

AGREEMENT REGARDING DESIGN OF IMPROVEMENTS FOR THE BALLINGER CREEK HABITAT RESTORATION AND FLOOD REDUCTION PROJECT

This Agreement regarding Design of Improvements to Ballinger Creek, generally from Brugger’s Bog Park to the culvert under State Route 104 (SR-104), hereinafter the “Agreement.” is made and entered into as of this ____ day of _____, 2022 (the “Effective Date”), by and between the City of Shoreline (“Shoreline”), a Washington municipal corporation and the City of Lake Forest Park (“LFP”), a Washington municipal corporation (collectively, the “Parties”).

Recitals

WHEREAS, Shoreline has been the lead agency developing the 25th Avenue NE Ballinger Creek Habitat Restoration and Flood Reduction project (the “Project”). The purpose of the Project, in general, is to "daylight" and restore habitat along a piped stream, including an adjacent restored floodplain area within a City of Shoreline maintenance yard, install four (4) fish-passable and habitat-friendly box culverts, and restore a degraded open channel running alongside and impacted by the aging Washington State Department of Transportation (WSDOT) infrastructure, and

WHEREAS, these improvements in habitat will also address long-standing and frequently recurring stream flooding issues in this area arising from undersized and aging roadway pipe infrastructure, and

WHEREAS, Shoreline has developed the Project’s design to approximately 60% completion, and

WHEREAS, roughly half of the Project area is within LFP’s jurisdictional boundaries, as well as WSDOT Rights-of Way for SR-104, and

WHEREAS, WSDOT is supportive of the Project, as it coordinates with improvements to, and benefits WSDOT’s existing facilities in proximity to the Project, such as WSDOT’s gabion wall that supports the SR-104 embankment and

WHEREAS, WSDOT has agreed to review the 60% Project plans and collaborate on Project funding opportunities, and

WHEREAS, the Parties agree to equally fund the WSDOT review costs, and

WHEREAS, the Parties desire to memorialize terms and conditions relating to the WSDOT review of the Project, and

WHEREAS, the Parties also anticipate amendment(s) to this agreement or future agreements regarding the Project,

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

Agreement

1. PURPOSE

The purpose of this Agreement is to cover the cost and expenses attributable to the WSDOT review of Shoreline's 60% Project Plans for the Project.

2. PROJECT PLANS

For the purpose of this Agreement, the 60% Project Plans means those plans prepared by Shoreline's consultant, Louis Berger, under Shoreline Contract No. 8403, dated December 31, 2019, and identified as the NE 195th Street Ballinger Creek Culvert Replacement Plan Set and the 25th Avenue NE Ballinger Creek Flood Reduction Project Plan Set, both dated December 2019.

3. RESPONSIBILITIES OF PARTIES

- A. Shoreline will seek approval of a "JZ Account" with WSDOT for an estimated cost of \$15,000. This sum is intended to cover all of WSDOT's costs for reviewing and commenting on submitted engineering data and plans, completing agreements, meetings, and inspections.
- B. Each party agrees to be equally responsible for fifty percent (50%) of all WSDOT costs, including those invoices submitted to Shoreline prior to execution of this Agreement.
- C. WSDOT will invoice Shoreline for its costs on a periodic basis. Shoreline will then invoice LFP for its equal share of those costs.
- D. LFP shall submit its payment to Shoreline, in full, within 15 calendar days of the date of Shoreline's invoice so that Shoreline can either be reimbursed or compensate WSDOT in a timely manner.
- E. If LFP fails to make timely compensation, then Shoreline may charge interest on the outstanding balance to LFP in the amount of one percent (1%) per month.

4. TERM AND TERMINATION

- A. The term of this Agreement commences on the date executed by all the Parties and shall continue until December 31, 2023, unless extended or terminated by the Parties in accordance with this Agreement.
- B. This Agreement may be terminated by any Party if any other Party fails to comply with any material provisions of the Agreement, in whole or in part. Termination shall not relieve a Party of costs incurred to the date of termination.

5. NOTICES

All notices and invoices required under the terms of this Agreement shall be given in writing, addressed as follows:

Jeff Perrigo
Public Works Director
City of Lake Forest Park
17425 Ballinger Way NE
Lake Forest Park, WA 98115
jperrigo@ci.lake-forest-park.wa.us

John Featherstone
Surface Water Utility Manager
City of Shoreline
17500 Midvale Ave N
Shoreline, WA 98133
jfeatherstone@shorelinewa.gov

Notices may be hand-delivered; sent via U.S. mail, return receipt requested; by a nationally recognized courier service, or electronic mail (e-mail). All notices issued under this Agreement shall be deemed received on the next business day after being deposited in the U.S. mail in city of mailing, at the time of hand or courier delivery to the addressee party, or on the date received by the recipient's computer.

6. SUCCESSORS OR ASSIGNS

Neither Party shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

7. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties hereto. Either party may request changes in this Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendment to this Agreement.

8. NO THIRD-PARTY BENEFICIARIES

This Agreement is entered into by and between the Parties hereto and is not intended to confer any rights or remedies upon any other persons or entities.

9. EXECUTION OF AGREEMENT – COUNTERPARTS

This Agreement may be executed counterparts, all of which shall be regarded for all purposes as an original.

10. RECORDS

Shoreline and LFP acknowledge that they are local agencies subject to Washington’s Public Records Act, chapter 42.56 RCW, and, as such, this Agreement and records arising from the performance of this Agreement are public records subject to disclosure unless an exemption applies. Shoreline and LFP will retain this Agreement and all records related to this Agreement consistent with the records retention schedule for contracts/agreements issued by the Washington Secretary of State pursuant to chapter 40.14 RCW.

11. JURISDICTION AND VENUE

This Agreement shall be interpreted pursuant to the laws of the State of Washington and any judicial action arising from this Agreement shall be in King County Superior Court. In any action or proceeding to enforce or interpret any provision of this Agreement, the prevailing part shall be entitled to recover its reasonable costs, expenses, and attorneys’ fees incurred in such action or proceeding.

12. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon Shoreline and LFP, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

13. NON-WAIVER OF RIGHTS AND REMEDIES

No term or provisions of this Agreement shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other Party, whether expressed or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

IN WITNESS WHEREOF, each person executing this Agreement on behalf of a Party represents and warrants that he or she is fully authorized to execute this Agreement of behalf of the Party for which he or she is signing on the date indicated next to their signatures

THE CITY OF LAKE FOREST PARK

CITY OF SHORELINE

By: _____
Jeff Johnson
Mayor

By: _____
Debbie Tarry
City Manager