



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

FCD Resolution

Proposed No. FCD2020-03.1

Sponsors

1 A RESOLUTION approving an interlocal agreement with the City
2 of Kent regarding real estate appraisals and preliminary designs
3 relating to the Signature Point Levee Improvement Project.

4 WHEREAS, the Signature Pointe Levee ("the Levee") is a key part of the Green
5 River levee system, and

6 WHEREAS, the District desires to improve the Levee ("the Project") to provide
7 improved flood protection and scour protection, to enable certification and secure
8 necessary land rights, and

9 WHEREAS, the District Executive Committee selected the District's preferred
10 alternative for the Project at the August 23, 2019, Executive Committee meeting, and

11 WHEREAS, the District has included the Project in its 2020 budget, in the
12 amount of \$1,445,000, and

13 WHEREAS, the City of Kent has agreed to complete real estate appraisals and
14 prepare preliminary design, and

15 WHEREAS, the District and the City of Kent ("the Parties") desire to complete
16 the real estate appraisals and preliminary design as soon as practicable and within the
17 year 2020;

18 NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF
19 SUPERVISORS OF THE KING COUNTY FLOOD CONTROL DISTRICT:

20 SECTION 1. The Board of Supervisors approves the Agreement Regarding Real
21 Estate Appraisals and Preliminary Designs, Signature Pointe Levee Improvement Project,
22 River Mile 21.7 to 23.2, Right Bank, Attachment A to this resolution, and authorizes the
23 chair to sign the agreement.
24

FCD Resolution was introduced on and passed by the King County Flood Control District on 2/11/2020, by the following vote:

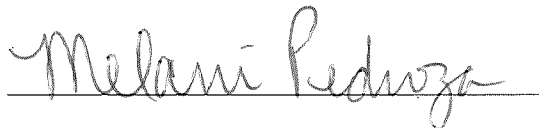
Yes: 8 - Mr. von Reichbauer, Ms. Lambert, Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles, Ms. Balducci and Mr. Zahilay
Excused: 1 - Mr. Dunn

KING COUNTY FLOOD CONTROL ZONE
DISTRICT
KING COUNTY, WASHINGTON



Dave Upthegrove, Chair

ATTEST:



Melani Pedroza, Clerk of the District

Attachments: A. Signature Pointe Levee - Real Estate Appraisals and Preliminary Designs

**AGREEMENT REGARDING
REAL ESTATE APPRAISALS AND PRELIMINARY DESIGNS**

Signature Pointe Levee Improvement Project

River Mile 21.7 to 23.2, Right Bank

THIS AGREEMENT is made and entered into on the last date signed below, by and between the CITY OF KENT, a municipal corporation of the State of Washington ("City"), and KING COUNTY FLOOD CONTROL DISTRICT, a quasi-municipal corporation of the State of Washington ("District") (collectively, the "Parties").

RECITALS

A. The Signature Pointe Levee ("Levee") is a key part of the Green River levee system. The District desires to improve the Levee to provide improved flood protection and scour protection, enable certification and FEMA accreditation, and secure necessary land rights for river bank protection and other flood related works (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 21.7 to 23.2.

B. King County, Washington, through its Water and Land Resources Division of the Department of Natural Resources and Parks, as service provider to the District pursuant to an interlocal agreement, manages, operates, and maintains a major portion of the Green River levee system.

C. The District has included the Project on its 2020-2025 Six Year CIP Projects Allocations List, and budgeted \$1,445,000 in its 2020 Capital Budget for real estate appraisals and preliminary designs. The District has also forecasted on its 2020-2025 Six Year CIP Projects Allocations List, \$26,777,500 in 2021 and \$26,777,500 in 2022 for the Project to acquire all necessary real estate, complete the designs, obtain all permits, and to construct and complete the Project. The Parties desire to construct the Project as soon as possible, with an optimistic goal of commencing construction in the year 2021. However, before construction can commence, the necessary real estate acquisition and design must be completed.

D. At the District's request and on its behalf, the City has agreed to complete real estate appraisals and prepare preliminary designs. The real estate appraisals process may include without limitation; appraisals, review appraisals, title research, and other required real estate activities with the goal of pursuing fee title, permanent restrictive easements, or temporary construction easements as the Parties may agree are necessary for the Project. The City will also

complete analysis of potential impacts and damages to properties along the levee alignment, from the Riverbend Golf Complex to Washington Avenue. The real estate appraisals and damage analysis completed under this Agreement will not include the Ostrovsky and Dejbod parcels (APN 5436200851 and 5436200841), which the City is acquiring at its own costs. Preparation of preliminary designs may include without limitation; development of plans, field reconnaissance, topographic survey, environmental reports and documentation, geotechnical, structural and hydraulic engineering, and other technical studies the Parties may agree are necessary for the Project. The Parties goals are to complete the real estate appraisals and preliminary designs as soon as practicable and within the year 2020.

AGREEMENT

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

2. Term-Effective Date:

a. This Agreement will be effective when the second party signs.

b. The term of this agreement shall run 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.

