from River Mile 24.04 to 24.25.

C. The District has included the Project in its CIP and budget, in a total amount of \$8,500,000. The Parties believe that the estimated cost and expense of planning, design, property acquisition and construction of the Project will not exceed this total amount. The City has agreed to construct the Project, in order to provide for the safety of residents and businesses that are protected by the Levee. The Parties desire to construct the Project as soon as possible, with a goal of construction in 2017.

D. The preliminary plan for the Project is 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. Before determining the final plan for the Project, the Parties desire to prepare an analysis and study of design and construction alternatives for the Project, and select a preferred alternative for recommendation to the District. The Parties further intend that after the District selects a design for the Project, the Parties will negotiate and enter into an Agreement regarding design and construction of the Project.

E. By Resolution No. FCD2015-07.2, adopted on July 13, 2015, the District determined that the flood control improvements included in the Resolution generally contribute to the objectives of the District's comprehensive plan of development. In that Resolution, the District also approved funding for the Project.

AGREEMENT

The Parties agree as follows:

1. Incorporation of Recitals—Scope of Agreement. All recitals above are hereby incorporated in and ratified as part of this Agreement. This Agreement establishes the terms and conditions for preparation of an analysis and study of design and construction alternatives for the Project, selection of a preferred alternative, selection of a final design, and acquisition of necessary property interests for the Project .

2. Preparation of Study of Alternatives--Selection of Preferred Alternative.

a. After consultation with the District, the City shall select a consultant to prepare an analysis and study of alternatives for the Project ("Study"), as described below. Prior to entering into an agreement with the consultant, the City shall provide the proposed agreement to the District, including the scope of work. The City shall pay the consultant, and the District shall reimburse the City for such payments pursuant to section 4 below.

b. Prior to commencement of the Study, the City shall provide to the District a schedule for preparation and completion of the Study. The Study shall include, but not be limited to, the following:

i. A charter (project goals, objectives and process) for the Project substantially similar to the charter provided for in the King County Water and Land Resources Division Project Management Manual.

ii. An analysis of at least two and perhaps three design and construction alternatives for the Project, which consider flood protection, toe/scour protection and certification, and which include, but not be limited to, alignment and location of any floodwall and a comparison of the cost, benefits and impacts of an earthen levee versus a floodwall.

iii. Criteria for analyzing, comparing and ranking each Alternative.

iv. A conceptual level cost estimate to relocate South 259th Street landward from the riverbank, and to install salmon habitat structures and features in the Project.

c. The Study shall assume that the maximum Project cost is \$8,500,000.

d. Upon completion of a draft Study, the City shall provide a copy of the draft Study to the District for review and comment. After District approval of the draft Study, either as prepared by the City or as amended after review and comment by the District, the City shall prepare the final Study. Based on the final Study, the Parties shall rank the Alternatives using the criteria, and recommend a preferred Alternative to the District. The District shall select the Alternative that will be used in the design of the Project. The City shall not commence design of the Project until the District has selected a design and has authorized the City to proceed.

3. Acquisition and Transfer of Property Interests.

a. During this Agreement, the City is authorized to acquire property interests that are necessary for the Project under the preliminary plan for the Project, in accordance with the terms and conditions of this section. These property interests are set forth on **Exhibit A**, attached hereto and incorporated herein.

b. The property interests acquired by the City shall provide for ownership, construction, installation, operation, maintenance, repair, replacement and removal of the Project. If the property interest is an easement, the City shall use either the form of the standard River Protection Easement in Reference 8P to the King County Surface Water Design Manual, or a different form of River Protection Easement approved by the District. If the property interest is other than an easement, the City shall use a form of property interest document approved by the District.

c. Prior to execution or acceptance of any property interest document, the City shall consult with the District Executive Director or designee.

d. In acquiring the real property interests, the City shall comply with all applicable state and federal laws and regulations, including but not limited to the following:

- i. Washington State Department of Transportation **Right of Way Manual (M26.01.06).**
- ii. Title 23, Code of Federal Regulations.
- iii. Chapters 8.04 and 8.25 RCW.
- iv. Chapter 8.26 RCW and Chapter 365-24 WAC.
- v. Chapter 8.140 RCW and Chapter 308-125 WAC.

e. The District shall reimburse the City for its costs and expenses of acquiring the property interests pursuant to section 4 below.

f. The City shall take title to the right-of-way of South 259 Street between the Union Pacific railroad and the east right-of-way edge of South 3rd Avenue.

