RESOLUTION NO 4905

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN INTERLOCAL AGREEMENT AMONG THE CITY OF AUBURN, KING COUNTY, AND THE KING COUNTY FLOOD CONTROL ZONE DISTRICT FOR EASEMENTS ASSOCIATED WITH THE REDDINGTON LEVEE EXTENSION AND SETBACK PROJECT

WHEREAS, the King County Flood Control Zone District ("District") and King County ("County") are each authorized to provide flood control improvements and flood protection services throughout the geographic area of King County; and

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

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. That the Mayor and City Clerk are hereby authorized to execute an Interlocal Agreement between the City, King County, and the King County Flood Control District for conveyance of easements on City properties for the purpose of facilitating the construction, operation, maintenance and repair of the Reddington Levee Extension and Setback Project, which agreement shall be in substantial conformity with the agreement attached hereto as Exhibit A and incorporated herein by this reference.
Exhibit A – City of Auburn, King County Flood Control Zone District
Interlocal Agreement for Conveyance of Easements Associated with the
Reddington Extension and Setback Project
CITY OF AUBURN, KING COUNTY AND KING COUNTY FLOOD CONTROL ZONE DISTRICT INTERLOCAL AGREEMENT FOR CONVEYANCE OF EASEMENTS ASSOCIATED WITH THE REDDINGTON LEVEE EXTENSION AND SETBACK PROJECT

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

WITNESSETH:

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

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

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

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

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

WHEREAS, the City and the District desire to work cooperatively to bring about the successful completion of the Reddington Levee Project in a timely and efficient manner;
NOW THEREFORE in consideration of their mutual covenants, conditions and promises, THE PARTIES HERETO DO HEREBY AGREE as follows:

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

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

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

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

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

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### City-Owned Parcels

<table>
<thead>
<tr>
<th>Easement Acreage</th>
<th>City-Owned Parcels</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.92</td>
<td>Reddington Levee Setback and Extension Phase 1</td>
</tr>
<tr>
<td>3.85</td>
<td>Former Crista Ministries, Parcel #0004000098</td>
</tr>
<tr>
<td>2.99</td>
<td>StormWater Facility - Bioswale Tract, Parcel #7338001230</td>
</tr>
<tr>
<td>3.50</td>
<td>Brannan Park, Parcel #0001000081</td>
</tr>
<tr>
<td>0.92</td>
<td>Riverpoint Plat Park- Tract “D,” Parcel #7338221190</td>
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<tr>
<td>3.25</td>
<td>Auburn 40 Plat Park - Tract “E,” Parcel #0301402420</td>
</tr>
<tr>
<td>0.92</td>
<td>Reddington Levee Setback and Extension Phase 2</td>
</tr>
<tr>
<td>1.47</td>
<td>Trail Run Plat Park - Tract “P,” Parcel #8669180500</td>
</tr>
</tbody>
</table>

**Total 22.90**

5. District’s Obligations:

a. City Stormwater Utility (Enterprise Fund) Land

   (1) The District shall pay the City the sum of One Hundred Forty Two Thousand, Five Hundred Eleven Dollars and No Cents ($142,511.00) for the 10.77 acres of easement encumbrances on the City stormwater-utility owned, former Crista Ministries Parcel (Parcel #0004000098, 6.92 acres), and the Stormwater Facility-Bioswale Tract (Parcel #733001230, 3.85 acres).

   (2) In addition, the District will be responsible for replacing the equivalent functionality of the existing bioswale located on Parcel #7338001230, hereafter referred to as “stormwater quality swale” or “swale”. The replacement facility shall be on the landward side of the Levee. The District’s responsibility shall include all necessary land use or construction permitting, design, construction, inspection, and one year of post-construction performance monitoring, so that there will be no additional expense to the City on this item. The District's replacement of the swale shall include the following:

   (i) Be completed in general conformance with the City’s Public Facility Extension (FAC) process.

