

AGREEMENT FOR ISSAQUAH CREEK - JEROME REVETMENT REPAIR

RIVER MILE 5.64

**BETWEEN THE KING COUNTY FLOOD CONTROL ZONE DISTRICT
AND THE CITY OF ISSAQUAH**

THIS AGREEMENT FOR THE ISSAQUAH CREEK JEROME REVETMENT REPAIR (“Agreement”), at River Mile 5.64, is entered into on the last date signed below, by and between the CITY OF ISSAQUAH, 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. WHEREAS, the King County Flood Control Zone District is a quasi-municipal corporation of the State of Washington, authorized to provide funding and support for flood risk reduction projects within King County.

B. WHEREAS, the District has identified a repair to the Jerome Revetment, depicted on Exhibit A hereto, on the Issaquah Creek as a flood risk reduction project necessary to increase the level of flood protection for King County’s residents and has included it for funding for 2021.

C. WHEREAS, the lower 5.7 miles of Issaquah Creek (“Creek”) flows through the City of Issaquah, Washington, traversing residential neighborhoods and the economic core of the City. King County, Washington, through the Water and Land Resources Division (“WLRD”) of the King County Department of Natural Resources and Parks, as service provider to the District, pursuant to an interlocal agreement with the District, collaborates with the City on providing funding and technical review of improvement projects in the Creek.

D. WHEREAS, the February 2020 flood caused extensive damage to river protection facilities located throughout King County, including approximately 75 lineal feet of the Jerome Revetment located at 1730 Brookside Drive. The Jerome revetment provides protection against bank erosion for three residential properties located in the Sycamore neighborhood of the City. The City desires to design and implement a repair of the damaged revetment along the Creek to restore the bank erosion protection for the affected residential properties (the “Project”).

E. WHEREAS, utilizing the District’s funding, the City desires to implement the Project, including the design, permitting and construction of the repair.

F. WHEREAS, the Parties agree that time is of the essence in the implementation of this Agreement in order to alleviate bank erosion risks along the Creek, which impacts the safety of local residents in the Sycamore Neighborhood of the City.

G. WHEREAS, the King County Water and Land Resources Division (“WLRD”) is a service provider to the District under the terms of an Interlocal Agreement between the District and King County, and pursuant to that Agreement, WLRD provides contract management and technical expertise for the District for District-funded projects, and will serve in this capacity for the Project.

AGREEMENT

Based upon the foregoing, the Parties agree as follows:

1. Incorporation of Recitals. All recitals above are hereby incorporated and ratified as part of this Agreement.

2. Scope of Agreement. The District agrees to provide funding for the Project not to exceed the total amount of Three Hundred and Fifty Thousand Dollars and No Cents (\$350,000.00) (“Funds”), subject to the terms of this Agreement. The Funding shall be available for the Project as follows:

2.1. Submission of a Charter. The City shall prepare and submit for District approval of a Project Charter in conformance with WLRD’s Project Management Manual. Work performed to prepare the Project Charter shall be eligible for District Funds, pursuant to the terms of this Agreement.

2.2. Project Scope of Work. Upon the District’s approval of the Project Charter, the Charter shall be automatically incorporated into this Agreement as Exhibit B hereto, without further action by either party. Subject to Section 2.1, the Funds shall only be used by the City for the performance of the Project, and specifically those tasks identified in the Project’s Charter, attached hereto as Exhibit B, and incorporated herein by this reference. Modifications to and deviations from the Charter by the City shall require advance written approval from the District.

3. Term. This Agreement shall be effective upon mutual execution of this Agreement (“Effective Date”). The Agreement shall terminate upon completion of the tasks identified in the Project’s Charter, unless earlier terminated in accordance with the terms of this Agreement; provided, if the District does not approve a Project Charter within two (2) years of the Effective Date, the Agreement shall automatically terminate.

3.1. The District may terminate this Agreement at any time by written notice to the City, and the City shall immediately terminate work upon receipt of notice to terminate, provided that, unless termination is for cause, the City may continue to submit reasonable requests for reimbursement up to the amount of funds appropriated in an approved District budget for work that was performed prior to the date of termination, provided The City’s construction contract shall be consistent with the parties’ right to terminate this Agreement.

3.2. The City may terminate this Agreement at any time by written notice to the District, provided that the District shall have no obligation to provide Funds for work occurring after the date of termination.

3.3. The Funds were appropriated in the District's mid-year 2020 Budget (\$50,000), and 2021 Annual Budget (\$200,000), and mid-year 2021 Budget (\$100,000), for a total of \$350,000. To the extent that the Project requires future appropriations or carryover to a future budget year by the District, the District's obligations are contingent upon the appropriation of sufficient funds, provided, that once the City enters into a contract for construction of the Project, the District's obligations shall be fixed and no longer contingent. If no such appropriation is made and the City has not yet entered into a contract for construction of the Project, this Agreement will terminate at the close of the appropriation year for which the last appropriation that allocated Funds under this Agreement was made.

