

AGREEMENT REGARDING ALTERNATIVES

Signature Pointe Levee Improvement Project

River Mile 21.7 to 23.2, Right Bank

THIS AGREEMENT REGARDING ALTERNATIVES (“Agreement”) relating to the Signature Pointe Levee Improvement Project, River Mile 21.7 to 23.2, 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 Signature Pointe 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, 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 21.7 to 23.2, as shown on Exhibit A.

C. The District has included the Project in its 2018-2023 Capital Budget Project List and its 2018 Capital Budget, in a total amount of \$300,000. The Parties desire to construct the Project as soon as possible, with a goal of construction in 2019.

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 cubic feet per second (cfs), plus three feet of freeboard.

E. The City has agreed to prepare an analysis of the design alternatives for the Project (“Study”), in order to provide for the safety of residents and businesses that are protected by the Levee. The Parties believe that the estimated cost of the Study, and City costs and expenses related to early Project work and services will not exceed \$300,000. After City completion of the Study, and District selection of the preferred alternative, the Parties intend to negotiate and enter into an Agreement regarding property acquisition, design, permitting and construction of 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 a study regarding design alternatives for the Project and selection of a preferred alternative.

2. Preparation of the Study—Selection of Preferred Alternative.

a. The City shall prepare a study as described in section 2(c) below (“Study”). After consultation with the District, the City shall select a consultant to prepare the Study, as described in section 2(c). Prior to entering into an agreement with the consultant, the City shall provide the proposed agreement to the District, including the scope of work. Upon execution of the agreement, the City shall send a copy of it to the District. The City shall pay the consultant, and the District shall reimburse the City for such payments pursuant to section 6 below.

b. Prior to commencement of the Study, the City shall provide to the District a charter (project goals, objectives and process) for the Project, substantially similar to the charter in the King County Water and Land Resources Division Project Management Manual, and a schedule for preparation and completion of the Study.

c. The Study shall include the following:

i. An analysis of at least two and perhaps three design alternatives for the Project, which consider flood protection, toe/scour protection and levee certification. Among the aspects to be considered for each alternative shall be the alignment and location of any floodwall and/or levee, and a comparison of the cost, benefits and impacts of an earthen levee versus a floodwall.

ii. Establishment of criteria for analyzing, comparing and ranking each alternative. The criteria shall include but not be limited to: habitat potential and features, long-term stability and maintenance, impacts to recreational opportunities including the Green River Trail, and impacts to the Signature Pointe apartment complex and its residents, factor of safety of alternatives, property cost and acquisition complexities, and need for passive vs. active closure needs.

iii. A conceptual level cost estimate for each alternative.

iv. A conceptual level cost estimate to install salmon habitat structures and features in the Project.

v. A schedule for selecting a preferred alternative, acquiring necessary property interests, and designing and constructing the Project.

d. Upon completion of a draft Study, the City shall provide a copy 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.

e. Using the criteria of the final Study, the Parties shall rank the alternatives and present the results to the District. The District, acting either through its Board of Supervisors or its Executive Committee, as determined by the Board of Supervisors, shall select an alternative that shall be used in the design of the Project. The City shall not commence design of the Project until the District has selected an alternative and has authorized the City to proceed under a separate or additional interlocal agreement.

3. Termination. The District reserves the right to terminate this Agreement upon notice to the City. Upon receipt of the notice, the City shall immediately terminate all Study and Project planning services and work; provided, that the District shall reimburse the City for such services and work that is performed prior to the termination.

4. City Costs and District Reimbursement. The Parties acknowledge and understand that the District has included the Project in its 2018-2023 Capital Budget Project List and its 2018 Capital Budget, in a total amount of \$300,000. The District's reimbursement to the City for the Study and Project planning services and work shall not exceed \$300,000 without prior written approval from the District.

5. Reimbursement of City Costs and Expenses.

a. 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 for Project planning and Study services and work. The requests shall be in a form and shall contain all information and data required by the District. In connection with the City's submittal of any of the requests for reimbursement, the District may require the City to provide a status or progress report concerning submittal, preparation or completion of the Study.

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. The District shall forward any approved reimbursement to the City within forty-five (45) days of the City's 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 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 11 below. After resolution of the dispute, the District shall provide reimbursement as provided in this section 5.

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, work or services required by this Agreement.

6. 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 City submits the results of the alternatives analysis and the District selects a preferred alternative, the Parties execute a property acquisition, design and/or construction agreement, or three years from the effective date, whichever occurs first.

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 of 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 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 either 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. 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 section 5 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 ultimately seek resolution within 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 11.

12. Entire Agreement; Amendment. This Agreement 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.

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

14. 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 (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 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: Michelle Clark, Executive Director
516 Third Avenue, Room 1200, W-1201
Seattle, WA 98104
Phone: (206) 477-2985
Email: Michelle.Clark@kingcounty.gov

Either Party may change its address for the purpose of receiving notices by providing written notice to the other Party as set forth in this section 14

15. 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: _____

Dana Ralph

Its: Mayor

By: _____

Reagan Dunn

Its: Board Chair

DATE: _____

DATE: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

City Attorney

By: _____

Legal Counsel