

INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF REDMOND AND KING COUNTY FOR NPDES WATERSHED-SCALE STORMWATER PLANNING – BEAR CREEK

June 30, 2014 through July 31, 2018

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This Intergovernmental Agreement Between City of Redmond and King County for NPDES Watershed-Scale Stormwater Planning – Bear Creek (“Agreement”), is made and entered into on this 24<sup>th</sup> day of August, 2015, by and between City of Redmond, a political subdivision of the State of Washington, and the King County, a political subdivision of the State of Washington, referred to collectively as “Parties” and individually as “Party.”

**RECITALS**

A. Special Condition S5C.5.c of the National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Stormwater permit (effective August 1, 2013 to July 31, 2018 and modified January 16, 2015) (“Phase I Permit”) requires Clark, King, Pierce and Snohomish counties to each develop, as a lead agency, a Watershed-Scale Stormwater Plan in a watershed of its selection;

B. King County has chosen to act as the lead agency in preparing a Watershed-Scale Stormwater Plan for a subarea of the Bear Creek watershed;

C. A portion of the subarea is located in incorporated City of Redmond; and

D. City of Redmond and King County desire to enter into an intergovernmental services agreement to authorize payment for services performed by King County in response to the NPDES Phase I Permit requirements and City of Redmond NPDES Phase II Municipal Stormwater Permit (“Phase II Permit”) requirements for Watershed-Scale Stormwater Planning for Bear Creek.

**AGREEMENT**

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City of Redmond and the King County agree as follows:

**1. DURATION OF AGREEMENT**

A. The term of this Agreement is June 30, 2014, through July 31, 2018, (the “Term”) unless terminated sooner as provided herein, or unless the Phase I Permit deadline for submission of the Watershed-Scale Stormwater Plan is extended, in which case the term of this Agreement is hereby automatically extended, without further action by the Parties, to be coextensive with such deadline extended by the Permit. City of Redmond’s and King County’s obligations after December 31, 2015, are contingent upon each Party’s legislative appropriation of sufficient funds to pay for the activities provided for hereunder, in accordance with applicable laws, the City of Redmond Charter, and the King County Charter. In the event that such appropriations are not made for either Party beyond current appropriation authority, then the obligations of the Parties shall terminate at the end of the appropriation year for which the last appropriation that funds the obligations was made.

B. Notwithstanding the date on which this Agreement is executed, all activities described in Appendix A to this Agreement that are performed after June 30, 2014, shall be eligible for reimbursement under this Agreement.

**2. PURPOSE OF AGREEMENT**

Special Condition S5.C.5.c of the National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Stormwater permit requires each of the four named counties to develop a Watershed-Scale Stormwater Plan in a watershed of its selection. King County has chosen to prepare a Watershed-Scale Stormwater Plan in a subarea of the Bear Creek watershed which includes area within incorporated City of Redmond.

This Agreement provides the terms under which King County will provide services in order to complete the Bear Creek Watershed-Scale Stormwater Plan and City of Redmond will pay for a portion of such services as part of its contribution to the basin planning process. Through this Agreement, the Parties confirm their intent to coordinate under a common Scope of Work for the Bear Creek Watershed-Scale Stormwater Plan.

**3. ADMINISTRATION OF AGREEMENT**

Each Party to this Agreement shall designate an individual who may be designated by title or position to oversee and administer such Party's participation in this Agreement. The Parties' initial Administrators shall be the following individuals:

City of Redmond's Initial Administrator  
Linda DeBoldt, Director  
City of Redmond  
Department of Public Works  
15670 NE 85<sup>th</sup> Street, MS:4NPW  
Redmond, WA 98052

King County's Initial Administrator  
Mark Isaacson, Director  
King County  
Water and Lands Resources Division  
201 S. Jackson St, RM 600  
Seattle, WA 98104-3855

Either Party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other Party.

**4. ENTIRETY OF AGREEMENT**

- A. This Agreement constitutes the entire agreement between City of Redmond and King County and supersedes all proposals, oral and written, and all other communication between the Parties in relation to the subject matter of this Agreement. No other agreement exists between City of Redmond and King County with regard to the instant subject matter except as expressly set forth in this instrument. Except as otherwise provided herein, no modification of this Agreement shall be effective until reduced to writing and executed by both Parties, as provided for in Section B. below.
- B. Any revisions or alterations to this Agreement shall be negotiated as an amendment requiring the written approval of both Parties.

**5. SCOPE OF WORK**

- A. King County shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work set forth in Appendix A, attached hereto and incorporated herein.
- B. King County will not be required to perform work for City of Redmond in excess of work specified in Appendix A except by mutual agreement in a written amendment to this Agreement.

