



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

FCD Resolution

Proposed No. FCD2021-15.1

Sponsors

1 A RESOLUTION approving an interlocal agreement with
2 the city of Redmond regarding the Avondale Road/Bear
3 Creek Flood Erosion Project.

4 WHEREAS, Bear Creek is an important stream in the Cedar-Sammamish
5 watershed for its productive salmonid habitat, and

6 WHEREAS, Bear Creek has migrated to the west edge of the floodplain near
7 10000 Avondale Road about 950 feet north of the Novelty Hill Road intersection, and

8 WHEREAS, the roadway embankment is experiencing severe scour at the toe,
9 resulting in the embankment settling, sidewalk slumping and damage to existing
10 stormwater outfalls, and

11 WHEREAS, the City of Redmond ("Redmond") has been monitoring the
12 embankment since the summer of 2018, and

13 WHEREAS, if left unchecked, this flood damage would cause the sidewalk, bike
14 lane, and parts of the roadway to collapse, and

15 WHEREAS, the King County Flood Control District ("the District") and Issaquah
16 desire to design and implement a long term solution for bank stabilization ("the Project"),
17 and

18 WHEREAS, the District has included the Project in its CIP and budget, in a total
19 amount of \$1,550,000, and

20 WHEREAS, Redmond has agreed to serve as the District's service provider for

FCD Resolution

21 the Project;

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

23 SUPERVISORS OF THE KING COUNTY FLOOD CONTROL DISTRICT:

24 SECTION 1. The board of supervisors approves the "Agreement for Flood Risk

25 Reduction Improvement Project between the King County Flood Control Zone District


FCD Resolution

- 26 and the City of Redmond," Attachment A to this resolution, and authorizes the chair to
27 sign the agreement.

FCD Resolution was introduced on and passed as amended by the King County Flood Control District on 11/9/2021, by the following vote:


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

KING COUNTY FLOOD CONTROL ZONE
DISTRICT
KING COUNTY, WASHINGTON

DocuSigned by:

E76CE01E07B14EF

Dave Upthegrove, Chair

ATTEST:

DocuSigned by:

8DE1BB375AD3422...

Melani Pedroza, Clerk of the District

Attachments: A. Agreement for Flood Risk Reduction Improvement Project Between the King County Flood Control Zone District and the City of Redmond

Attachment A

**AGREEMENT FOR
FLOOD RISK REDUCTION IMPROVEMENT PROJECT
BETWEEN THE KING COUNTY FLOOD CONTROL ZONE DISTRICT
AND THE CITY OF REDMOND**

This Agreement is made between the King County Flood Control Zone District, a quasi-municipal corporation of the State of Washington (“District”) and the City of Redmond, a Washington municipal corporation (“City”), (collectively, the “Parties”), for the purpose set forth herein.

RECITALS

A. WHEREAS, the King County Flood Control Zone District is a quasi-municipal corporation of the State of Washington, authorized to provide funding and support for flood risk reduction projects within King County.

B. WHEREAS, the District has identified the Avondale Road/Bear Creek Flood Erosion Project (“Project”) as a flood risk reduction project necessary to increase the level of flood protection for King County’s residents and has included it for funding for 2020, 2021, and 2022.

C. WHEREAS, utilizing the District’s funding, the City desires to implement the Project, including the restoration and strengthening of the Avondale roadway embankment, and the employment of stream restoration techniques and natural stream processes to redirect flow away from the threatened roadway, alleviating future risk.

D. WHEREAS, the Parties agree that time is of the essence in the implementation of this Agreement in order to alleviate flood risk which impacts the safety of King County’s residents.

E. WHEREAS, the King County Water and Land Resources Division (“WLRD”) is a service provider to the District under the terms of an Interlocal Agreement between the District and King County, and pursuant to that Agreement, WLRD provides contract management and technical expertise for the District for District-funded projects, and may assist the City as requested for the Project.

