

**AGREEMENT BETWEEN KING COUNTY AND THE CITY OF REDMOND
TO DESIGN AND IMPLEMENT THE BEAR CREEK – DOYLE PROPERTY HABITAT
RESTORATION PROJECT**

This Agreement is made and entered into by King County, Washington, by and through the Water and Land Resources Division of its Department of Natural Resources and Parks ("WLR"), and the City of Redmond ("City" or "Redmond"), (collectively referred to as the "Parties"), to design and implement the Bear Creek – Doyle Property Habitat Restoration Project ("Project").

I. Purpose

This Agreement provides the terms under which King County and the City will work together to complete Project activities pursuant to a Scope of Work, attached to this Agreement as Exhibit One and incorporated herein and made a part hereof.

II. Administration

- A. The activities to be performed under this Agreement by WLR will be under the direction of Laird O'Rollins or other representative as designated by WLR and for the City by Tom Hardy or other representative as designated by the City ("Administrators").
- B. Disputes or questions of interpretation of this Agreement that may arise between the Parties shall be governed under the dispute resolution provisions in this Section. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations at the lowest level. The Administrators shall meet to discuss and attempt to resolve the dispute in a timely manner. If the Administrators cannot resolve the dispute, the Division Director of WLR and the City's Public Works Director shall meet to discuss and attempt to resolve the dispute in a timely manner. In the event the Directors cannot resolve the dispute, the Parties are free to file suit, seek any available legal remedy, or agree to alternative dispute resolution methods such as mediation or arbitration.

III. Responsibilities

- A. Working in cooperation with each other, the Parties will complete Project tasks as described in Exhibit One.
- B. As described in IV below, Redmond will pay 35% of quarterly accrued Project costs up to a combined maximum amount of \$150,000 for the Project. Project costs include all costs expended by King County to implement the Project, including public outreach, technical studies, design, permitting, staff salaries, overhead, construction, materials, and consultants. King County's cost share is to be 65% of quarterly accrued Project costs. However, King County shall be solely responsible for all Project costs incurred after the City has expended \$150,000.

- C. If any Historical Register-eligible artifacts or sites are discovered or determined to be affected during investigations or construction of the Project, the Parties will determine how to address any resulting impacts to the Project.
- D. King County shall be solely and exclusively responsible for compliance with any and all regulations governing public bidding, prevailing wages, procurement of materials and/or obtaining professional services to the extent such regulations are applicable to the services performed under this Agreement. King County's obligations under this subsection expressly include, but are not limited to, the posting and notification requirements set forth at RCW 39.34.050(5)(b), to the extent such requirements are applicable.
- E. Upon completion of Project closeout (as set forth in Exhibit One), King County will be responsible for long-term maintenance and monitoring of the Project. However, the Administrators may agree to transfer any maintenance and monitoring obligations affecting the City's Native Growth Protection Easement from King County to the City.

IV. Billing and Payment

- A. WLR will submit quarterly invoices to the City detailing Project cost expenditures to be reimbursed by the City under this Agreement.
- B. The City will make payment to King County within 45 days of receipt of invoices.
- C. To the extent that performance of activities under this Agreement requires future appropriations beyond current appropriation authority the obligations of King County and the City are contingent upon the appropriation of sufficient funds by each respective legislative authority to complete the activities described herein. If no such appropriation is made, this Agreement will terminate at the close of the appropriation year for which the last appropriation that funds these activities was made.

V. Effectiveness, Duration, and Termination

- A. This Agreement is effective upon signature and shall remain in effect until Project closeout is completed. However, King County shall still be responsible for any permit-required maintenance and monitoring of the Project after Project closeout.
- B. This Agreement may be amended, altered, clarified, or extended only by the written agreement of the Parties hereto.
- C. This Agreement is not assignable by either Party, either in whole or in part.
- D. This Agreement is a complete expression of the intent of the Parties and any oral or written representations or understandings not incorporated herein are excluded. The Parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Parties which shall be attached to the original Agreement.

