

May 4, 2020  
Revised ATT A

Sponsor: Dunn

[nb]

Proposed No.: 2020-0173

Dem → ~~Proposed~~ *Carried*

1 **AMENDMENT TO PROPOSED ORDINANCE 2020-0173, VERSION 1**

2 Strike Attachment A, Agreement between King County and the Cedar River Water and  
3 Sewer District, and insert Attachment A, Agreement between King County and the Cedar  
4 River Water and Sewer District, Revised May 12, 2020

5 **EFFECT: *Deletes the original Attachment A and replaces it with a revised Attachment***  
6 ***A to this ordinance which would:***

7 ***1. Make technical and language corrections as recommended by Council's legal***  
8 ***counsel;***

9 ***2. Add protections for the County in the event CRWSD unreasonably delays the***  
10 ***County's contractor in the performance of either the County Project or the***  
11 ***CRWSD Work;***

12 ***3. Clarify that the CRWSD is responsible for, and has sole jurisdiction over,***  
13 ***inspection of the CRWSD Work and that the CRWSD will coordinate its***  
14 ***inspections of the project with the County, as well as, conduct its inspections***  
15 ***and share its inspection results with the County in a timely manner;***

16 ***4. Stipulate that direct and indirect costs incurred by the County and charged to***  
17 ***the CRWSD shall not exceed 25% of the construction costs;***

18       5. *Include a complete cost estimate for the CRWSD Work construction costs under*  
19       *Exhibit A to the ILA, which increases the estimated payment to the County, by*  
20       *the CRWSD, from approximately \$135,000 to approximately \$208,000.*



**AGREEMENT BETWEEN KING COUNTY AND  
THE CEDAR RIVER WATER AND SEWER DISTRICT  
FOR THE RELOCATION OF ITS WATER MAIN AND SANITARY SEWER LINES  
AT 162<sup>nd</sup> AVENUE SE AND SE 166<sup>th</sup> COURT.**

THIS **AGREEMENT** is made and entered into by and among King County, a political subdivision of the State of Washington, hereinafter called the “County” and Cedar River Water and Sewer District, hereinafter called “CRWSD”. The County and CRWSD are collectively referred to as the “Parties”.

**RECITALS**

- A. The County’s Culvert Replacement Project #1130707 will replace the existing drainage culvert under 162<sup>nd</sup> Ave SE at SE 166<sup>th</sup> Court.
- B. Project #1130707 includes removal of an existing culvert and installation of a new fish passable culvert with associated road and stormwater improvements.
- C. CRWSD owns and operates Water Main and Sanitary Sewer lines including appurtenances within the project boundaries of Project #1130707.
- D. A portion of the CRWSD Water Main and Sanitary Sewer lines will need to be relocated to prevent conflicts with the work necessary to construct Project #1130707.
- E. Appurtenances to the Water Main and Sanitary Sewer lines, such as valves, meters, and fire hydrants may need to be adjusted or relocated to accommodate the road improvements.
- F. CRWSD is responsible for the relocation and/or adjustment of any portion of its Water Main and Sanitary Sewer lines located within the County’s rights-of-way.
- G. It is in the best interest of the Parties that relocation and/or adjustment of the Water Main and Sanitary Sewer lines are coordinated with Project #1130707.
- H. The Parties are municipal corporations under the laws of the State of Washington and are entitled to utilize Ch. 39.34 RCW to enter into an interlocal agreement to mutually carry out statutory duties.

NOW, THEREFORE, the Parties hereby covenant and agree as follows:

**AGREEMENT****1. SCOPE OF WORK**Project #1130707

Project #1130707 includes the removal of an existing culvert and installation of a new fish passable box culvert with associated road improvements on 162<sup>nd</sup> Ave SE at SE 166<sup>th</sup> Court. The scope of work for the culvert replacement includes the following: installation of a 137-foot-long, 17-foot-wide by 10-foot-high fish passable box culvert, and associated grading, drainage, erosion/water pollution controls, surfacing, pavement markings, curb gutter and sidewalk, and illumination.

In conjunction with the work included in Project #1130707, a new stormwater detention vault and control structure will be constructed pursuant to a separate agreement between the King County Department of Local Services Road Services Division and Department of Natural Resources and Parks Water and Land Division.

The above described work is referred to herein as "County Project."