AGREEMENT

Based upon the foregoing, the Parties agree as follows:

1. Incorporation of Recitals. All recitals above are hereby incorporated and ratified as part of this Agreement.
2. Scope of Agreement. The District agrees to provide funding for the Project not to exceed the total amount of One Million, Five Hundred Fifty Thousand Dollars and No Cents

(\$1,550,000.00) (“Funds”), subject to the terms of this Agreement. The Funds shall be used by the City solely for the performance of the Project, and specifically those tasks identified in the Project’s Charter attached hereto as Exhibit A and incorporated herein by this reference. Modifications to and deviations from the Charter by the City shall require advance written approval from the District. The Funds shall not be used for any tasks performed prior to January 1, 2020, even if those tasks appear on the Charter.

3. Term. This Agreement shall be effective upon mutual execution of this Agreement (“Effective Date”). The Agreement shall terminate upon completion of the tasks identified in the Project’s Charter, unless earlier terminated in accordance with the terms of this Agreement.

3.1. The District may terminate this Agreement at any time prior to the City entering into a construction contract for the Project by providing the City 90 days’ advance written notice, provided that, unless termination is for cause, the City may continue to submit reasonable requests for reimbursement up to the amount of funds appropriated in an approved District budget for work that was performed prior to the date of termination. After the City has entered into a contract for construction of the Project, the District may not terminate this Agreement except for a material breach by the City. If the District alleges that a material breach has occurred, the District shall provide thirty (30) days’ advance written notice of termination to the City and an opportunity to cure. If the City cures the alleged breach within the thirty (30) days or, if the breach cannot be cured within thirty (30) days, the City commences cure within thirty (30) days and provides the District with a date by which the breach will be expeditiously cured in full, then this Agreement shall not terminate. If the City does not cure the breach as provided in this Section, then this Agreement shall terminate at the end of the thirty (30) day period without further action by the District

3.2. The City may terminate this Agreement with 90 days advance written notice to the District, provided that the District shall have no obligation to provide Funds for work occurring after the effective date of termination.

3.3. The Funds were appropriated in the District’s 2020 Budget (\$550,000), the District’s 2021 Budget (\$550,000), and the District’s 2022 Budget (\$450,000) for a total allocation of \$1,550,000. To the extent that the Project requires future appropriations or carryover to a future budget year by the District, the District’s obligations are contingent upon the appropriation of sufficient funds, provided, that once the City enters into a contract for construction of the Project, the District’s obligations shall be fixed and no longer contingent. If no such appropriation is made and the City has not yet entered into a contract for construction of the Project, this Agreement will terminate at the close of the appropriation year for which the last appropriation that allocated Funds under this Agreement was made.

4. Permitting and Compliance. At all times relevant to the City’s performance under the terms of the Agreement, the City shall comply with all applicable federal, state and local laws

and regulations. 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.

4.1. The City shall obtain and be responsible for all necessary property rights, special use permits, easements, or property acquisitions. Access to private properties for the Project are the sole responsibility of the City, and the District shall notify the City when District access is necessary to effectuate the District's performance under this Agreement.

4.2. Inspections. The District, including its service provider WLRD, may provide technical assistance to the City and coordinate with the City as required on work needed within King County jurisdiction. The District, including its service provider WLRD, shall have the right to inspect the City's Project at the District's request.

4.3. Discriminatory Practices Prohibited. Throughout the term of this Agreement, the City shall fully comply with all equal employment and nondiscrimination provisions of applicable local, state and federal laws.

5. District Review. The City shall review and adhere to the requirements set out in District Resolution FCD 2016-22 in acquiring property or property rights, if any, required for the Project. The City shall also adhere to the terms of the City's Project Management Manual or similar City-adopted policy documents. The City shall maintain and update the Project Charter (Exhibit A hereto) and all modifications thereto shall be submitted to the District for prior written approval. The City shall provide to the District and maintain a project schedule showing all significant events and actions for completion of the Project, including but not be limited to, completion of right-of-way acquisition (if any), permitting approval, completion of contract documents, and completion of construction.

The 30% and 60% designs for the Avondale Road/Bear Creek Flood Erosion Project were completed by the City in advance of this Agreement. Consistent with Exhibit A hereto, the City shall not proceed to final design until the District has reviewed and approved of the 90% Design submittal consistent with the City's Project Management Manual.