VI. Indemnification

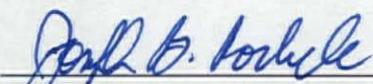
To the fullest extent permitted by law, King County shall protect, defend, indemnify, and save harmless the City, its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from King County's own negligent acts or omissions in performing its obligations pursuant to this Agreement. To the fullest extent permitted by law, the City shall protect, defend, indemnify, and save harmless King County, its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from the City's own negligent acts or omissions in performing its obligations pursuant to this Agreement. Each Party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that a Party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability. This indemnification shall survive the termination of this Agreement.

VII. Counterparts

This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the 28th day of July, 2016.

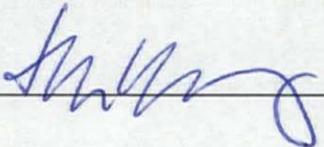
Approved as to Form

By: 
Title: Deputy Prosecuting Attorney

King County:

By: 
Title: Department Director
Department of Natural Resources and Parks

Approved as to Form

By: 
Title: CITY ATTORNEY

City of Redmond:

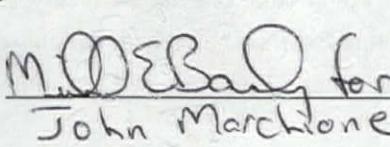
By: 
Title: Mayor

Exhibit One

Scope of Work Bear Creek – Doyle Property Habitat Restoration Project

Project Overview

King County and the City of Redmond are planning design and implementation of a habitat restoration project on a reach of Bear Creek bordered by both jurisdictions. This reach extends approximately 650 linear feet upstream from Novelty Hill Road NE. The east bank property is owned by King County and is within unincorporated King County. The west bank property is owned by a private company, Leisure Care, and is within the City of Redmond. The City holds a Native Growth Protection Easement on Leisure Care property that borders Bear Creek.

Project goals are to:

- Improve salmonid habitat by enhancing channel roughness and complexity within Bear Creek and by adding large wood to the channel; and
- Enhance riparian ecological functions by planting native riparian species throughout the floodplain of Bear Creek and adjacent areas.

King County will take lead status in managing the Project and will be responsible for the following tasks:

- Project management;
- Cultural resources site assessment and associated coordination with regulators;
- Project design and engineering approval;
- Project permitting (with the exception of local permits required from the City of Redmond);
- Contractor procurement;
- Construction management and inspection; and
- Fulfillment of permit-required Project monitoring and other permit conditions.

Timeline

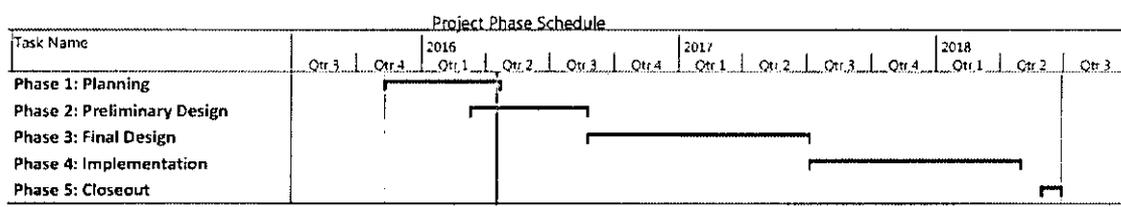
The six tasks outlined in this scope of work will be completed in five phases, which are described as follows:

- 1) Site assessment/planning (cultural resources, critical area survey and topographic survey). The estimated date for the completion of Phase 1 is July 1, 2016, or two months after execution of the Agreement to which this Exhibit is attached, whichever is later.
- 2) Preliminary design. Phase 2 will proceed as soon as the cultural resources site assessment and survey have been completed.

- 3) Final design and permitting. Phase 3 will begin after approval by both Redmond and King County of the 30 percent design.
- 4) Implementation. Phase 4 will begin upon issuance of the Notice to Proceed to construction by King County.
- 5) Close-out. Phase 5 will begin when all implementation activities, including planting, have been completed.