Water Main and Sanitary Sewer Lines relocation

The scope of the Water Main and Sanitary Sewer relocation work includes the following:

The scope of work for this project consists of the construction of approximately 200 lineal feet of new 12-in. diameter ductile iron water main, 100 lineal feet of 8-inch PVC sewer main and approximately 300 LF of temporary sanitary sewer. Both the new water and sewer mains will follow the path of the existing water and existing sewer mains. The existing water and sewer mains will be removed (including one fire hydrant). The new water and sewer lines will be reinstalled after the new culvert work is completed. The new water system will include one new fire hydrant and two new connections to the existing system. The new 12" water main will extend to the limits shown on the plans as provided by CRWSD as referenced in Section 2.3. The limits of the new sewer main will extend from the existing SSMH located opposite SE 166<sup>th</sup> Court to just past the limits of excavation for the new culvert and other utility work to the southwest. The existing 8" sewer main will be replaced along with one 6" side sewer pipe. A temporary gravity sewer will be installed and maintained until the new sewer is in place and fully operational. It will be such contractor's responsibility to furnish the material to support the gravity sewer main that will cross the ravine, make the final connections for the new sewer and side sewer and provide a temporary sewer by-pass while final connections are being made, plug and abandon the temporary sewer system (underground), remove and properly dispose of the temporary sewer system across the ravine, and fully restore the ground surface and sewer system in kind.



The above described work is referred to herein as "the CRWSD Work."

The County Project is contingent upon issuance of all necessary permits and the participation of King County Department of Natural Resources and Parks Water and Land Division in construction of the new stormwater and fishway facilities.

**2. CRWSD RESPONSIBILITIES**

- 2.1 CRWSD shall be responsible for the design and specifications for the Water Main and Sanitary Sewer lines relocation and have full authority to complete all aspects of the relocation subject to the terms of this agreement.
- 2.2 CRWSD shall be responsible for obtaining any necessary permits for the CRWSD Work, beyond the permits acquired by the contractor for the County Project.
- 2.3 CRWSD shall provide to the County stamped plans and specifications for the CRWSD Work to be included with the County Project contract. CRWSD has already complied with this requirement.
- 2.4 CRWSD shall provide all details, special provisions, pay items and a list of bid items and corresponding bid item quantities for the CRWSD Work as a separate bid schedule to be included as a component of the County Project contract.
- 2.5 Prior to the solicitation of bids by the County, CRWSD shall provide written confirmation of acceptance of the consolidated bid proposal documents as prepared by the County, or review comments, within five (5) business days of receiving the documents from the County for review and comment.
- 2.6 Following the receipt of bids, CRWSD shall notify the County in writing within fifteen (15) business days of receiving a copy of the complete, County-prepared bid tabulation, including identification of bidders and proposed subcontractors for the CRWSD Work, whether CRWSD approves or rejects award of the bid including the CRWSD Work. The County shall not proceed with the CRWSD Work if the County has received written notification from CRWSD that CRWSD rejects the bid proposed for acceptance by the County for the CRWSD Work. Such approval or rejection by CRWSD shall be at CRWSD's sole discretion, without cost or penalty.
- 2.7 If CRWSD rejects the County's proposed bid for the CRWSD Work, the following shall apply:

CRWSD shall 1) at its sole cost, perform, or cause to be performed

under separate contract, all or such portions of the CRWSD Work necessary to accommodate the County road improvements; 2) release the County from all obligations and requirements of every nature with respect to the CRWSD Work except to provide reasonable access and coordination; and 3) shall use reasonable efforts to work with the County to complete its CRWSD Work so not to unreasonably delay the County Project.

- 2.8 CRWSD shall be financially responsible for the total costs of the CRWSD Work.
- 2.9 In accordance with Section 3.5 CRWSD shall inspect the CRWSD Work to ensure proper compliance with requirements during the performance of the project. CRWSD shall advise the County of any issues noted and retains sole authority for determining whether the work is sufficient to allow connection to CRWSD's existing water main and sanitary sewer lines and restoration of water and sewer service.
- 2.10 CRWSD shall be responsible for all utility coordination for the CRWSD Work unless CRWSD uses the County's contractor to perform the water and sewer main relocation work including the provision of temporary water and sewer service, in which case the County's contractor shall be entirely responsible for such coordination.
- 2.11 Final acceptance (or rejection) of the CRWSD Work will be by CRWSD.
- 2.12 CRWSD shall continue to own, maintain and operate the Water Main and Sanitary Sewer lines. The portion of the Water Main and Sanitary Sewer inside the County's right-of-way shall be subject to the County's franchise agreement with CRWSD.
- 2.13 CRWSD shall use reasonable efforts to work with the County to complete its CRWSD Work so not to unreasonably delay the County Project.
  - 2.13.1 If CRWSD unreasonably delays the County's contractor in the performance of the CRWSD Work, CRWSD agrees to defend, indemnify, and hold the County harmless from and against any such delay if and to the extent a claim is made against the County by the County's contractor with respect to such delay, provided, the County must give CRWSD notice of the delay claim within 30 days of the County receiving such delay claim from the County's contractor for this Section to be effective. CRWSD agrees to fully cooperate with County in the defense of such claim and provide all records and facts in its possession in good faith.

