



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 2, 2018

FCD Resolution FCD2018-02

Proposed No. FCD2018-02.1

Sponsors

1 A RESOLUTION approving an interlocal
2 agreement with the City of Kent regarding property
3 acquisition relating to the Lower Russell Road
4 Levee Setback Project.

5 WHEREAS, the Lower Russell Road Levee Setback Project ("the
6 Levee") is a key part of the Green River levee system, and

7 WHEREAS, the District desires to improve the Levee ("the Project") to
8 provide improved flood protection and scour protection, assist the City of Kent ("the
9 City") in obtaining FEMA accreditation of the Levee; enable certification and secure
10 necessary land rights, and

11 WHEREAS, the District has included the Project in its CIP and budget,
12 in a total amount of \$46,887,298, and

13 WHEREAS, the City has agreed to acquire the necessary real property
14 and real property interests on behalf of the District to construct the Project, and

15 WHEREAS, the District and the City ("the Parties") desire to construct
16 the Project as soon as possible, with a goal of construction in 2019, and

17 WHEREAS, the Parties will negotiate and enter into an agreement
18 regarding final design and construction of the Project;

19 NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF

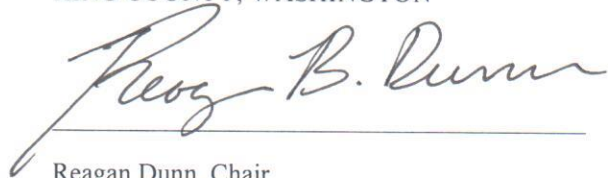
20 SUPERVISORS OF THE KING COUNTY FLOOD CONTROL ZONE DISTRICT:

21 SECTION 1. The board of supervisors approves the "Agreement Regarding
22 Property Acquisition, Lower Russell Road Levee Setback Project, River Mile 17.85 to
23 19.25, Right Bank," Attachment A to this resolution, and authorizes the chair to sign the
24 agreement.

FCD Resolution FCD2018-02 was introduced and passed by the King County Flood Control District on 4/30/2018, by the following vote:

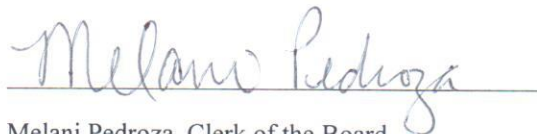
Yes: 8 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove and Ms. Kohl-
Welles
No: 0
Excused: 1 - Ms. Balducci

KING COUNTY FLOOD CONTROL DISTRICT
KING COUNTY, WASHINGTON



Reagan Dunn, Chair

ATTEST:



Melani Pedroza, Clerk of the Board

Attachments: A. Agreement Regarding Property Acquisition

AGREEMENT REGARDING PROPERTY ACQUISITION

Lower Russell Road Levee Setback Project

River Mile 17.85 to 19.25, Right Bank

THIS AGREEMENT REGARDING PROPERTY ACQUISITION ("Agreement") relating to the Lower Russell Road Levee, River Mile 17.85 to 19.25, Right Bank, is entered into on the last date signed below by and between the CITY OF KENT, a Washington municipal corporation ("City"), and KING COUNTY FLOOD CONTROL ZONE DISTRICT, a special purpose district of the State of Washington ("District") (collectively, the "Parties").

RECITALS

A. The Lower Russell Road Levee ("Levee") is a key part of the Green River levee system. The District desires to acquire necessary real property and real property interests to improve the Levee, provide better flood and scour protection, and assist the City in obtaining FEMA accreditation of the Levee. The Levee improvement will hereafter be referred to as the "Project." The area of the Project is the right bank of the Green River from River Mile 17.85 to 19.25, more commonly known as the right bank between S. 212th St. and S. 228th St.

B. The Water and Land Resources Division of the King County Department of Natural Resources and Parks ("WLRD"), is service provider to the District pursuant to an interlocal agreement with the District. On behalf of the District, WLRD manages, operates and maintains a major portion of the Green River levee system, and acquires real property and real property interests for District projects.

C. The City has agreed to acquire the necessary real property and real property interests on behalf of the District to construct the Project. The Parties intend for the City to complete the acquisitions as soon as possible with a goal of completing them by end of 2018.

D. The preliminary plan for the Project is to increase the height of the Levee to achieve the Lower Green River Interim System-Wide Improvement Framework's provisional flood protection goal of 0.2% annual chance (500-year) or 18,800 cfs (as measured at Auburn USGS gage), plus three feet of freeboard.