Construction dates will depend on approval of the final design, issuance of all necessary permits and local, state or federal permit conditions regarding work in the river. In-channel construction will occur within the “fish window” stipulated by the Hydraulic Project Approval issued by WDFW for the Project (estimated to be July 1, 2017 to September 15, 2017).

Figure 1: Project Schedule – Estimated Dates and Timeframes



Tasks

1. Project Management

The task responsibilities of King County include:

- Preparing scope, schedule, and budget;
- All aspects of Project management;
- Reporting;
- Managing communications and public outreach;
- Directing the King County Design Team and Construction Management and Inspection Team.

Deliverables to be prepared by King County:

- Final Project scope, schedule, and budget;
- Quarterly bills/invoices and supporting documentation;
- Quarterly progress reports, either written or in person with representatives of both Redmond and King County, providing updates on Project progress and status, including scope, schedule and budget.

Redmond Responsibilities:

- Review and provide feedback on work products from King County in a timely and efficient manner that does not delay the Project schedule; and
- Pay invoices per the terms and conditions of this Agreement.

Schedule: Ongoing through the date of Project completion (projected to be by the end of the second quarter of 2018).

2. Cultural Resources and Critical Areas Investigations

The task responsibilities of King County include:

- Completing cultural resources site assessment;
- Coordinating with the state Recreation and Conservation Office (RCO), Native American Tribes and the state Department of Archaeology and Historical Preservation (DAHP) to complete state regulatory requirements and processes; and
- Completing wetland delineation, classification and documentation.

Deliverables to be prepared by King County or King County contractors:

- Copies of completed Cultural Resources survey of Project site;
- Fulfillment of either the Washington State Executive Order 05-05 or National Historic Preservation Act (NHPA) Section 106 process requirements; and
- Wetland Delineation and Classification report, if needed.

Schedule: Site investigation will be completed within two months of execution of the attached Agreement.

Redmond Responsibilities:

- Provide copies of any existing documentation in possession of the City regarding critical areas or cultural resources within the Project site; and
- Provide rights-of-entry and/or necessary easements for access to properties within the City of Redmond for cultural resources and critical areas surveys.

3. Alternatives Analysis, Selection of Preferred Alternative, 30 Percent, 60 Percent, and Final Engineering Designs

The task responsibilities of King County include:

- Generation of conceptual design alternatives and criteria for selection of a preferred alternative;
- Selection of a preferred alternative;
- Completion of 30 percent design, including survey, base map preparation, structure positions, preparation of 30 percent plan set and updated construction cost estimate and schedule;
- Completion of 60 percent and final designs, including engineering analysis, design, right-of-way or easement acquisition (to be undertaken and completed by Redmond for work on Leisure Care property), preparation of construction plans, technical specifications, cost estimates, planting plan, and final stamping by the engineer-of-record;
- Perform constructability review to identify any potential issues and risks during construction;
- Coordinate with Redmond on design modifications; and
- Develop operations and maintenance manual and design documentation.

Deliverables to be prepared by King County:

- Conceptual Design Alternatives, in the form of graphic depictions with planning-level cost estimates, as well as criteria for alternative selection for consideration by Redmond;

- A final preferred alternative with rationale for selection according to agreed-upon criteria, for review and approval by Redmond;
- Copies of 30 percent plan set, revised cost estimate, and related documents for review and approval by Redmond;
- Copies of 60 percent and final construction plans stamped by the engineer-of-record, construction cost estimate, related documents for review and approval by Redmond; and
- Operations and maintenance manual.

Schedule: 30 percent plan set will be completed and available for review by Redmond on or about September 30, 2016. 60 percent plan set and related documents will be completed and available for review on or about December 31, 2016. Final plan set and related documents will be completed and available for review on or about May 15, 2017. These deadlines are contingent upon Redmond's meeting its review and comment responsibilities as provided for immediately below.

