ORDINANCE NO.4349

AN ORDINANCE of the City Council of the City of Kent, Washington, providing for the acquisition by eminent domain of real property generally located on the north side of the Green River and commonly known as 7641 S. 259th St., which property is needed for the construction of the Milwaukee II Levee Improvement Project. This ordinance provides for the condemnation, appropriation, taking, and damaging of real property necessary for that project and provides for the payment thereof out of the Milwaukee II Levee Improvement Project (Fund No. D20090). This ordinance also directs the City Attorney to prosecute the appropriate legal condemnation proceedings in King County Superior Court, to retain any legal counsel required, and to enter into settlements, stipulations, or other agreements as may be necessary.

RECITALS

A. The Milwaukee II Levee Improvement Project (the "Project") consists of constructing a combination earthen levee and floodwall system that will reduce flood risk impacts from the Green River from major storm events and better protect businesses, residents, and roadway infrastructure in the Kent Valley. The current levee fails to meet federal standards established by FEMA (the Federal Emergency Management Agency), which increases the risk of the levee’s failure, breach, and flooding of the Kent Valley. The Project will strengthen the levee and assist the City in obtaining FEMA certification of its levee system.

Condemnation Ordinance - Milwaukee II Levee (Skyway Towing Property)
B. The City and the King County Flood Control District ("Flood District") entered into an interlocal agreement on June 28, 2016, in accordance with Ch. 39.34 RCW, to join efforts to cooperatively study available design alternatives for the Project and acquire any real property or property rights needed to construct the Project. The Flood District is authorized by Ch. 86.15 RCW to exercise the power of eminent domain to acquire any property or rights as necessary to construct an improvement or carry out its purposes. The City is similarly authorized under the provisions of Ch. 8.12 RCW. The joining of efforts by the City and the Flood District through the authority of the Interlocal Cooperation Act allows the City to acquire real property and property rights within unincorporated King County for the benefit of both the City and the Flood District.

C. To complete the Project, the City must acquire several parcels of land within unincorporated King County. The City has been negotiating with these property owners in an effort to acquire the parcels through negotiation and an agreed settlement. While negotiation efforts with one property owner continue to move forward positively, efforts have been less fruitful with another property owner, which prompted staff to seek Council approval through this ordinance to authorize formal condemnation proceedings, if such proceedings become necessary to allow the Project to proceed as planned.

D. Timing on the Project is critical due to the ongoing annual flood risk impacts from high-water events in the Green River, and Project construction costs that continue to rise due to an increase in property values and inflation. Despite the City’s best efforts and the retention of outside counsel, appraisers, and relocation experts, negotiation efforts with one property owner have stalled. Given the lack of fruitful negotiations with that property owner, and the length of time associated with formal condemnation proceedings, the Project’s timing requires that staff obtain
Council authorization to proceed with condemnation proceedings, if formal proceedings become necessary, in order to move the Project forward and preserve the public health, safety, and welfare. It is essential that if negotiations continue to stall that the City be able to initiate condemnation proceedings so that the real property required for the Project can be obtained to allow the Project to be timely constructed.

E. Prior to Council’s action on this ordinance, the City provided the requisite notice to property owners in the manner provided for in RCW 8.12.005 and RCW 8.25.290.

G. The public health, safety, and welfare depend upon the completion of this Project, through the exercise of eminent domain rights, if such become necessary. Through this ordinance, Council authorizes staff to commence formal proceedings, if reasonably necessary, to condemn, appropriate, and take for public use and necessity, the Property and property rights identified herein, if such Property cannot be reasonably acquired by the City through agreed settlement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Public Use and Necessity Declared. After receiving the report of City staff, and after reviewing the planned improvements for the Milwaukee II Levee Improvements Project ("Project"), the City Council finds and declares that the public convenience, use, health, safety, welfare, and necessity demand that the City of Kent condemn, appropriate, take, and damage certain real property located in King County, Washington, in order to acquire the necessary real property and/or property rights for the construction of the Project, including all necessary appurtenances. The property affected by this ordinance is
commonly referred to as the Skyway Towing Property, is located at 7641 S. 259th St. in unincorporated King County, is legally described in the attached and incorporated Exhibit A, and is broadly depicted in the attached and incorporated Exhibit B, (collectively, the “Property”). The purposes for which this condemnation is authorized shall include, without limitation, all acts necessary to complete the construction, improvement, alteration, maintenance, reconstruction, and restoration of the Project, and any other municipal purpose that may be necessary from time to time on the Property.

