

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Authorizing the City Manager to Execute an Interlocal Agreement with the City of Lake Forest Park Regarding Design of Improvements for the 25 th Avenue NE Ballinger Creek Habitat Restoration and Flood Reduction Project
DEPARTMENT:	Public Works
PRESENTED BY:	John Featherstone
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

The neighboring cities of Shoreline and Lake Forest Park (LFP) have developed an interlocal agreement (ILA) to formalize their partnership on the 25th Avenue NE Ballinger Creek Habitat Restoration and Flood Reduction Project (Project). This project includes improvements and benefits within both cities.

The initial purpose of this ILA is to cover expenses arising from the Washington State Department of Transportation (WSDOT) review of the 60% Project Plans, which the City developed. Tonight, staff is seeking Council authorization to execute the ILA.

RESOURCE/FINANCIAL IMPACT:

Under the ILA, LFP would reimburse 50% of the City’s WSDOT design review costs up to a total WSDOT billed amount of \$15,000, including costs incurred prior to ILA execution. The City’s WSDOT expenditures to date are \$4,069.16; LFP’s expected initial reimbursement to the City under this ILA is \$2,034.58.

RECOMMENDATION

Staff recommends the Council authorize the City Manager to execute the Interlocal Agreement with the City of Lake Forest Park regarding design of improvements for the 25th Avenue NE Ballinger Creek Habitat Restoration and Flood Reduction Project.

Approved By: City Manager **JN** City Attorney **MK**

BACKGROUND

The stream known locally as Ballinger Creek (a western tributary of Lyon Creek) originates in Mountlake Terrace north of the Project area, passes through the northeastern corner of Shoreline within the Ballinger neighborhood for a distance of about 0.6 miles, and continues southeast into Lake Forest Park, joining the Lyon Creek main stem another 0.6 miles downstream of Shoreline city limits. Lyon Creek enters Lake Washington near the Lake Forest Park Town Center about 1.5 miles below the Ballinger-Lyon creek confluence.

The Ballinger Creek drainage basin has been largely built out since the 1980s, and the stream exhibits the typical impacts of urbanization, including flooding and loss of habitat. A particularly problematic area for the creek is within the Shoreline-LFP boundary area along an 825-foot section of almost entirely piped stream conveyance system running from Brugger's Bog Park (19553 25th Ave NE) in Shoreline to the NE 195th Street culvert in LFP. Since 2001, neighbors and others have reported flooding at least 18 times within this area. Flooding has impacted homes, buildings, yards, driveways, parking, and the 25th Avenue NE and NE 195th Street roadways and shoulders. Historical observations have confirmed computer modeling predictions that this area is expected to flood every two years on average. The most recent major flooding episode was on December 20, 2019, during a large rainstorm event. The Project was recommended as a high priority in the City of Shoreline's 2015 Lyon Creek Basin Plan.

According to the Washington Department of Fish and Wildlife's (WDFW) SalmonScape map ([WDFW SalmonScape \(wa.gov\)](http://wdfw.wa.gov)), the lower reaches of Ballinger/West Lyon Creek host the presence of Winter Steelhead and Fall Chinook, Coho, and Sockeye Salmon, and feature numerous fish passage barriers. In 2016 juvenile Coho salmon and cutthroat trout were found within Ballinger/West Lyon Creek just upstream of the NE 195th Street culvert. Coho are a food source for the endangered Southern Resident Orcas.

DISCUSSION

The Project's goal is to reduce flooding and restore habitat by making improvements to sections of Ballinger Creek within the project area along 25th Avenue NE between Brugger's Bog Park and downstream of NE 195th Street. These improvements will return Ballinger Creek to more natural conditions and assist in salmon recovery efforts.