2.13.2 If CRWSD proceeds pursuant to the provisions of Section 2.7, and CRWSD or its contractor unreasonably delays the County's contractor in the performance of the County Project, CRWSD agrees to defend, indemnify, and hold the County harmless from and against any such delay if and to the extent a claim is made against the County by the County's contractor with respect to such delay, provided, the County must give CRWSD notice of the delay claim within 30 days of the County receiving such delay claim from the County's contractor for this Section to be effective. CRWSD agrees to fully cooperate with County in the defense of such claim and provide all records and facts in its possession in good faith.

### **3. COUNTY RESPONSIBILITIES**

- 3.1 The County shall be the lead agency for the County Project, and the CRWSD Work if incorporated into the County Project as set forth in Section 2.
- 3.2 The County shall include the CRWSD Work in its construction contract for the County Project on the condition CRWSD approves the County's Contract for the Water Main Project and reimburses the County for the costs of such work as provided herein. The estimated cost for the CRWSD Work is attached as Exhibit A.
- 3.3 Nothing herein shall prevent the County from using more than one contractor for the CRWSD Work. If this occurs, the above provisions shall apply to any contract which includes the CRWSD Work.
- 3.4 The County shall apply for permits necessary to complete the County Project and the CRWSD Work, except for those permits referenced in Section 2.2. CRWSD is not required to obtain a Franchise Construction Permit as the CRWSD Work is a requirement for the County Project to proceed.
- 3.5 If CRWSD utilizes the County's contractor to perform the CRWSD Work, in accordance with WSDOT specifications, the County will conduct inspections of the County Project, including the CRWSD Work, to assure the County that the work by the County's Contractor complies with the terms of the County's Contract; provided however CRWSD shall have sole jurisdiction of inspection of CRWSD Work, including temporary and permanent water service(s), testing and verification of water quality prior to restoration of water service, and temporary and permanent sanitary sewer service. CRWSD shall be responsible for coordinating its inspections with the County and providing inspection results to the County's designated on-site representative, who shall communicate those



inspection results to the County's Contractor. CRWSD agrees to conduct its inspections in a timely manner and timely provide the inspection results to the County.

- 3.6 The County shall provide all necessary construction contract administration.
- 3.7 The County shall separately track the work performed on the CRWSD Work portion of the County Contract.
- 3.8 The County shall not order or approve any changes in the approved CRWSD Work design which substantially change the nature of the CRWSD Work or increases the contract sum to CRWSD by more than ten (10) percent or change the schedule of the Water Main Project without first consulting CRWSD for approval.
- 3.9 The County shall at all times keep CRWSD advised as to the progress of the CRWSD Work, including upcoming inspections to be performed by CRWSD.
- 3.10 The County shall be responsible for providing CRWSD with all necessary invoice documents and back up information to satisfy CRWSD's requirements for payment in this agreement.
- 3.11 The County shall act as a contractor of services only and shall not purport to represent CRWSD other than in providing the services described in this Agreement.
- 3.12 The County shall abide by all bid and public works contracting laws applicable to public works construction applicable to Washington State counties and water-sewer districts. The County shall provide notification in accordance with RCW 39.34.030(5)(b) in order that CRWSD comports with the County's bid solicitation and award process.

**4. PAYMENT**

- 4.1 CRWSD shall pay the County for actual costs ("Actual Costs") incurred by County associated with the CRWSD Work.
  - 4.1.1 Actual Costs may vary from the estimate contained in Exhibit A.
  - 4.1.2 Actual Costs shall include all costs of construction and all direct and indirect costs incurred by the County for providing clerical, inspection and administrative services, as well as bonds, legal and other services which together shall not exceed 25% of construction costs.



4.1.3 The Parties have reviewed Exhibit A and agree that it contains a reasonable estimate of the Actual Costs for the CRWSD Work. The County shall invoice CRWSD on no more than a monthly basis for Actual Costs incurred for the CRWSD Work. These invoices shall reflect the Actual Costs of the CRWSD Work in accordance with this Agreement. CRWSD agrees to pay such invoices within 30 days of the invoice date. Unpaid amounts shall bear interest at 12 percent per annum. If any invoices are disputed, CRWSD is not required to pay under the terms herein and the parties agree to meet to discuss the dispute. If the dispute remains, it shall be resolved under Section 7 below.

4.2 In accordance with Section 3.10, the County is responsible for providing CRWSD with a detailed invoice. The invoice shall show specific charges for work performed in the CRWSD Work.

**5. DURATION/TERMINATION**

This Agreement shall remain in effect until final acceptance of the work performed under the County Project contract and payment by CRWSD of all monies due from CRWSD to the County.