SECTION 2. - Condemnation Authorized. In the event the Property cannot be reasonably acquired through agreed settlements within the schedule established by staff to allow the Project to be timely constructed, the City Council authorizes the acquisition by condemnation of all or a portion of the Property for the construction, improvement, alteration, maintenance, and reconstruction of the Project, together with all necessary appurtenances and related work to make a complete improvement according to City and Flood District standards.

SECTION 3. - Condemnation Procedures and Proceedings. The City shall condemn the Property only upon completion of all steps and procedures required by applicable federal or state law or regulations, and only after just compensation has first been made or paid into court for the owner or owners in the manner prescribed by law.

SECTION 4. - Project Fund. The City shall pay for the entire cost of the acquisition by condemnation provided for in this ordinance through the City’s “Milwaukee II Levee Improvements Project” fund (Fund No. D20090) or from any of the City’s storm and surface water utility funds, if necessary, as may be provided by law, and subject to reimbursement as
provided for in the June 28, 2016, Interlocal Agreement between the City and the Flood District.

**SECTION 5.** - *City Attorney Authorized.* The City Attorney or designee is authorized and directed to commence condemnation proceedings as provided by law that are necessary to condemn the Property as the Project schedule requires. The City Attorney is specifically authorized to retain any legal counsel or other expert as may be needed, and to sign any retainer or other agreement that may be required. In commencing these condemnation proceedings, the City Council authorizes the City Attorney to enter into settlements, stipulations, or agreements in order to minimize damages as the City Attorney determines is appropriate. These settlements, stipulations, or agreements may include, but are not limited to, the amount of just compensation to be paid, the size and dimensions of the property condemned, and the acquisition of temporary construction easements and other property interests as the City Attorney may determine are required.

**SECTION 6.** - *Ratification.* Any acts consistent with the authority of this ordinance and prior to its effective date are ratified and affirmed.

**SECTION 7.** - *Severability.* If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 8.** - *Effective Date.* This ordinance shall take effect and be in force thirty days from and after its passage, as provided by law.

_DANA RALPH, MAYOR_

_Date Approved_

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Condemnation Ordinance – Milwaukee II Levee (Skyway Towing Property)
Condemnation Ordinance –
Milwaukee II Levee
(Skyway Towing Property)
EXHIBIT A
Skyway Towing & Recovery, Inc.

Parcel A:

Beginning at a point on the East line of the Cavanaugh Tract and the South line of County Road which is 810.48 feet, more or less, East and 2,914.56 feet, more or less, South of the Northwest corner of the Samuel W. Russell Donation Land Claim Number 41, Section 24, Township 22 North, Range 4 East, W.M., in King County, Washington; Thence South to the White River; Thence Westerly along the North bank of the White River to the Easterly line of Chicago Milwaukee St. Paul and Pacific Railroad; Thence Northerly along said Easterly line to the Southerly line of said County Road; Thence Easterly along said road line to Point of Beginning.

Parcel B:

Beginning 810.48 feet East and 2,914.56 feet South of the Northwest corner of Samuel W. Russell Donation Claim Number 41, Section 24, Township 22 North, Range 4 East, W.M., in King County, Washington; Thence South 82.5 feet, more or less, to White River; Thence Northeasterly along river, 198 feet to the South line of County Road; Thence Westerly to the Point of Beginning.

Situate in the County of King, State of Washington.
King County Tax Parcel No. 000660-0017

Condemnation Ordinance – Milwaukee II Levee (Skyway Towing Property)