**6. PERFORMANCE**

King County agrees to meet all requirements of this Agreement applicable to King County, including Appendix A, in a timely and professional manner. King County shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Agreement. At any time that King County cannot fulfill its responsibilities under this Agreement, King County shall notify City of Redmond thereof in writing, together with an explanation of why the responsibilities cannot be fulfilled. Failure to perform shall be cause for City of Redmond to terminate this Agreement with 30 days' written notice. A decision by City of Redmond not to terminate after a failure by King County to meet its responsibilities shall not constitute a waiver of the right to terminate pursuant to the terms of this Section 6 based on such failed responsibility nor a forfeiture of City of Redmond's right to terminate in the future pursuant to the terms of this Section 6.

**7. SUBCONTRACTING**

- A. King County may subcontract any of the work contemplated under this Agreement.
- B. King County shall notify City of Redmond of such subcontracting, but prior written approval of City of Redmond for subcontracts is not required.
- C. King County is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts.
- D. If, at any time during the progress of the work, City of Redmond determines in its sole judgment that any subcontractor is incapable of satisfactorily accomplishing the work, City of Redmond shall notify King County, and King County and City of Redmond shall discuss the notification and concerns within three (3) days, and then take immediate steps to resolve the problem, including possibly terminating the subcontractor's involvement in the work. Notwithstanding City of Redmond's right to provide input on subcontractor performance, King County solely remains responsible for administering contractor or subcontractor performance and output.

**8. RIGHTS AND RESPONSIBILITIES OF CITY OF REDMOND**

**A. Monitoring**

The City of Redmond Executive and staff shall have responsibility for monitoring the performance of King County's work under this Agreement. The City of Redmond Executive and staff shall examine work product, quarterly reports and invoices submitted by King County, and shall render decisions concerning acceptability of work and payment of invoices. In the event that King County makes a written request for information from City of Redmond relative to completion of King County's work, City of Redmond shall respond either by providing such information, if available, within a reasonable time period, or by providing a rationale for City of Redmond's inability to provide such information

**B. Compensation.**

- (1) City of Redmond will reimburse King County for work accomplished pursuant to this Agreement and Appendix A. Requests for reimbursement by King County shall include a quarterly report which itemizes King County's total work. King County will be reimbursed 7.2% (the percentage of total impervious area in the Bear Creek Basin study area that lies within City of Redmond) of the total project costs for each billing period. The initial invoice will include 7.2% of the total costs incurred by King County on the project from June 30, 2014.
- (2) In no event shall the compensation to be provided under this Agreement exceed **\$119,271.00** for the Term of this Agreement.
- (3) City of Redmond will provide reimbursement within forty-five (45) days of receipt of the written invoice, unless within such forty-five day period City of Redmond provides King County with a written objection to either the work or the amount of the invoice. The Administrators for City of Redmond and King County shall confer or meet and try to resolve any such objection. If the Administrators reach an impasse, the Parties may seek to resolve the dispute through alternative dispute resolution processes such as binding arbitration, mediation, or any other remedy provided for under the terms of this Agreement. Any invoice provided by King County shall clearly identify work performed and costs incurred, and shall indicate that the work as specified in Appendix A has been accomplished.

**9. USE OF DELIVERABLES**

- A. All deliverables generated directly as a result of this Agreement will be available for use by King County, the City of Redmond, and the other Phase I or II jurisdictions participating in the Bear Creek Watershed planning process.
- B. Each party is responsible for the proper use and distribution of the deliverables directly generated under the terms of this Agreement, in accordance with the terms of this Agreement.

**10. INVOICES**

King County shall submit all invoices at least annually, but no more than monthly, accompanied by a progress report, to:

City of Redmond Public Works Department  
Attn: Andy Rheume  
15670 NE 85<sup>th</sup> Street, MS:2NPW  
Redmond, WA 98052

Invoices shall be for services performed in fulfillment of this Agreement and shall include an accounting of time spent on work identified in Appendix A. The Invoice and supporting documents must itemize all costs incurred to complete the Scope of Work. Upon expiration of this Agreement, any invoice for payment not already made shall be submitted within 30 days after the expiration date.

**11. AUDIT AND INSPECTION**

King County shall maintain records pursuant to this Agreement in accordance with generally accepted accounting principles and practices consistently applied. King County's records shall be available for inspection and audit by City of Redmond, the State Auditor, federal auditors, and any persons duly authorized by the parties. King County shall preserve and make such records available to said parties until expiration of six (6) years from the date of final payment under this Agreement.

**12. DELAYS, REVISIONS AND TERMINATION**

- A. City of Redmond shall have cause to terminate or suspend this Agreement or refuse payments hereunder for failure of King County's work or products to fulfill any requirements of the Appendices, for failure of King County to submit products in a timely fashion, or for any delays, errors or omissions attributable to King County. Failure by City of Redmond to terminate or suspend the Agreement, or failure by City of Redmond to refuse payment of an invoice, shall not constitute a waiver of City of Redmond's right to terminate or suspend or to refuse payment nor a forfeiture of City of Redmond's future right to terminate, suspend or refuse payment. At City of Redmond's option, copies of all finished or unfinished work products prepared by King County under this Agreement shall be furnished to City of Redmond, provided King County is compensated as specified in this Agreement and that such products are satisfactory to City of Redmond.
- B. City of Redmond may terminate this Agreement for a violation of express provisions of this Agreement by King County or for cause. The aggrieved party will give the other party written notice of such violation or failure. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.
- C. If this Agreement is terminated by City of Redmond as provided herein, King County will be paid for services performed prior to the time of termination or work stoppage, whichever comes first, in accordance with the current billing rates, provided that work continues to

fulfill all requirements under this Agreement and Appendix A. In the event City of Redmond withdraws from or terminates this Agreement, City of Redmond will not be held liable for any future monetary loss incurred by King County due to termination.