E. By Resolution No. FCD 2018.02.1, adopted on April 20, 2018, the District approved acquisitions by the City for the Project.

AGREEMENT

In consideration of the rights and obligations set forth in this Agreement, which constitute good and valuable consideration, the Parties agree as follows:

1. Incorporation of Recitals Definitions. All recitals above are hereby incorporated in and ratified as part of this Agreement. The District Executive Director or designee shall have the discretion and right to perform the functions of the District in this Agreement, unless otherwise provided in this Agreement.

2. Acquisition and Transfer of Real Property.

a. The City shall acquire title to and interests in real property ("Real Property") that the District determines to be necessary for ownership, construction, installation, operation, maintenance, repair, replacement and removal of the Project in accordance with this Agreement. In acquiring Real Property, the City shall use procedures approved by the District, and shall comply with all applicable laws and regulations, including but not limited to: (i) the Washington State Department of transportation Right of Way Manual (M26.01.17); (ii) Chapters 8.12, 8.25, and 8.26 RCW; and (iii) Chapter 308-125 WAC. In acquiring Real Property, the City shall acquire the Real Property in a size and location approved by the District. For each Real Property acquisition, the City (i) shall prepare and submit to the District, prior to the commencement of the acquisition process, a schedule that includes but is not limited to work tasks, task durations, and task linkages, and (ii) communicate regularly with WLRD and the District, providing written reports when requested by WLRD or the District.

b. The District shall approve before execution by the City all documents for the acquisition and transfer of Real Property. Any easements granted by the City to the District shall be in the form of the standard River Protection Easement in Reference 8P to the King County Surface Water Design Manual, or in a different form acceptable to the District.

c. The District shall approve before expenditure by the City any individual cost or expense that exceeds \$10,000 in the City's acquisition or transfer of Real Property pursuant to this Agreement. The District will reimburse the City for costs and expenses in accordance with Section 3 of this Agreement.

d. The City already has acquired title to certain Real Property described in **Exhibit A**, attached hereto and incorporated herein. The acquisition cost for such Real Property is stated in **Exhibit A** (a total sum \$1,023,550.00). The District ratifies and confirms the acquisition of this Real Property. Upon the District's reimbursement to the City of the full acquisition costs for the Real Property identified in Exhibit A, the City shall grant to the District the easements provided for by Section 2(a) of this Agreement. The District's reimbursement under this Section 2(d) shall be paid to the City prior to the City's execution of the easements but in no event shall the District make such

reimbursement later than 30 days following the City's submittal of the reimbursement request. Before the commencement of construction of the Project, the City shall remove any structures on the Real Property at its own cost and expense.

e. The City shall acquire title to a portion of the KOA Campground property (Tax Parcel Number 112204 9065) ("KOA Property") that (i) allows for ownership, construction, installation, operation, maintenance, repair, replacement and removal of the Project and (ii) allows for a recreational trail connecting the Green River Trail to South 212th Street ("Recreational Trail"). After acquisition of the KOA Property, the City shall grant to the District an easement over the KOA Property that will allow the District to own, construct install, operate, maintain, repair, replace and remove the Project. As part of the regular communication with the District regarding the acquisition of the KOA Property, the City shall submit to the District background information, appraisals, analysis and negotiations with the owner of the KOA Campground property. The District shall reimburse the City for acquisition of the KOA Property in accordance with Section 3.

f. If the City's acquisition of the KOA Property is conditioned upon transfer of a portion of the Green River Natural Resources Area ("GRNRA")(Tax Parcel Numbers 112204 9015 and 112204 9083) ("Transferred Property") to the owners of the KOA Campground property, the District must approve before transfer the size and location of the Transferred Property (estimated to be 0.8 acres based on conceptual site layout provided by KOA Campground on February 2, 2016), as well as the cost of the acquisition of the KOA Property. The City shall not acquire the KOA Property unless the District determines that the acquisition of the KOA Property is cost effective for the District. If the District approves the acquisition of the KOA Property, the District shall support the City's efforts to release the covenant on the GRNRA property, which has recording number 9408051537 ("GRNRA Covenants"), if such release is necessary to complete the acquisition.

g. If necessary to compensate for impacts of the Project on the GRNRA Covenants, the City shall acquire the Suh Properties (Tax Parcel Numbers 000620 0020 and 000620 0032). Upon acquisition, the Suh Properties shall remain in City ownership. The District shall reimburse the City for the Suh Properties acquisitions in accordance with Section 3 of this Agreement.