**6. FORCE MAJEURE**

The County's and CRWSD's performance under this Agreement, except for provisions requiring the reimbursement of expenses under sections 3 and 4 above, shall be excused during any period of force majeure. Force majeure is defined as any condition that is beyond the reasonable control of the County and CRWSD, including but not limited to, natural disaster, severe weather conditions, contract disputes, labor disputes, epidemic, pandemic, delays in acquiring right-of-way or other necessary property or interests in property, permitting delays, or any other delay resulting from a cause beyond the reasonable control of the County and CRWSD.

**7. DISPUTE RESOLUTION**

7.1 In the event of a dispute between the Parties regarding this Agreement, the Parties shall attempt to resolve the matter informally.

7.2 If the Parties are unable to resolve the matter informally, the matter shall be decided by the Director of the King County Road Services Division and the General Manager of CRWSD. If the Parties are unable to reach a mutual agreement, either Party may refer the matter to non-binding mediation.

- 7.3 Unless otherwise expressly agreed to by the Parties in writing, both the County and CRWSD shall continue to perform all their respective obligations under this Agreement during the resolution of the dispute.
- 7.4 This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. In the event any Party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the Parties hereto agree that such action or proceedings shall be brought in a court of competent jurisdiction in King County Washington.

**8. INDEMNIFICATION AND DEFENSE**

- 8.1 Each Party hereto agrees to protect, defend and indemnify the other Party, its officers, officials, employees and agents from any and all costs, claims, claims for delay, judgments and/or awards of damages, arising out of or in any way resulting from the Party's default, failure of performance, or negligent acts and omissions associated with this Agreement, by the Party, its employees, subcontractors or agents. All claims, demands and obligations resulting from the concurrent negligence of the Parties shall be shared, based upon the percentage of fault attributed to each Party.
- 8.2 Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide each Party with a full and complete indemnity of claims made by the other Party's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- 8.3 Claims shall include, but not be limited to, defects or mistakes in plans, specifications and/or drawings, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.
- 8.4 The provisions of this section shall survive the expiration or earlier termination of this Agreement with regard to any event that occurred prior to or on the date of such expiration or earlier termination.



**9. OTHER PROVISIONS**

- 9.1 Nothing contained herein is intended to, or shall be construed to, create any rights in any person or entity not a signatory to this Agreement, or to form the basis for any liability on the part of the CRWSD, the County, or their officials, employees, agents or representatives, to any person or entity not a signatory to this Agreement.
- 9.2 Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 9.3 The headings in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- 9.4 If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the Parties.
- 9.5 This Agreement contains the entire agreement of the Parties and any representations or understandings, whether oral or written, not incorporated herein are excluded.
- 9.6 This Agreement may be amended only by an instrument in writing, duly executed by all Parties.

**10. AUDITS AND INSPECTIONS**

- 10.1 The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review or audit by the County or the CRWSD during the term of this Agreement and three years after termination.
- 10.2 Audits and inspections shall be the responsibility of the County. The CRWSD shall support the County in meeting audit and inspection requirements.

SIGNATURES ON NEXT PAGE

**IN WITNESS WHEREOF**, the Parties have executed this Agreement effective as of the date last signed below.

**KING COUNTY**

**CEDAR RIVER WATER AND SEWER DISTRICT**

\_\_\_\_\_  
Rick Brater, Division Director  
KCDLS, Road Services Division

\_\_\_\_\_  
General Manager  
Cedar River Water and Sewer District

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
John Briggs  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Cedar River Water and Sewer District  
General Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## EXHIBIT A

Estimated CRWSD Work Construction Costs

The following represents an estimate of the reimbursable costs for the County to incorporate the plans, specifications, and associated bid proposal documents, to include the work for, and to survey, inspect and perform construction contract administration for the CRWSD Work into the County project:

Estimated County Costs for Plans, Specifications, and Estimate	\$ <u>NA</u>
Direct Construction Cost (see District Engineer's Estimate which includes tax)	\$ <u>166,296.00</u>
Construction Related Costs *	\$ <u>Included in Direct Construction Cost</u>
Construction Contract Inspection and Administration**	\$ <u>41,574.00</u>
<b>TOTAL ESTIMATED WATER/SEWER MAIN PROJECT COST</b>	<b>\$ <u>207,870.00</u></b>

\* Construction Related Cost items applied to the contract pay items:

- Contractor's Mobilization (10% of actual "Direct Construction Costs")
- Construction Surveying (actual cost for staking related to water and sewer features)
- As-built Survey and Record Drawings (As-builts by District)
- Items for Temporary Project Traffic Control (N/A)
- SPCC Plan (N/A)
- Temporary Water Pollution / Erosion Control Items, including ESC Lead. (N/A)
- Clearing and Grubbing (N/A)

\*\* Construction Inspection & Administration costs.

- 25% of actual "Direct Construction Costs".