The District agrees to review and act upon design submittals in a timely manner and to approve, disapprove, or return submittals for correction within forty-five (45) calendar days from receipt. If the District fails to take action on a design submittal within forty-five (45) calendar days, the design submittal shall be deemed approved, and the City may proceed to the next milestone.

6. Retention and Review of Documents. The City agrees to maintain documentation of all planning, modeling, analysis, and design of the Project sufficient to meet District and 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 Parties shall retain all records related to the Project in accordance with the Washington State Retention Schedules and shall comply with the Washington

State Public Records Act, Ch 42.56.RCW. The City shall submit to the District the final report of this Project, in a form and with detail required by the District as provided in Exhibit B.

7. Payment of Funds. The City may submit for reimbursement of its actual and reasonable costs and expenses for the Project incurred after January 1, 2020 from the Funds described in Section 2. Requests for reimbursement shall be submitted and reviewed consistent with the procedures, requirements and restrictions set out in this Agreement.

7.1. No more than once a quarter, the City may submit requests for reimbursement of City actual and reasonable costs and expenses incurred on or after January 1, 2020 for the Project. The requests shall be in the form attached (Exhibit C). 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.

7.2. 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 (30) 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 (45) days of the City's request.

7.3. 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 that may be reasonably required to confirm that the expenses are reimbursable and payable under this Agreement 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 9.5 below. If the dispute is resolved in the City's favor, the District shall provide reimbursement within thirty (30) days of said resolution.

8. Impact on Other Reaches or Segments. The District and the City agree that the Project under this agreement shall not have a detrimental effect on other reaches of Bear Creek. The improvements to Avondale Road shall be deemed not to have such a detrimental effect where the improvements fully protect the conveyance capacity of Bear Creek and provide reasonable flood protection for adjacent properties during the 100-year flood.

9. General Provisions.

9.1. 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.

9.2. 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 Project 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.

9.3. Indemnification. 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, attorney fees and expenses, fines, penalties and liability of any kind, including but not limited to injuries to persons or damages to property, relating to, in connection with, or arising out of, whether directly or indirectly, or as a consequence of, the Project, this Agreement, the City's use of the Funds, or the City's exercise of its obligations, rights or privileges under this Agreement.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of the City's immunity under industrial insurance, Title 51 RCW, as respects the District and King County only, and only to the extent necessary to provide the District and the County with a full and complete indemnity of claims made by the indemnitor's employees against the District and King County as the result of the City's actions. This waiver has been mutually negotiated.

The City's obligations under this Section shall survive any termination of this Agreement for claims arising out of the City's actions undertaken pursuant to this Agreement.

9.4. Insurance. The City shall maintain, and shall require its contractors, subcontractors and agents to carry comparable insurance as set forth below, a policy of liability insurance with limits of 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), naming the District as an additional insured thereon and will provide the District with a Evidence of Coverage (EOC) pursuant to Chapter 48.62 RCW; provided, that the District shall accept a certificate from a certified risk pool certifying that the City is a member in good standing and has contractual indemnity coverage applicable to the requirements of this paragraph in fulfillment of insurance requirements. The City's obligations under this Section shall survive any termination of this Agreement.

9.4.1. The City's insurance coverage shall be primary insurance with respect to the District. Any insurance, self-insurance, or insurance pool coverage maintained by the District shall be in excess of the District's insurance and shall not contribute to it.

9.4.2. The City shall waive its rights of subrogation against the District for all claims and suits.

9.4.3. The coverage shall apply separately to each insurance against whom a claim is made or a suit is brought, except with respect to the limits of the insurer's liability.

9.4.4. Upon receipt of notice from its insurer(s), the City shall provide the District with notice of cancellation within three (3) days. It is hereby understood and agreed that the policy may not be canceled nor the intention not to renew be stated until thirty (30) days after receipt by the District, by registered mail, of a written notice addressed to the Chair of such intent to cancel or not to renew. If the insurance is canceled or reduced in coverage, the City shall provide a replacement policy or this Agreement is immediately terminated.

9.4.5. The City's maintenance of insurance policies required by this Agreement shall not be construed to limit the liability of the City to the coverage provided in the insurance policies, or otherwise limit the District's recourse to any other remedy available at law or in equity.