3. Reimbursement of City Expenditures – General.

a. As provided for in this Agreement, the District will reimburse the City all costs and expenses incurred by the City to acquire or transfer the Real Property (“City Costs”) in accordance with this Section.

b. Excluding the reimbursement due under Section 2(d) and related to the City’s acquisition of the Real Property described in Exhibit A, the maximum reimbursement for City Costs shall be \$700,000.00.

c. Reimbursement requests for City Costs, within the budget provided for under Section 3(b), may be submitted by the City after title to or interest in Real Property has been completed and on a no more frequent basis than once a month for such Real Property that was approved by the District. The requests shall be in a form and shall contain information and data as required by the District. Upon receipt of a request for reimbursement, the District may request the City to provide a status or progress report concerning all acquisitions of Real Property that are not the subject of the request. The District may delay payment until receipt of this report.

d. 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 and pay the reimbursement within forty-five (45) days of receipt of a request.

e. Except for the reimbursement of City Costs for the Real Property described in **Exhibit A**, the District may postpone review of a City request for reimbursement where all or any part of the request is 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 inaccurate or incomplete in the opinion of the District, the dispute shall be resolved in accordance with Section 5 of this Agreement. After resolution of the dispute, the District shall pay reimbursement as provided in this Section.

f. The District also may postpone payment of any portion of a request for reimbursement where the City is delinquent in the submittal, preparation or completion of any document or work required by this Agreement and related to the Real Property that is the subject of the request for reimbursement.

4. Duration—Effective Date. This Agreement shall take effect on the date on which the second party signs this Agreement, and shall remain in effect until all terms of this Agreement are completed or four (4) years from the effective date of this Agreement, whichever occurs first.

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

a. In the event that any dispute arises between the Parties as to the interpretation or application of any term of this Agreement, or as to the validity of any claim made by either Party against the other as a result of this Agreement, and the Parties are unable to resolve the dispute through negotiations, the Parties agree to participate in a nonbinding, neutral evaluation and mediation of their dispute at a mutually agreeable location prior to commencing legal action. Either Party may request that any dispute be submitted to neutral evaluation and mediation at any time upon giving written notice to the other Party.

b. Upon giving notice by either Party as provided above, the Parties shall attempt to select a neutral person to evaluate and mediate the dispute. If, after thirty (30) days, the Parties cannot agree on any of the persons named, or if acceptable persons are unable to serve, or if for any reason the appointment of a neutral person cannot be made, either Party may terminate the dispute resolution process or the Parties may, by agreement, seek other means of resolution.

c. Each Party shall promptly disclose to the other any circumstances known by it that would cause justifiable doubt as to the independence or impartiality of any individual under consideration or appointed as a neutral mediator. Any such individual shall promptly disclose such circumstances to the Parties. If any such circumstances are disclosed, the individual shall not serve as neutral mediator unless both Parties agree in writing.

d. The neutral mediator's charges shall be established at the time of appointment. Unless the Parties otherwise agree, the fees and expenses of the neutral mediator shall be split equally and each Party shall bear its own costs and expenses.

e. The mediation session is intended to provide each Party with an opportunity to present its best case and position to the other Party and the neutral mediator and for the Parties to receive opinions and recommendations from the neutral mediator. The neutral mediator shall facilitate communications between the Parties, identify issues, and generate options for settlement. The neutral mediator shall also discuss with each Party separately the neutral mediator's opinion and evaluation of the strengths and weaknesses of that Party's position. The terms of any settlement made by the Parties as the result of the mediation shall be set out in writing.

f. The dispute resolution process identified in this Section is a compromise negotiation. The Parties agree to maintain in confidence all offers, promises, conduct, and statements, oral or written, made in the course of the mediation by either of the Parties, their agents, employees, experts, representatives or attorneys, or by the neutral

mediator and agree that the same shall be deemed negotiations in pursuit of settlement and compromise and not admissible or discoverable in subsequent legal proceedings pursuant to Washington Evidence Rule 408. The neutral mediator shall be disqualified as a trial or deposition witness, consultant, or expert of either Party.

g. In the event that the Parties are unable to resolve the dispute through the dispute resolution process established in this Section, the Parties reserve any and all other rights and remedies available to each of them regarding such dispute.

6. 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.

