

AGREEMENT FOR MADSEN CREEK FLOOD REDUCTION IMPROVEMENT PROJECT

Design, Permitting, and Construction

THIS AGREEMENT FOR THE MADSEN CREEK FLOOD REDUCTION IMPROVEMENT PROJECT ("Agreement"), is entered into on the last date signed below by and between the CITY OF RENTON, a Washington municipal corporation ("City"), and KING COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi-municipal corporation of the State of Washington ("District") (collectively, the "Parties").

RECITALS

- A. The lower reach of Madsen Creek straddles the jurisdiction line between the City of Renton and Unincorporated King County, and has gradually lost its conveyance capacity over time due to sedimentation, increased runoff from changed land use in the basin, and historical modifications to the channel geometry and alignment. The City of Renton, located in the State of Washington, maintains Madsen Creek ("Creek") and the high flow bypass upstream of State Route (SR) 169. King County, Washington, maintains the high flow bypass downstream of SR 169 and the drainage system on 149th Ave SE, through the Stormwater Services Section in the Water and Land Resources Division ("WLRD") of the King County Department of Natural Resources and Parks. WLRD is also the service provider to the District, pursuant to an inter-local agreement with the District, and collaborates with the City on providing funding and technical review of improvement projects in the Lower Cedar River system.
- B. The City desires to design, obtain required permits, and construct flood reduction improvements along lower Madsen Creek. This agreement covers all work necessary to complete the Project, including but not limited to City project management, consultant project management, data collection, coordination with other agencies, surveying, hydraulic and hydrologic modeling, design, cost estimate, specifications, temporary construction easement acquisition and costs, permitting, maintenance plans, contract documents, construction, construction management, landscaping, and mitigation.
- C. The City and the District desire to increase the level of flood protection along Madsen Creek by completing the following improvements shown in Exhibit A and as described below:

1. Restore the capacity of the high flow bypass channel and the SR 169 culvert to a minimum of the 4% chance annual flood (i.e., 25-year flood event) by removing accumulated sediment and vegetation.
 2. Raise approximately 400-feet of the right bank berm along the upper High Flow Bypass to contain the 1% chance annual flood (i.e., 100-year flood event) within the bypass channel.
 3. Create a berm to increase the level of flood protection to Wonderland Estates and an adjacent private parcel.
 4. Improve and extend the existing right bank ecology block wall/berm along Madsen Creek between SR 169 and 149th Avenue SE.
 5. Raise the berm surrounding the sediment pond to create a rock-lined emergency spillway that would safely discharge flood waters to the high flow bypass following a catastrophic failure of the existing outlets.
 6. Coordinate with King County and WSDOT to implement maintenance activities along the Madsen Creek high flow bypass.
 7. Implement any mitigation measures required by permitting agencies.
- D. The District desires to authorize and the City desires to complete the Project as soon as possible, in order to alleviate flood risk which impacts the safety of local residents in Wonderland Estates and along 149th Ave SE, recreation in Ron Regis Park, and traffic along major thoroughfare (SR 169).
- E. By Resolution FCD 2019-08, adopted on July 10, 2019, the District determined that the flood control improvements included in the Resolution generally contribute to the objectives of the District’s comprehensive plan of development. In that Resolution, the District also approved funding for the Project.

AGREEMENT

Based upon the foregoing, the Parties agree as follows:

1. Incorporation of Recitals—Scope of Agreement.
 - a. All recitals above are hereby incorporated and ratified as part of this Agreement.

- b. This Agreement establishes the terms and conditions for the project initiation, project management, data collection, , easement acquisition, permitting, maintenance plans, contract documents, construction, mitigation, and other work required for the completion of the Project as that term is defined in the recitals above.

2. Madsen Creek Flood Reduction Improvement Project and Reimbursement.

- a. The City shall implement the Project Improvements in the areas shown on Exhibit A documents, attached hereto and incorporated herein by reference on accordance with this Agreement. In this agreement, the term “Project” shall apply to the Madsen Creek Flood Reduction Improvement Project.
- b. The Project Charter was approved by the District on December 3, 2019, and is provided as Exhibit B.
- c. The City shall obtain and be responsible for all necessary local, state, and federal permits and approvals for the Project, and shall fully comply with all applicable requirements and conditions thereof.
- d. The City shall obtain and be responsible for all necessary special use permits, easements or property acquisitions. Access to private properties for construction would be coordinated by the City or its consultant.
- e. The District, through its service provider WLRD, shall provide technical assistance to the City and coordinate with the City as required on work needed within King County jurisdiction.
- f. The Parties acknowledge and understand that as of the effective date of this Agreement, all of the estimated cost of the Improvement Project is included in the District’s 2019-2024 six-year CIP budget. The District reserves the right to terminate this Agreement, and the City shall immediately terminate work upon receipt of notice to terminate; provided, that until substantial completion of the Project, the District shall continue to accept and review City reasonable requests for reimbursement up to the amount of funds appropriated in an approved District budget.
- g. The City’s reasonable cost and expense for the Improvement Project shall be reimbursed pursuant to the procedures, requirements and restrictions of the Reimbursement of City Expenditures paragraph below.