4. Permitting and Compliance. At all times relevant to the City's performance under the terms of the Agreement, the City shall comply with all applicable federal, state and local laws and regulations. The City shall obtain and be responsible for all necessary local, state, and federal permits and approvals for the Project, and shall fully comply with all applicable requirements and conditions thereof.

4.1. The City shall obtain and be responsible for all necessary property rights, special use permits, easements, or property acquisitions. Access to private properties for the Project are the sole responsibility of the City, and the District shall notify the City when District access is necessary to effectuate the District's performance under this Agreement.

4.2. Compliance with Laws and Regulations. The City shall be responsible for compliance with all applicable laws and regulations, and for obtaining all required permits, approvals and licenses in connection with the Project, including compliance with all applicable laws and regulations pertaining to the City's management of the Public Works construction contract advertisement, bidding and award process.

4.3. Inspections. The District, including its service provider WLRD, may provide technical assistance to the City and coordinate with the City as required on work needed within King County jurisdiction. The District, including its service provider WLRD, shall have the right to inspect the City's Project and Project at the District's request.

4.4. Discriminatory Practices Prohibited. Throughout the term of this Agreement, the City shall fully comply with all equal employment and nondiscrimination provisions of applicable local, state and federal laws.

5. Ownership of Improvements. Notwithstanding the funding arrangements provided herein, the District shall be and become the sole owner of the Project improvements upon completion thereof and shall have sole responsibility thereafter for all maintenance and repair.

6. Impact on Other Reaches or Segments. The District and the City agree that the Project under this agreement shall not have a detrimental effect on other reaches of Issaquah Creek. The improvements shall be deemed not to have such a detrimental effect where the improvements fully protect the conveyance capacity of Issaquah Creek and provide flood protection for adjacent properties during the 100-year flood.

7. District Review. The City shall review and adhere to the requirements set out in District Resolution FCD 2016-22, including the terms of WLRD's Project Management Manual. The City shall submit a Project Charter for review and approval by the District's Executive Committee (which shall become Exhibit B hereto when approved) and shall request prior approval from the District's Executive Committee for initiation of the Project. The City shall include in the Project Charter a schedule of the material and significant events and actions for the Project, which events and actions shall include, but not be limited to, data collection, hydraulic and hydrologic modeling, alternatives screening and analysis, preliminary cost estimates, feasibility assessment, conclusions, recommendations, and conceptual drawings. Consistent with Exhibit B hereto, the City shall not proceed to the following milestones until the District has reviewed and approved of interim products consistent with the District's Capital Project Review Protocols and as follows:

- a. An Alternatives Analysis Report characterizing existing conditions, hazards and risks to the subject and adjacent properties; identifying various alternatives and costs/benefit scenarios for this part of this study. This step provides the City and the District the opportunity to review and approve any improvements or measures that the consultant would analyze in further detail.
- b. A 30% design, cost estimate and schedule for purposes of baselining these elements of the project and obtaining District approval to proceed with final design and construction.
- c. A draft Basis of Design (BOD) Report providing the rationale and supporting documentation for the 30% design.
- d. 60% and 90% design drawings, updated cost estimates and schedules, and any updates to the BOD Report at these milestones.
- e. Final design drawings, technical specifications, and cost estimate (bid package) for construction and the final BOD Report. The final BOD report shall include all supplemental information and documentation of studies performed to support the design including the alternatives analyses, cost-benefit analysis, any applicable hydraulic modeling results, geotechnical studies, surveys, conclusions and recommendations.
- f. Upon approval of Project design by the District, the City shall solicit bids for construction of the Project. If the City receives a bid for the Project that is

acceptable to the City and that will not cause the City's total Project costs under this Agreement to exceed the authorized \$250,000, the City may award the contract and construct the Project without the need to obtain specific approval from the District for the bid, the construction contract, or any change orders. If the City does not receive an acceptable bid(s) and the City's costs would exceed the authorized \$250,000, and the District does not appropriate additional funding and an amendment to this Agreement, this Agreement shall immediately terminate. In the event of a termination pursuant to this provision, the City may continue to submit reasonable requests for reimbursement up to the amount of funds appropriated in an approved District budget for work that was performed prior to the date of termination.

8. Retention and Review of Documents. The City agrees to maintain documentation of all planning, modeling, analysis, and design of the Project sufficient to meet District and 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. The Parties shall retain all records in accordance with the Washington State Retention Schedules and shall comply with the Washington State Public Records Act, Ch 42.56.RCW. The City shall submit to the District the final report of this Project, in a form and with detail required by the District.