7. Liens and Encumbrances. The City acknowledges and agrees that it will not cause or allow any lien or encumbrance arising from or related to this Agreement to be placed upon the real property interests of King County or the District. If such lien or encumbrance is so placed, King County or the District shall have the right to remove such lien and charge back the costs of such removal to the City. If there are pre-existing encumbrances which are required to be removed by the City in order to construct the Levee, the costs will be reimbursable by the District as described in Section 3 of this Agreement.

8. Indemnification. To the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party, and all of its officials, employees, principals and agents, from any and all claims, demands, suits, actions, fines, penalties and liability of any kind, including injuries to persons or damages to property, arising out of or relating to any negligent acts, errors or omissions of the indemnifying Party and its contractors, agents, employees and representatives in performing these obligations under this Agreement, unless such damages and injuries to persons or property are caused by or result from the sole negligence or willful misconduct of the District or its contractors, employees, agents, or representatives, or the City or its contractor or employees, agents, or representatives. Each Party's obligation hereunder applies only to the extent of the negligence of such Party or its contractor or employees, agents, or representatives. This indemnification provision shall not be construed as waiving any immunity granted to the City, the District, or King County, under state statute, including chapters 86.12 and 86.15 RCW, as to any other entity.

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.

9. Insurance. Each Party recognizes that the other is self-insured and accepts such coverage for liability arising under this Agreement. Should any Party choose not to self-insure, that Party shall maintain and keep in full force and effect a policy of general liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence with an additional excess liability policy of not less than Ten Million Dollars (\$10,000,000) and will provide the other Party with a certificate of insurance and additional insured endorsement that will name the other Party as an additional insured.

10. Entire Agreement; Amendment. This Agreement, together with **Exhibits A, B, and C**, 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.

11. Binding Nature. The rights and duties contained in this Agreement shall inure to the benefit of and are binding upon the Parties and their respective successors in interest and assigns.

12. 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: Tim LaPorte, Public Works Director
 220 Fourth Avenue South
 Kent, WA 98032
 Phone: (253)856-5500
 Email: tlaporte@KentWA.gov

To District: Michelle Clark, Executive Director
516 Third Avenue, Room 1200, W-1201
Seattle, WA 98104
Phone: (206) 477-2985
Email: michelle.clark@kingcounty.gov

Any Party may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other Party.

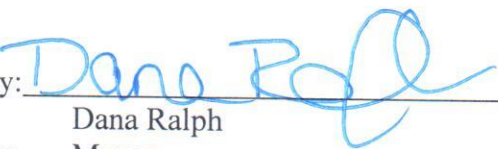
13. Mutual Release/Consideration. As part of the consideration for this Agreement, the Parties agree to mutually release any and all claims known or unknown related to prior reimbursement requests between City and District and resolved through the mutual promises and performance under this Agreement.

14. Severability. If any provisions of this Agreement or its application are held invalid, the remainder shall not be affected.

15. Authority. The undersigned warrant that they have the authority duly granted by their respective legislative bodies to make and execute this Agreement.

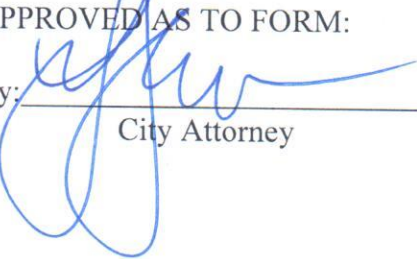
IN WITNESS WHEREOF, the Parties have executed this Agreement, which shall become effective on the last date signed below.

CITY OF KENT


By: 
Dana Ralph
Its: Mayor

DATE: 5/17/18

APPROVED AS TO FORM:

By: 
City Attorney

**KING COUNTY FLOOD CONTROL
ZONE DISTRICT**

By: 
Reagan Dunn
Its: Board Chair

DATE: _____

APPROVED AS TO FORM:

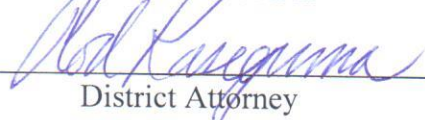
By: 
District Attorney

EXHIBIT A

The City acquired title to the following Real Property prior to the effective date of this Agreement:

| Parcel No. | Seller | Sales Price * |
|-------------|---------------------|----------------|
| 102204-9153 | Jeanne Hamilton | \$ 211,750.00 |
| 102204-9024 | Tom & Janice Baxter | \$ 192,500.00 |
| 000620-0011 | Mary Jo Torgeson | \$ 338,300.00 |
| 000620-0017 | Kimberly Voss | \$ 281,000.00 |
| | Total | \$1,023,550.00 |