9.5. Dispute Resolution. The Parties will work collaboratively to resolve disagreements arising from the matters provided for in this Agreement. Disagreements will be resolved promptly and at the lowest organizational level. The following is a guide intended to resolve the maximum number of issues at the lowest level of hierarchy:

9.5.1. Each party shall designate a representative (the "Designated Representative") responsible for communications between the parties and as a central point of contact for the resolution of disputes under this Agreement. The initial Designated Representatives are:

City: Emily Flanagan
Senior Surface Water Engineer
City of Redmond
15670 NE 85th Street
P.O. Box 97010
Mail Stop 2NPW
Redmond, WA 98073-9710
Phone: (425) 556-2707
Email: eflanagan@redmond.gov

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

9.5.2. 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. Each Party will be responsible for its own costs and attorney's fees in connection with the dispute resolution provisions of this paragraph. The Designated Representatives shall use their best efforts to resolve disputes and issues arising out of or related to the matters covered by this Agreement. The Designated Representatives shall communicate regularly to discuss the status of the Project and the resolution of any issues or disputes arising during the term of this Agreement.

9.5.3. Each Designated Representative shall notify the other in writing of any problem or dispute that the Designated Representative believes needs formal resolution. The Designated Representatives shall meet within three (3) business days of receiving the written notice in an attempt to resolve the dispute. The parties may, but shall not be required to, utilize the services of a mediator to assist with problem identification and resolution.

9.5.4. If the Designated Representatives cannot resolve the dispute, the Executive Director of the District and the Director of the City's Public Works Department shall meet within ten (10) business days of being notified by the Designated Representatives and shall engage in good faith negotiations to resolve the dispute.

9.5.5. If the Executive Director of District and the Director of the City's Public Works Department cannot resolve the dispute, the Chair of the Board of the District and the Mayor of the City shall meet within ten (10) business days after being notified by the Executive Director of the District and the Director of the City's Public Works Department and shall engage in good faith negotiations to resolve the dispute.

9.5.6. The parties agree that they will not seek relief under this Agreement in a court of law unless and until each of these dispute resolution steps is exhausted. The preceding sentence shall not apply to the extent any applicable statute of limitations will or may run during the time that may be required to exhaust the dispute resolution steps set forth above, provided, however, that the parties agree that any legal proceeding brought during such period may be stayed, if consistent with applicable law and if the rights of the parties will not be prejudiced thereby, while the dispute resolution steps set forth above are satisfied.

9.6. Entire Agreement; Amendment. This Agreement, together with Exhibits A, B and C, represent 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.

9.7. 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: Emily Flanagan
 Senior Surface Water Engineer
 City of Redmond
 15670 NE 85th Street
 P.O. Box 97010
 Mail Stop 2NPW
 Redmond, WA 98073-9710
 Phone: (425) 556-2707
 Email: eflanagan@redmond.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

9.8 Authority. The undersigned warrant that they have the authority duly granted by their respective legislative bodies to make and execute this Agreement. This Agreement will be approved and filed in accordance with Chapter 39.34 RCW.

9.9 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence, or its application to any person or circumstance (collectively referred to as "Term"), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such Term declared illegal, invalid or unconstitutional shall be severable and the remaining Terms of the Agreement shall remain in full force and effect unless to do so would be inequitable or would result in a material change in the rights and obligations of the Parties hereunder.

9.10 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between the City and the District. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

9.11 Force Majeure. In the event either party is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, unusually severe weather conditions, employee strikes and unforeseen labor or availability of materials conditions not attributable to the City's employees or agents, neither party shall be deemed in breach of provisions of this Agreement.

9.12 Venue/Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. Any action brought relative to enforcement of this Agreement, or seeking a declaration of rights, duties or obligations herein, shall be initiated in King County Superior Court.

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

CITY OF REDMOND

By: _____

Angela Birney

Its: Mayor

DATE: _____

**KING COUNTY FLOOD CONTROL
ZONE DISTRICT**

DocuSigned by:
By:  _____
E70CE01F07B14EF...

Dave Upthegrove

Its: Board Chair

DATE: 11/15/2021

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

James E. Haney
City Attorney

DocuSigned by:
By:  _____
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Charlotte A. Archer
District Legal Counsel