   (ii) “Equivalent functionality” shall mean that the swale has a similar length, cross-section and hydraulic characteristics (travel time and flow depth) as the design of the existing water quality treatment facility shown on Auburn’s construction drawings for project number C8049A, which provides treatment for flow rates up to 7.7 cfs and accommodates a discharge conveyance capacity of 25 cfs from the existing Brannan Park Storm Drainage pump station. The parties agree that the new swale and associated pipes will be designed to treat 7.7 cfs of flow and accommodate a discharge from the pump station at a flow rate of 15 cfs,
provided the pump station can be modified to discharge an additional 10 cfs of
flow directly to the river in a manner acceptable to the City. City and King
County staff may agree to alternative or additional equivalent functionality
criteria.

(iii) The City shall have the opportunity to review and comment on the plans
developed by the District for the swale replacement prior to finalization,
permitting and approval. The District shall cooperate and work to incorporate
City’s comments prior to finalization, permitting and approval. Additionally, the
City shall have the opportunity to inspect the construction and provide
comments.

(iv) The District shall sequence its project activities to ensure that the full equivalent
functionality of the existing bioswale is in place by the completion of the
corresponding phase or subphase of construction that results in the removal of
the existing bioswale facility. The District may install temporary measures;
however, treatment functionality must be maintained throughout construction.
Upon completion of construction of the bioswale, the one year monitoring
period shall begin.

b. Parkland Washington State Recreation and Conservation Office (RCO) Conversion
(1) The District shall fully fund the City’s obligation to satisfy the RCO conversion
requirements for the 2.99 acres at Brannan Park (Parcel #000100001) and shall
work with the City to replace the Brannan park acres with 2.99 acres at another
location acceptable to the City.

(2) The City and King County shall determine whether any proposed replacement
property is "available and in an acceptable location and configuration" using the
following process: The City and King County shall cooperate to determine suitable
areas based on areas not needed for replacement of the River Mobile Home Park due
to Reddington Levee Project displacement, and based on existing easements and
restrictions and existing stormwater facilities affecting the former Crista Ministries
parcel. The potential for relocating any existing easements and restrictions or
existing stormwater facilities currently affecting the former Crista Ministries parcel
may also be evaluated and accomplished by King County. The location and
configuration of the replacement City park land shall be determined in consultation
with the City Director of Parks, Arts and Recreation. The City shall initiate and
process a boundary line adjustment or other land use process through the City’s
development review to transfer ownership of the property from City’s stormwater
utility to the City’s general fund.

(3) If property on the former Crista Ministries site is available to satisfy the conversion,
the District shall fund all City costs associated with converting the stormwater
property including but not limited to:
(i) Conduct a new appraisal (under the process described in (4) below),
(ii) Perform the process required for any boundary line adjustment, if needed, and
(iii) Negotiate and complete title work and petition process with RCO.

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

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

c. Trail Improvements.

(1) As consideration for lost park land from the City’s park resources, the District shall, at its sole expense, design and construct a paved trail on the entire length of the Phase 1 of the Reddington Levee Project, so that the top of the levee meets King County’s multi-use paved trail specifications and so that the trail is consistent with the design of the Green River Trail. After construction, the trail shall become part of the County’s regional Trail System, and the County shall be responsible for the operation and maintenance of the trail. The trail shall contain a minimum of three separate public access points that conform to the slope requirements of the Americans with Disabilities Act (ADA), as mutually agreed upon by the City and District, with the purpose of allowing the public to access the trail at the top of the levee from current or planned public roads or trails within the immediate vicinity of the Reddington Levee Project. In the event that the configuration of the Reddington Levee Project generates the need for the trail to be utilized by the City to access its utility facilities, then the parties will seek a mutually agreeable solution for such access including the creation or addition of access points from the trail or from other locations to said facilities, subject to approval of King County Parks.

(2) If the District constructs Phase 2 of the Reddington Levee Project, the District agrees to pave, at its sole expense, the top of the Phase 2 levee to the same specifications stated in Section 5c(1) above for use as a recreational trail.

(3) The City agrees to convey, at no additional cost to the District, except for the consideration specified in Section 5.a., easements to the District over the City-owned parcels necessary for the District to complete the District’s Reddington Levee Project and to complete said trail improvements.

(4) If and when the District constructs Phase 2 of the Reddington Levee Project, the City will convey easements for the Reddington Levee Project needed from Trail Run Plat Park - Tracts "0" and "P," when the District has a confirmed date to begin Phase 2.
6. Preparation and recording of easements.
   a. The District will prepare drafts of all easement documents in a form acceptable to the City.
   b. The District will be responsible for recording all easements, and for providing copies to the City.