The City of Shoreline has developed the Project to 60% design, partially funded by a \$472,000 grant from the King County Flood Control District. As designed, the Project would restore and improve approximately 1,500 feet of impacted stream channel. The Project would "daylight" approximately 600 feet of currently piped stream and restore habitat along this length, including 400 feet of stream with a half-acre of natural floodplain storage area within what's currently a fully paved area of the City's North Maintenance Facility (NMF) site. The Project would also install four (4) fish-passable and habitat-friendly box culverts with streambed gravel over 11 feet wide and running a total length of nearly 230 feet. Finally, the Project would also restore another 700 feet of existing Ballinger Creek open channel running along (and impacted by) the footing of a

failing retaining wall (owned by WSDOT within the State Route 104 Right-of-Way (ROW)) and other issues. Roughly half of the Project area is within the City of Shoreline, and the other half is within the City of Lake Forest Park and WSDOT ROW for SR-104.

The City is currently coordinating with WSDOT to replace their failing retaining wall along SR-104, and as future owners of the NE 195th Street culvert. WSDOT has indicated full funding is available for design and construction of the wall replacement to be implemented by the Project (as run by Shoreline/LFP) and is advancing an initial agreement to finish wall replacement design as part of the local project. Shoreline is currently working on providing information for WSDOT to draft this agreement.

A key part of WSDOT involvement in the Project is a “JZ” agreement (“JZ” is an alphanumeric identifier within the WSDOT accounting system and not an acronym) between the City and WSDOT, which funds WSDOT review of Project plans as developed. The bulk of the initial WSDOT review for the 60% design is completed.

The City of LFP has agreed to share costs with Shoreline for the WSDOT review. On October 13, 2022, the Lake Forest Park City Council authorized this ILA with the City of Shoreline.

COUNCIL GOAL(S) ADDRESSED

This interlocal agreement supports City Council’s commitment to “stewardship of the natural environment” as stated in Council Goal No. 2.

RESOURCE/FINANCIAL IMPACT

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RECOMMENDATION

Staff recommends the Council authorize the City Manager to execute the Interlocal Agreement with the City of Lake Forest Park regarding design of improvements for the 25th Avenue NE Ballinger Creek Habitat Restoration and Flood Reduction Project.

ATTACHMENTS

Attachment A: Interlocal Agreement with the City of Lake Forest Park Regarding Design of Improvements for the 25th Avenue NE Ballinger Creek Habitat Restoration and Flood Reduction Project

AGREEMENT BETWEEN THE CITY OF SHORELINE AND THE CITY OF LAKE FOREST PARK REGARDING DESIGN OF IMPROVEMENTS FOR THE 25th AVENUE NE BALLINGER CREEK HABITAT RESTORATION AND FLOOD REDUCTION PROJECT

This Agreement between the City of Shoreline and the City of Lake Forest Park regarding Design of Improvements for the 25th Avenue NE Ballinger Creek Habitat Restoration and Flood Reduction Project, generally from Brugger’s Bog Park, a City of Shoreline 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, 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, it is the understanding of the Parties that 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 WSDOT's costs for reviewing and commenting on submitted engineering data and plans, completing agreements, meetings, and inspections.
- B. Each party agrees to be responsible for fifty percent (50%) of all WSDOT costs referenced in 3.A. These WSDOT costs include WSDOT invoices submitted to Shoreline prior to execution of this Agreement but included in the \$15,000 JZ account referenced in 3.A.
- 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 thirty (30) calendar days of the date of receipt 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:

Jeffrey Perrigo
Public Works Director
City of Lake Forest Park
17425 Ballinger Way NE
Lake Forest Park, WA 98155
jperrigo@cityoflfp.gov

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 party 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

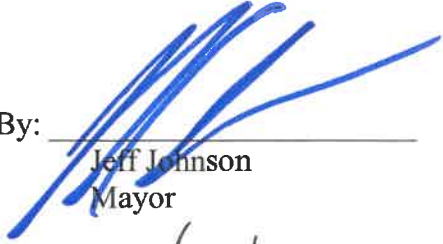
No term or provisions of this Agreement shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other Party, whether expressed or implied, shall 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

CITY OF LAKE FOREST PARK

CITY OF SHORELINE

By: 
Jeff Johnson
Mayor

By: _____
Debbie Tarry
City Manager

Dated: 10/13/2022

Dated: _____

