



Signature Report

FCD Resolution FCD2019-07

Proposed No. FCD2019-07.1

Sponsors

1 A RESOLUTION approving an agreement with the  
2 City of Kent regarding property acquisition relating  
3 to the Signature Pointe Levee Improvement Project

4 WHEREAS, the Signature Pointe ("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  
7 provide improved flood protection and scour protection, to assist the City of Kent  
8 ("the City") in obtaining Federal Emergency Management Agency accreditation of  
9 the Levee and to enable certification and secure necessary land rights, and

10 WHEREAS, the District has included the Project in its CIP and budget, in a  
11 total amount of \$300,000 for an analysis of design alternatives for the Project, and

12 WHEREAS, the District has also included \$5,000,000 in its CIP and budget  
13 for strategic acquisition of properties along the lower Green River, and

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

16 WHEREAS, the District and the City will negotiate and enter into an  
17 agreement regarding final design and construction of the Project;

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

20            SECTION 1. The board of supervisors approves the Agreement Regarding  
21 Property Acquisition, Signature Pointe Levee Improvement Project, River Mile 21.7 to

22 23.2 Right Bank, Attachment A to this resolution, and authorizes the chair to sign the  
23 agreement.  
24

FCD Resolution FCD2019-07 was introduced on and passed by the King County Flood Control District on 5/29/2019, by the following vote:

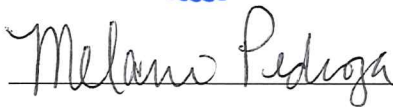
Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn, Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci



KING COUNTY FLOOD CONTROL ZONE DISTRICT

  
\_\_\_\_\_  
Reagan Dunn, Chair

ATTEST:

  
\_\_\_\_\_

Melani Pedroza, Clerk of the Board

**Attachments:** A. Agreement Regarding Property Acquisition Signature Pointe Levee Improvement Project River Mile 21.7 to 23.2, Right Bank

**AGREEMENT REGARDING PROPERTY ACQUISITION****Signature Pointe Levee Improvement Project****River Mile 21.7 to 23.2, Right Bank**

THIS AGREEMENT REGARDING PROPERTY ACQUISITION (“Agreement”) related to the Signature Pointe Levee Improvement Project, River Mile 21.7 to 23.2, 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. King County, Washington, through its Water and Land Resources Division of the King County 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.

B. 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.

C. The District has included the Project on its 2018-2023 Capital Budget Project List, and budgeted \$300,000 in its 2018 Capital Budget for an analysis of design alternatives for the Project. The District has also included Pre-Construction Acquisition in its 2019-2024 Capital Budget Project List, and budgeted \$5,000,000 in its 2019 Capital Budget for strategic acquisition of properties necessary to construct levee projects and reduce the risk of construction delays. 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 property rights must first be acquired, and the existing structures removed.

D. The preliminary plan for the Project is to increase the height of the Levee to achieve the Lower Green River System-Wide Improvement Framework’s provisional flood protection goal of 500-year or 18,800 cubic feet per second (cfs), plus three feet of freeboard.

E. At the District’s request and on its behalf, the City has agreed to acquire necessary real property and real property interests (“Real Property”) to construct the Project in furtherance of the parties’ common interest in flood protection for Kent and the larger regional community, and agreed to remove the structures thereon. This Real Property may include

without limitation fee title, permanent restrictive easements, or temporary construction easements as the Parties may agree are necessary for the Project. The Parties intend for the City to acquire the Real Property as soon as practicable, with a goal of completing the acquisitions provided for by this Agreement by the end of 2019, but with the understanding that this acquisition date is not firm and may be exceeded if voluntary acquisition efforts are unsuccessful and formal eminent domain proceedings become necessary.

### **AGREEMENT**

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 the real property (“Real Property”) described in this Agreement, or such additional Real Property that the City and District agree is necessary for public use through ownership, construction, installation, operation, maintenance, repair, replacement and removal of the Project in accordance with this Agreement. In acquiring Real Property, the City shall comply with the following procedures, laws, and regulations: (i) the Washington State Department of Transportation Right of Way Manual (M26.01.17); (ii) Chapters 8.12, 8.25, and 8.26 RCW; (iii) Chapter 308-125 WAC; and (iv) King County Flood Control Zone District Property Acquisition Policy approved in Resolution FCD 2016-22.2. In the event the District’s Property Acquisition Policy conflicts with a mandatory law or regulation that applies to action being taken by the City, the mandatory law or regulation will control over the Acquisition Policy. In acquiring Real Property, the City shall acquire the Real Property in a size and location the City and the District agree is necessary for the Project and public use. 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 work tasks, task durations, and task linkages, and (ii) will 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 conveyance documents proposed to acquire the Real Property from the property owners and to transfer the Real Property to the District. 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 agrees it will reimburse the City for City's actual costs and expenses incurred in acquiring the Real Property and removing the structures thereon, and that reimbursement requests will be submitted and paid in accordance with Section 4 of this Agreement.

d. The City shall acquire fee title of the Real Property identified by the District for acquisition which supports the Project's goals to (i) allow for ownership, construction, installation, operation, maintenance, repair, replacement, and removal of the Project; (ii) allow for a continuous Green River Trail ("Recreational Trail"); and (iii) allow for a new roadway alignment of South 251<sup>st</sup> Street between the Signature Pointe Apartments to the west and Washington Avenue to the east ("Roadway Alignment"). After the Project is fully constructed, the City shall grant to the District an easement over that portion of the Real Property the District requires to own, construct, install, inspect, operate, maintain, repair, replace, and remove the Project. As part of its regular communications with the District regarding the acquisition of the Real Property, the City shall submit to the District background information, appraisals, analysis and negotiations with the owner of the Real Property. The District shall reimburse the City for acquisition of the Real Property in accordance with Section 4.

3. Removal of Structures.

a. Once the Real Property is acquired and the City has title and possession to the Real Property, the City will hire a contractor to demolish and remove all structures on the Real Property, including any existing septic tank, oil heating system, or other appurtenances associated with the Real Property.

b. The City shall obtain and be responsible for all necessary local, state, and federal permits and approvals necessary to carry out the demolition and removal work described above, and shall fully comply with all applicable requirements and conditions thereof.

c. The District agrees it will reimburse the City for the City's actual costs and expenses incurred in the demolition and removal work provided for in this Section 3, and those reimbursement requests will be submitted and paid in accordance with Section 4 of this Agreement.

4. 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") The maximum reimbursement for City costs currently authorized through this Agreement is \$1,600,000 for the acquisition of the Real Property identified in Section 2 and the removal of structures per Section 3. However, the parties understand that the market rate for Real Property is in a constant state of flux and the area is currently experiencing an unprecedented increase in property values. Therefore, the parties agree and understand that this maximum reimbursement

amount may be insufficient to acquire the Real Property and, 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 4 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 any just compensation, damages, or costs ordered by a Court to be paid to a Real Property owner as a result of any eminent domain proceeding, or the actual costs or expenses incurred by the City in acquiring the Real Property when that cost or expense was approved by the District in accordance with Section 2.c. or as otherwise authorized by this Agreement.

5. 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.

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 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 Section 4 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. 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 paragraph 10.

11. 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.

12. 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.

13. 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.

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**

**KING COUNTY FLOOD CONTROL  
ZONE DISTRICT**

By: Dana Ralph  
Dana Ralph  
Its: Mayor

By: Reagan Dunn  
Reagan Dunn  
Its: Board Chair

DATE: 6/10/19

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: [Signature]  
City Attorney  
Deputy

By: [Signature]  
District Attorney