Redmond Responsibilities:

- Participate in analysis and selection of design alternatives; and
- Review and provide comments on work products submitted to Redmond, including engineering plans and reports, within 10 working days of their receipt.

4. Permits & Permissions

The task responsibilities of King County include:

- Preparing and submitting all permit applications, with the exception of any permits required by the City of Redmond. Required permits/compliance actions are assumed to be:
 - Compliance with requirements of the State Environmental Policy Act (SEPA), for which WLR will act as Lead Agency (unless the Streamlined Habitat JARPA process is utilized, in which case the Project will be exempt from SEPA requirements);
 - Hydraulic Project Approval (HPA) from WDFW, possibly via the streamlined process for fish habitat enhancement projects;
 - NPDES Construction Permit if necessary;
 - Nationwide 27 Permit (if necessary) from the US Army Corp of Engineers, including Endangered Species Act and Section 106 compliance certification;
 - Executive Order 05-05 (Historic Preservation) compliance (if not superseded by Section 106 above);
 - Posting and presentation of 30 percent plans and Design Checklist to comply with King County's Large Wood Safety Ordinance.
- Communicating with regulatory agency staff during permit review and negotiation of permit conditions;
- Updating City staff via phone/e-mail on regulatory agency interactions;
- Assistance to Redmond staff in obtaining local permits from Redmond, such as providing technical information, plans and other materials necessary for completing permit applications and/or negotiations with Redmond permitting staff; and
- Assistance to Redmond in obtaining any necessary easements or rights-of-entry for work on

properties within Redmond jurisdiction.

Deliverables to be prepared by King County: Completed/submitted permit applications.

Schedule: Permit applications will be submitted after completion of the 60 percent plan set. It is anticipated that permits will be issued by June 30, 2017. If issuance occurs by this date, delays to the construction schedule will be prevented.

Redmond Responsibilities:

- Apply for and obtain any permits required from the City of Redmond in order to complete the Project; and
- Secure easements and/or rights-of-entry from properties within the City of Redmond necessary to complete the Project.

5. Construction, Coordination and Supervision

Construction may be accomplished using a contractor, in-house King County Roads crews, or a combination of the two. King County will manage construction of the Project. The task responsibilities of King County include:

- Perform constructability review;
- Transmit construction-ready plans/documents to contractor and/or King County Roads;
- Obtain construction cost estimate from contractor and/or King County Roads;
- Develop and administer change order procedures and decision protocols/thresholds;
- Coordinate with contractor and/or King County Roads on construction, including pre-construction meeting, construction schedule, materials purchases, right-of-entry verification, traffic control/road closure plan;
- Oversee erosion control and perform certified erosion and sediment control lead (cescl) responsibilities to comply with NPDES requirements (if any);
- Perform daily inspections and complete daily field activity reports;
- Coordinate archaeological and cultural resources monitoring of excavation work;
- Ensure compliance with permit conditions;
- Purchase plants and oversee planting installation; and
- Perform punch-list inspection with Redmond staff.

Deliverables to be prepared by King County:

- Construction Management Plan (CMP);
- Construction schedule;
- Written documentation of various construction planning elements;
- Weekly progress summaries with daily field activity reports, change order log, submitted weekly erosion and sediment control monitoring reports by CESCL (if required by NPDES permit); and
- Punch-list inspection summary.

Schedule: Notice to Proceed on or about last week of June, 2017. Construction, except for planting, will be completed by the end of the “fish window” as dictated by WDFW (estimated to be September 15, 2017). Planting is expected to be completed by late March 2018.

Redmond Responsibilities:

- Obtain necessary easements and permissions for construction access to properties within the City of Redmond; and
- Participate in walk-through and punch list preparation at conclusion of Project construction.

6. Project Closeout

The task responsibilities of King County include administrative closeout and as-built drawing preparation, including documentation of any field changes.

Deliverables to be prepared by King County:

- As-built plan set;
- Financial reports and related documents;
- Documentation of any field changes.

Schedule: Project close-out will be completed by June 30, 2018.