7. Indemnification.
The City and the District agree that each shall indemnify and hold the other party and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the indemnified party arising out of, in connection with, or incident to the execution of this Agreement and/or the indemnifying party’s performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the indemnified party, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the indemnifying party; and provided further, that nothing herein shall require the indemnifying party to hold harmless or defend the indemnified party, its agents, employees and/or officers from any claims arising from the sole negligence of the indemnified part, its agents, employees, and/or officers. No liability shall attach to any party by reason of entering into this Agreement except as expressly provided herein. This Agreement and any activities authorized hereunder shall not be construed as granting any rights or privileges to any third person or entity, or as a guarantee or

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warranty of protection from flooding or flood damage to any person, entity or property, and nothing contained herein shall be construed as waiving any immunity to liability by the City, King County, and/or the KC Flood District, granted under state statute, including Chapters 86.12 and 86.15 of the Revised Code of Washington (RCW), or as otherwise granted or provided for by law.

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

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

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

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

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

To King County:  
Christie True, Director,  
King County DNRP  
201 S Jackson Street, Suite 700  
Seattle, WA 98104-3855

To the City:  
Dennis Selle, Asst. Public Works  
Director/City Engineer  
25 W. Main Street  
Auburn, WA 98001
To the KC Flood District:

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

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

13. NONDISCRIMINATION

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

14. MISCELLANEOUS

a. All of the covenants, conditions and agreements in this Agreement shall extend to and bind the legal successors and assigns of the parties hereto.

b. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in accordance with RCW 36.01.050.

c. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

d. The duration of this Agreement shall extend until the completion of the construction of Phase 2 of the Reddington Levee Project. Notwithstanding the preceding sentence, in the event that the parties mutually agree in writing after construction of Phase 1 of the Reddington Levee Project that the construction of Phase 2 of the Reddington Levee Project should be postponed indefinitely, then this Agreement shall terminate upon the date of the execution of such writing.

e. The performances of the duties of the parties provided hereby shall be done in accordance with standard operating procedures and customary practices of the parties.

f. Unless otherwise specifically provided herein, any real property to be held in connection herewith, if applicable, shall be held as the separate property of the party or parties in whose name(s) the property is/was acquired.

g. No provision of this Agreement shall relieve any party of its public agency obligations.

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and or responsibilities imposed by law.

h. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect, unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time either party shall have the right to terminate the Agreement.

i. This Agreement constitutes the entire agreement among the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by all of the parties.

j. Pursuant to RCV 39.34.040, a copy of this Agreement shall be filed with the Auburn City Clerk, recorded with the King County Auditor, or made available on the City or County web sites, in the sole discretion of the Parties.

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

KING COUNTY

By: [Signature]

Its: EXECUTIVE

Attest: [Signature]

Approved as to form:

Deputy Prosecuting Attorney

CITY OF AUBURN

By: [Signature]

Peter B. Lewis, Mayor

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Its: ____________________________

Approved as to form:

[Signature]
Attorney for KC Flood District

EXHIBIT A

MAP
Legend
- Major Contours - 10 foot
- Minor Contours - 2 foot
- Parcel Boundaries
- - - - - Utility Lineman and Mains
- Railroad
- - - - - Street
- - - - - Edge of Parcel
- Edge of Water

County/District Easement Areas from Auburn City properties are identified and noted whether easement covers entire parcel or only a portion of the parcel.

Tract O - a portion upon construction scheduling of Phase 2
Tract P - entire area (upon construction scheduling of Phase 2)
Tract K - entire area

Port of Seattle - no acquisition at this time, implementation delayed to let Port satisfy existing permit obligations.

Future Phase 2

PROPOSED LEVEE ALIGNMENT

Maintenance Access Zone
Levee Footprint

EXISTING LEVEE

Former Crista Property - a portion
Tract D - a portion

Stormwater Facility - entire area
Bramante Park - a portion

PROPOSED LEVEE

Reddington Levee Setback and Extension

Exhibit A - Easement Areas to be Conveyed by the City of Auburn

PROPOSED LEVEE ALIGNMENT