- D. City of Redmond or King County may terminate this Agreement by written, mutual consent of both parties with thirty (30) days' notice to be given by either party unless other timing is mutually agreeable.
- E. This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

### **13. RIGHTS AND REMEDIES**

In no event shall any payment by City of Redmond to King County constitute a waiver by City of Redmond of any breach of covenant or any default that may exist on the part of King County. The making of any such payment by City of Redmond while any such breach or default exists shall in no way impair or prejudice any of City of Redmond's rights and remedies with respect to breach or default of this Agreement.

### **14. HOLD HARMLESS**

King County agrees to protect, defend and hold harmless City of Redmond, its elected and appointed officials, employees and agents, from and against all claims, demands and causes of action of any kind or character, including any cost of defense and attorney's fees, arising out of any negligent actions, errors or omissions of King County, its officials, employees and agents in performing this Agreement.

City of Redmond agrees to protect, defend and hold harmless King County, its elected and appointed officials, employees and agents, from and against all claims, demands and causes of action of any kind or character, including any cost of defense and attorney's fees, arising out of any negligent actions, errors or omissions of City of Redmond, its officials, employees and agents in performing this Agreement.

### **15. RELATIONSHIP TO EXISTING LAWS**

The laws of the State of Washington shall govern this Agreement. The parties stipulate that any lawsuit regarding this Agreement must be brought in King County, Washington.

### **16. SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the Agreement as determined by City of Redmond.

**17. INSURANCE**

King County shall carry for the duration of this Agreement, insurance and/or self-insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by King County, its agents, representatives, employees or subcontractors. Annual proof of insurance or self-insurance will be submitted to City of Redmond.

**18. INDEPENDENT CONTRACTOR**

King County will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of City of Redmond. The parties agree that King County is not entitled to any benefits or rights enjoyed by employees of City of Redmond. King County specifically has the right to direct and control its own activities in providing the agreed services in accordance with the specifications set out in this Agreement. City of Redmond shall only have the right to ensure performance.

**19. THIRD PARTY BENEFICIARY**

No entity is a third-party beneficiary of this Agreement.

**20. MISCELLANEOUS**

- A. No obligation in this Agreement shall limit King County in fulfilling its responsibilities otherwise defined by law.
- B. No obligation in this Agreement shall limit City of Redmond in fulfilling its responsibilities otherwise defined by law.

IN WITNESS WHEREOF, City of Redmond and King County have executed this Agreement as of the date first above written.

**CITY OF REDMOND:**

City of Redmond, a political subdivision of the State of Washington

By MLB for

Name: John Marchione

Title: Mayor

**Approved as to Form Only:**

[Signature]  
Deputy Prosecuting Attorney  
City

**Approved as to Hold Harmless & Insurance**

[Signature]  
Risk Management Designee

**KING COUNTY:**

King County, a political subdivision of the State of Washington

By [Signature]

Name: Mark Isaacson

Title: Director, Water and Land Resources Division

**Approved as to Form Only:**

[Signature]  
Deputy Prosecuting Attorney

## **APPENDIX A SCOPE OF WORK**

### **NPDES Watershed-Scale Stormwater Planning – Bear Creek**

**Project Description:**

Special Condition S5.C.5.c of the National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Stormwater permit requires each Phase I county under that permit to develop a Watershed Management Plan in a watershed of its selection. King County has chosen to prepare a Watershed Management Plan for the Bear Creek watershed. Washington Department of Ecology has approved King County's selection of the Bear Creek Watershed, parts of which are within the incorporated City of Redmond. King County will prepare a Bear Creek Watershed Plan that meets its requirements under the NPDES Phase I municipal Stormwater permit. The Process of developing the Bear Creek Watershed Plan will also satisfy the City of Redmond's NPDES Phase II Municipal Stormwater Permit requirement S5.C.4.g in accordance with Phase II Permit requirement S3.B.c, whereby Redmond will rely on King County to meet its S5.C.4.g. requirements for the City of Redmond. The Plan shall be prepared according to a Scope of Work that is approved by Washington State Department of Ecology. The Parties agree that this Agreement confirms that the Parties are cooperatively undertaking a common Scope of Work under which King County will have the responsibility of undertaking the identified tasks and Redmond will support King County's efforts as requested by King County.