3. District Review of Improvement Study. Under District resolution FCD 2016-22, the District requires that any jurisdiction implementing a capital project shall comply with WLRD's Project Management Manual. The jurisdiction shall submit a project charter for review and approval by the District's Executive Committee, and shall request prior approval from the District's Executive Committee for initiation of the Project. The City shall provide to the District a schedule of the material and significant events and actions for the Project, which events and actions shall include, but not be limited to, temporary construction easement, permitting, contract documents, and construction. The 30% design for the Madsen Creek project was completed in advance of this agreement. The next milestone funded by this agreement is the 75% design. Upon the execution of this agreement, the City shall proceed to the 75% design. The City shall not proceed to the following milestones until the District has reviewed interim products consistent with its Capital project review protocols:
 - a. Final design until 75% design has been reviewed
 - b. Construction until final design has been reviewed

The District shall submit any comments within thirty days of receipt of the documents.

4. District Inspections. The District shall have the right to inspect the City's project area.
5. Contracts for Levee Work. No levee improvements will be constructed as part of this Project.
6. Retention and Review of Documents. The City shall submit to the District the final report of this Project, in a form and with detail required by the District. The City agrees to maintain documentation of all planning, modeling, analysis, and design 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 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 Parties shall retain all records in accordance with the Washington State Retention Schedules and shall comply with the Washington State Public Records Act, Ch 42.56.RCW.

7. District Costs and Expenses

- a. The District's revised budget for 2019, included a total of \$635,000 for the Madsen Creek Flood Reduction Improvement Project and was carried over to 2020. The Project costs covered under this Agreement shall not exceed \$615,000 without amendment of the District's budget or approval of such amount in a future annual District budget.

8. Reimbursement of City Expenditures.

- a. No more than once a quarter, the City shall submit requests for reimbursement of City reasonable costs and expenses incurred on or after March 1, 2020 for the Project. The requests shall be in a form and shall contain information and data as required by the District. In connection with submittal of requests for reimbursement, the District may require the City to provide a status or progress report concerning submittal, preparation or completion of any document or work required by this Agreement.
- b. 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 within thirty days of receipt of a request in order to determine whether they are reimbursable and payable under this Agreement. The District shall forward a response to the requested reimbursement to the City within forty-five days of the City's request.
- c. The District may postpone review of a City request for reimbursement where all or any part of the request is unreasonable, 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 unreasonable, inaccurate or incomplete in the opinion of the District, the dispute shall be resolved in accordance with paragraph 17 below. If the dispute is resolved in the City's favor, the District shall provide reimbursement within thirty (30) days of said resolution.
- d. The District may postpone payment of any request for reimbursement, up to a maximum of five percent (5%) of the request, where the City is

delinquent in submittal, preparation or completion of any document or work required by this Agreement

9. Compliance with Laws and Regulations. The City shall be responsible for compliance with all applicable laws and regulations, and for obtaining all required permits, approvals and licenses in connection with the Project.
10. Impact on Other Reaches or Segments. The District and the City agree that the improvements to Madsen Creek under this agreement shall not have a detrimental effect on other reaches of Madsen Creek or the Cedar River. The improvements to Madsen Creek shall be deemed not to have such a detrimental effect where the improvements fully protect the conveyance capacity of the creek and provide flood protection for adjacent properties during the 100-year flood.
11. 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 the Improvement Study is deemed complete under the scope of work and submittal agreements.
12. 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.
13. Liens and Encumbrances. The City acknowledges and agrees that it will not cause or allow any lien or encumbrance arising from or related to the Improvement Study authorized by this Agreement to be placed upon the real property interests of King County and the District. If such lien or encumbrance is so placed, King County and the District shall have the right to remove such lien and charge back the costs of such removal to the City.
14. Indemnification. To the maximum extent permitted by law, the City shall defend, indemnify and hold harmless the District and King County, and all of their officials, employees, principals, agents and insurers, from any and all claims, demands, suits, actions, losses, costs, reasonable attorney fees and expenses, fines, penalties and liability of any kind, including injuries to persons or damages to property, arising out of, or as a consequence of, the Improvement Study under

this Agreement. As to all other obligations under this Agreement, 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 agents, employees and representatives in performing these obligations under this Agreement. However, if any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the District or its employees, agents, or representatives, and the City or its employees, agents, or representatives, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its 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.

15. Insurance. The District recognizes that the City is self-insured and accepts such coverage for liability arising under this Agreement. The District is a member of the risk-pool Enduris, and agrees to 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 a reinsurance liability policy of not less than Ten Million Dollars (\$10,000,000) and will provide the City with a Evidence of Coverage (EOC) pursuant to Chapter 48.62 RCW.
16. 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 paragraph 6 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 resort will otherwise be had to 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 paragraph 17.
17. Entire Agreement; Amendment. This Agreement, together with Exhibit A, 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. Should any conflict exist between the terms of this Agreement and the terms of the Exhibits, this Agreement shall control.
18. 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.
19. 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: Ronald Straka, Utility Systems Director
1055 S Grady Way, 5th Floor
Renton, WA 98057
Phone: (425) 430-7239
Email: RStraka@rentonwa.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.

21. 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 RENTON

**KING COUNTY FLOOD CONTROL
ZONE DISTRICT**

By: _____
Armondo Pavone
Its: Mayor

By: _____
Dave Upthegrove
Its: Board Chair

DATE: _____

DATE: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
Legal Counsel

Attest

Jason A. Seth
City Clerk