3. Project Description and Specifications

a. The project is a replacement of the existing levee and revetment on the right bank of the Green River from River Mile 21.7 to 23.2 (which extends from the west end of the Riverbend Golf Complex Driving Range to the Washington Ave South bridge), commonly referred to as the Signature Pointe Levee Project (“Project”). The Project is described briefly and depicted in the Alternative Analysis study commissioned by the District, prepared by the City and presented to the District Executive Committee at its meeting on August 26, 2019.

b. The height of the existing levee will be increased to achieve the Lower Green River 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 a minimum of three (3) feet of freeboard.

4. Project Responsibility and General Requirements

a. The City will prepare appraisal reports and complete analyses of property impacts and damages, and preliminary designs, in accordance with all applicable laws, regulations,

standards and guidelines, including without limitation the following:

- i. District resolutions and policies;
- ii. Landscape architecture and engineering design standards and guidance;
- iii. Terms and conditions of agreements that relate to the real property on which the Project will be constructed;
- iv. U.S. Army Corps of Engineers and FEMA design guidance and standards regarding structural design of flood protections system (levees and floodwalls); and
- v. Project plans and specifications.

b. In designing the project, the Levee shall meet the following minimum Factors of Safety (FS) for potential slope failure mechanisms when determined by the methodologies described in USACE Publications EM 1110-2-1902 and EM 1110-2-1913, as follows:

- | | |
|--------------------------------------|--------|
| • End of Construction | FS=1.3 |
| • Steady State at full stage | FS=1.2 |
| • Steady state at intermediate stage | FS=1.2 |
| • Seepage and Heaving: | FS=1.2 |
| • Rapid Drawdown from full stage: | FS=1.4 |
| • Seismic: | FS=1.0 |

c. The preliminary designs shall include 30% plans, specifications and cost estimates. The City agrees to maintain documentation of all planning, design, construction and inspection of the Project sufficient to meet state audit standards for a capital project, recognizing that the costs of the Project are paid for in whole or in part by the City and the District. The City agrees to maintain any additional documentation that is reasonably requested by the District. City contracts and internal documents shall be made available to the District for review and/or independent audit upon request. The designs shall include all flood protection facilities and other environmental or recreation required by the project or requested by the District.

5. District Review of Project Plans and Specifications. The City shall provide to the District a schedule of the events and actions the City believes are material and significant for design and bidding of the Project, including 30% PS&E, 60% PS&E, 90% PS&E, 100% or final

PS&E and the invitation to bid. The City shall submit the preliminary phase of PS&E to the District and allowed the District at least 30 days to review and comment on that phase of PS&E. If the District fails to comment within this 30-day time period, that failure shall be interpreted as the District's approval of the PS&E. The District may request more time for review or to ask questions. The City will incorporate all changes requested by the District or provide reasons for not incorporating those changes.

6. 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 prepare real estate appraisals and preliminary designs ("City Costs") The maximum reimbursement for City costs currently authorized through this Agreement is \$1,445,000. However, the parties understand that the market rate for Real Property is in a constant state of flux and appraisals have a limited useful life. Therefore, the parties agree and understand that this maximum reimbursement amount may be insufficient to prepare real estate appraisals and to complete preliminary designs, consequently, to fully reimburse the City for its actual costs incurred, in the event it appears this budget amount will be insufficient to complete the work authorized under this Agreement, the parties agree to negotiate in good faith to amend the Project budget or redefine the Project as the parties mutually agree is necessary. In such an event, the City's Mayor and the District's Executive Director are authorized to execute an amendment to this Agreement to amend the Project budget or redefine the Project up to an additional amount of \$100,000. Any increases beyond this amount will require an amendment to this Agreement and may require additional approval of the Kent City Council and the King County Flood Control District's Board of Supervisors.

b. Reimbursement requests for City Costs incurred in accordance with this Agreement may be submitted by the City on a no more frequent basis than once a month. The request 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.

c. 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.

d. 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 reasonable opinion of the District, the dispute shall be resolved in accordance with Section 10 of

this Agreement. After resolution of the dispute, the District shall provide reimbursement as provided in this Section.

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

f. This section pertains to information the City may need to submit to the District with its reimbursement request for processing. However, nothing in this Section shall be interpreted as releasing the District from any obligation to pay the actual costs or expenses incurred by the City in appraising the Real Property or preparing preliminary designs when that cost or expense was approved by the District or as otherwise authorized by this Agreement.

7. 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.

8. 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 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 Project, the costs will be reimbursable by the District as described in this Agreement.

9. 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.

10. 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.

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

a. For disputes involving cost reimbursements or payments, as provided for in Section 3 above, submittal of all relevant information and data to an independent Certified Public Accountant or a Construction Claims Consultant, if agreed upon by the Parties, for a non-binding opinion as to the responsibility.

b. If the foregoing does not result in resolution and for all other disputes, the Parties may mutually select any informal means of resolution and ultimately seek resolution within the Superior Court for King County, Washington.

c. Each Party will be responsible for its own costs and attorney's fees in connection with the dispute resolution provisions of this Section.

12. Entire Agreement: Amendment. This Agreement 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.

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

14. 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 (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) 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

Either 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.

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

16. 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

**KING COUNTY FLOOD CONTROL
ZONE DISTRICT**

By: Dana Ralph
Dana Ralph
Its: Mayor

DATE: 2/26/20

APPROVED AS TO FORM:

By: [Signature]
City Attorney

By: Dave Upthegrove
Dave Upthegrove
Its: Board Chair

DATE: _____

APPROVED AS TO FORM:

By: [Signature]
District Attorney