9. Payment of Funds. The City may submit for reimbursement from the Funds of City actual and reasonable costs and expenses for the Project incurred on or after January 1, 2020. Requests for reimbursement shall be submitted and reviewed consistent with the procedures, requirements and restrictions set out in this Agreement and the District's relevant policies and procedures.

9.1. No more than once a quarter, the City may submit requests for reimbursement of City actual and reasonable costs and expenses incurred on or after January 1, 2020 for the Project. 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 submittal, preparation or completion of any document or work required by this Agreement.

9.2. 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 days of receipt of a request in order to determine whether they are reimbursable and payable under this Agreement. The District shall forward a response to the requested reimbursement to the City within forty-five days of the City's request.

9.3. The District may postpone review of a City request for reimbursement where all or any part of the request is unreasonable, 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 unreasonable, inaccurate or incomplete in the opinion of the District, the dispute shall be resolved in accordance with the terms herein.

9.4. 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.

9.5. The parties agree that if the Project funding provided by the District is insufficient to reimburse the City in full for its costs, the City shall not be obligated to complete the Project and shall have the option to terminate this Agreement by notifying the District of such termination in writing. If the City terminates this Agreement under the provisions of this subsection, the District shall continue to receive and review City requests for reimbursement for work that occurred prior to termination.

10. General Provisions.

10.1. 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.

10.2. 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 Improvement Study 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.

10.3. Indemnification. The City shall defend, indemnify and hold harmless the District and King County, and all of their officials, employees, principals, agents and insurers, from any and all claims, demands, suits, actions, losses, costs, attorney fees and expenses, fines, penalties and liability of any kind, including but not limited to injuries to persons or damages to property, relating to, in connection with, or arising out of, whether directly or indirectly, or as a consequence of, the Project, this Agreement, the City's use of the Funds, or the City's exercise of its obligations, rights or privileges under this Agreement.

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.

The City's obligations under this Section shall survive any termination of this Agreement.

10.4. Insurance. The City shall maintain, and shall require its contractors, subcontractors and agents to carry comparable insurance as set forth below, a policy of liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, with a reinsurance liability policy of not less than Ten Million Dollars (\$10,000,000), naming the District as an additional insured thereon and will provide the District with a Evidence of Coverage (EOC) pursuant to Chapter 48.62 RCW; provided, that the District shall accept a certificate from a certified risk pool certifying that the City is a member in good standing and has contractual indemnity coverage applicable to the requirements of this paragraph in fulfillment of insurance requirements. The City's obligations under this Section shall survive any termination of this Agreement.

10.4.1. The City's insurance coverage shall be primary insurance with respect to the District. Any insurance, self-insurance, or insurance pool coverage maintained by the District shall be in excess of the District's insurance and shall not contribute to it.

10.4.2. The City shall waive its rights of subrogation against the District for all claims and suits.

10.4.3. The coverage shall apply separately to each insurance against whom a claim is made or a suit is brought, except with respect to the limits of the insurer's liability.

10.4.4. Upon receipt of notice from its insurer(s), the City shall provide the District with notice of cancellation within three (3) days. It is hereby understood and agreed that the policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the District, by registered mail, of a written notice addressed to the Chair of such intent to cancel or not to renew. If the insurance is canceled or reduced in coverage, the City shall provide a replacement policy or this Agreement is immediately terminated.

10.4.5. The City's maintenance of insurance policies required by this Agreement shall not be construed to limit the liability of the City to the coverage provided in the insurance policies, or otherwise limit the District's recourse to any other remedy available at law or in equity.

10.4.6. The District reserves the right, during the term of the Agreement, to require any other insurance coverage or adjust the policy limits as it deems reasonably necessary

utilizing sound risk management practices and principals based upon the loss exposures. Prior to imposing such additional coverage or adjusting existing required coverages or limits, the District shall provide reasonable notice to the City and an opportunity to provide comments, and the District shall review and consider such comments that are timely made.

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

10.5.1. For disputes involving cost reimbursements or payments, 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.

10.5.2. 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. Each Party will be responsible for its own costs and attorney's fees in connection with the dispute resolution provisions of this paragraph.

10.6. Entire Agreement; Amendment. This Agreement, together with Exhibits A and B hereto, 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.

10.7. 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:

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

10.8 Authority. The undersigned warrant that they have the authority duly granted by their respective legislative bodies to make and execute this Agreement. This Agreement will be approved and filed in accordance with Chapter 39.34 RCW.

10.9 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence, or its application to any person or circumstance (collectively referred to as “Term”), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such Term declared illegal, invalid or unconstitutional shall be severable and the remaining Terms of the Agreement shall remain in full force and effect unless to do so would be inequitable or would result in a material change in the rights and obligations of the Parties hereunder.

10.10 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between the City and the District. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

10.11 Force Majeure. In the event either party is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, unusually severe weather conditions, employee strikes and unforeseen labor or availability of materials conditions not attributable to the City’s employees or agents, neither party shall be deemed in breach of provisions of this Agreement.