4. Reimbursement of City Expenditures.

a. The maximum reimbursement for costs and expenses incurred by the City for the Study and property interest acquisitions pursuant to this Agreement shall be \$3,650,000.

b. No more than once a month, the City shall submit requests for reimbursement of City costs and expenses incurred on or after the effective date of this Agreement pursuant to sections 2 and 3 above; provided, that for costs and expenses incurred pursuant to section 3 above (property interests), the City shall not submit, and the District shall not consider, any requests for reimbursement until the City has executed or accepted a property interest document in accordance with section 3 above. The requests shall be in a form and shall contain information and data as required by the District. In connection with submittal of requests for reimbursement, the District may require the City to provide a status or progress report concerning the Study or the acquisition of property interests.

c. 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's request.

d. 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 all additional information or data within thirty (30) days of the District's request for such additional 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 section 6 below. After resolution of the dispute, the District shall provide reimbursement as provided in this section 4.

e. 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.

5. 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 District selects a preferred Alternative or the Parties execute a design and construction Agreement, whichever occurs first.

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

a. For disputes involving cost and expense reimbursements or payments, as provided for in section 4 above, submittal of all relevant information and data to an independent Certified Public Accountant 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 section 6.

7. 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 or King County, granted under state statute, including Chapters 86.12 and 86.15 RCW, or as otherwise granted or provided for by law.

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

9. 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 Project, the Study or 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.

10. 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.

11. Entire Agreement; Amendment. This Agreement, together with **Exhibit A**, 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 **Exhibit A**, this Agreement shall control.

12. 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.

13. 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 electronic mail. 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 business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three business days after the deposit thereof in the United States Mail. If such notice is sent by electronic mail, it shall be deemed given at the time of the sender's transmission of the electronic mail communication, unless the sender receives a response that the electronic mail message was undeliverable. 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: Kjristine Lund, Executive Director
516 Third Avenue, Room 1200, W-1201
Seattle, WA 98104
Phone: (206) 477-2985
Email: Kjris.Lund@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.

14. 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: _____
Assistant City Attorney

By: _____
Legal Counsel

EXHIBIT A

Property Interests that May be Acquired by City of Kent

V&S Properties and Investment

Tax Parcel Number: 000660-0017

Parcel A:

Beginning at a point on the east line of the Cavanaugh Tract and the south line of county road which is 810.48 feet, more or less, east and 2,914.56 feet, more or less, south of the northwest corner of Samuel W. Russell Donation Claim Number 41, Section 24, Township 22 North, Range 4 East, W.M., in King County, Washington;
Thence south to the White River;
Thence westerly along the north bank of the White River to the easterly line of Chicago Milwaukee St. Paul and Pacific Railroad;
Thence northerly along said easterly line to the southerly line of said county road;
Thence easterly along said road line to point of beginning.

Parcel B:

Beginning 810.48 feet east and 2,914.56 feet south of the northwest corner of Samuel W. Russell Donation Claim Number 41, Section 24, Township 22 North, Range 4 East, W.M., in King County, Washington;
Thence south 82.5 feet, more or less, to White River;
Thence northeasterly along river, 198 feet to the south line of county road;
Thence westerly to the Point of Beginning.

Amrik Commercial Rentals LLC

Tax Parcel Number: 000660-0082

That portion of the S.W. Russell Donation Land Claim No. 41, in King County, Washington, described as follows:

Commencing at the southeast corner of Waterman's Acre Tracts to the Town of Kent, according to the Plat recorded in Volume 12 of plats, page 11, in King County, Washington;
Thence south 88°02'30" west along the south line of said Plat 713.08 feet to the southerly production of the west line of South Third Avenue, as conveyed to the City of Kent by Deed Dated July 11, 1955, and recorded under Recording Number 4599830;
Thence south 1°55'37" East along said west line, and said west line produced, 1179.70 feet to an angle point in the southerly line of that Tract of land conveyed to C.L. Knudsen, W.H.

Meadowcroft and Fred E. Meadowcroft by Deed dated January 27, 1956, and recorded under Recording Number 4659959 and the True Point of Beginning;

Thence south $88^{\circ}02'30''$ west to the east line of the Tract of land conveyed to James A.

Cavanaugh by Deed dated December 8, 1885, and recorded under Recording Number 8870;

Thence south $1^{\circ}58'00''$ east along said east line 283.80 feet, more or less, to the north line of a County Road, being also the south boundary of a tract of land conveyed to Ralph E. Leber and La Vern June Leber his wife, by Deed dated February 4, 1955, and recorded under Recording Number 4543722;

Thence in an easterly direction along the north line of said County Road south $89^{\circ}17'00''$ east 242.10 feet, north $78^{\circ}06'00''$ east 239.10 feet north and $87^{\circ}14'00''$ east 330.61 feet, more or less, to said southerly production of the west line of said south Third Avenue;

Thence north $1^{\circ}55'37''$ west along said produced west line 249.16 feet, more or less, to the True Point of Beginning.