10.12 Venue/Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. Any action brought relative to enforcement of this Agreement, or seeking a declaration of rights, duties or obligations herein, shall be initiated in King County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective on the last date signed below.

CITY OF ISSAQUAH

KING COUNTY FLOOD CONTROL DISTRICT

By: _____
Mary Lou Pauly
Its: Mayor

By: _____
Dave Upthegrove
Its: Board Chair

DATE: _____

DATE: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
City Attorney

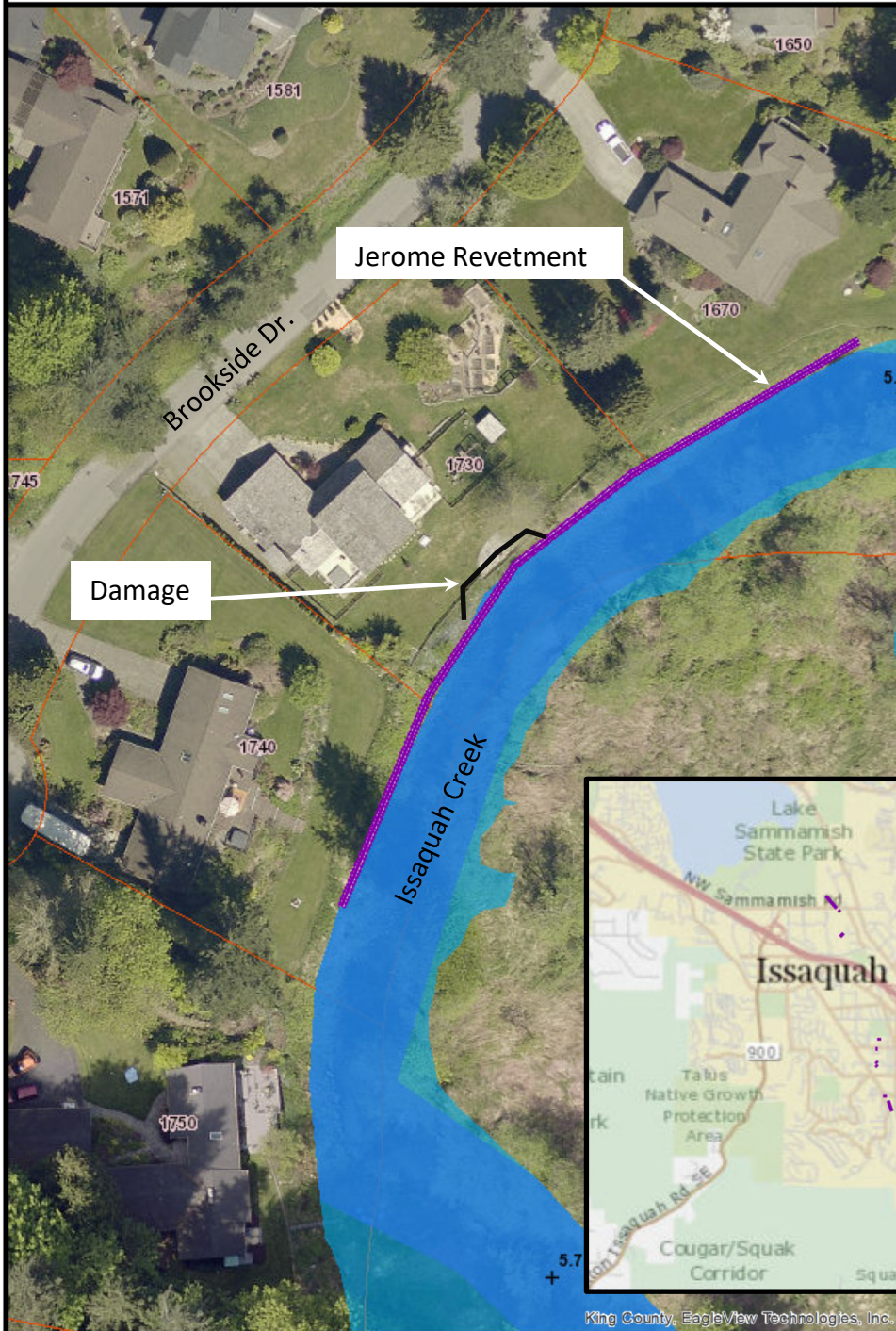
By: _____
Legal Counsel

Attest

NAME
City Clerk

EXHIBIT A

Rivers iMap



Legend

- River facilities database links**
- revetment
 - + River miles from flood patrol map book
- River facilities**
- levee
 - pump station
 - revetment
 - constructed channel
 - FEMA floodway
 - FEMA 100 year floodplain
 - Parcels

King County, EagleView Technologies, Inc.

The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

Date: 10/16/2020 Notes:

