# RESOLUTION NO. 2016-6

**A Resolution of the Pierce County Flood Control Zone District, relating to District flood and stormwater projects; approving two forms of interlocal agreement between the District and municipalities for payment and use of District funds for District projects; and repealing Resolution No. 2014-4.**

**Whereas**, the District Board of Supervisors adopts annually a District budget for, among other things, capital projects funded in whole or in part by District funds ("District projects"); and

**Whereas**, some of the District projects are designed, constructed and installed by cities and towns in Pierce County or by Pierce County itself ("municipalities"), using District funds; and

**Whereas**, in Resolution No. 2014-4, adopted on October 8, 2014, the Board approved a form of interlocal agreement between the District and the municipalities to govern the distribution of District funds to the municipalities for use on District projects; and

**Whereas**, the form of interlocal agreement approved by the Board in Resolution No. 2014-4 assumes that Pierce County, as service provider for the District, will review and approve the plans, specifications and drawings for District projects, and will operate, maintain, repair and replace the District projects; and

**Whereas**, in many cases, Pierce County, as service provider for the District, will not review and approve the plans, specifications and drawings for District projects, and the District and Pierce County will not operate, maintain, repair and replace the District projects; and

**Whereas**, in view of these two circumstances involving District projects, the Board desires to approve two forms of interlocal agreements between the District and the municipalities, one for payment of District funds only and one both for payment of District funds and operation, maintenance, repair and replacement of District projects; now, therefore

**BE IT RESOLVED by the Board of Supervisors of the Pierce County Flood Control Zone District as follows**:

Section 1. The Board of Supervisors approves the "Interlocal Agreement Between the Pierce County Flood Control Zone District and [*insert name of municipality*] for District Funded Projects (Funding Only)," Exhibit A to this Resolution.

Section 2. The Board of Supervisors approves the "Interlocal Agreement Between the Pierce County Flood Control Zone District and [*insert name of municipality*] for District Funded Projects (Funding and Operation and Maintenance)," Exhibit B to this Resolution.

Section 3. The Chair of the Board of Supervisors, or designee, is authorized to sign an Interlocal Agreement between the District and a municipality located within the District (including Pierce County) that is substantially in the form of the Interlocal Agreements approved by Sections 1 and 2 of this Resolution, as long as at the time of signing the District project covered by the Interlocal Agreement is included in the District's annual budget resolution (or a District resolution relating specifically to the District project) and in the District's Comprehensive Plan of Development.

Section 4. The District Administrator is authorized to establish rules for implementation of the Interlocal Agreements approved by Sections 1 and 2 of this Resolution. Upon adoption, the District Administrator shall provide a copy of the rules to the Board of Supervisors, the District Executive Director and the District Clerk. The District Clerk shall post a copy of the rules on the District's website, and shall keep a copy of the rules for inspection and review by the public.

Section 5. Resolution No. 2014-4 is repealed.

**ADOPTED this 13th day of July, 2016.**

ATTEST:

**PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT**
Pierce County, Washington

Kate Kennedy, Clerk of the Board

Rick Talbert, Board Chair

482402.01 | 362658 | 0001

# INTERLOCAL AGREEMENT BETWEEN THE PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT AND [*insert name of municipality*] FOR DISTRICT FUNDED PROJECTS (FUNDING ONLY)

THIS AGREEMENT is made and entered into by and between [*insert name of municipality*], a municipal corporation of the State of Washington ("Municipality") and the PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi-municipal corporation of the State of Washington ("District") ("Parties" or when singular "Party"), and shall be effective upon execution by the Municipality and the District.

## RECITALS

A. The District Board of Supervisors ("Board") has adopted the District comprehensive plan, which is titled "Pierce County Flood Control Zone District Comprehensive Plan of Development" and is commonly referred to as "CPOD." The Board must approve by resolution the construction of all flood control and storm water control improvements.

B. The Board has adopted a budget resolution, which includes capital projects and improvements that will be funded by the District. The [*insert name of project or improvement*] is listed in the resolution as one of such capital projects and improvements ("Project").

C. The District desires to provide funding for the Project consistent with the budget resolution and the terms and conditions of this Agreement.

D. Pursuant to Chapter 39.34 RCW and RCW 86.15.080, the Parties desire to enter into this Agreement to establish the terms and conditions of District funding for the Project.

## AGREEMENT

In furtherance of the foregoing and in consideration of the following terms and conditions, the Parties agree as follows:

1. Definitions. In this Agreement, the following terms shall have the following meanings.

1.1 "Board" means the Board of Supervisors of the District.

1.2 "District Administrator" means the Director of the Pierce County Public Works and Utilities Department, or designee.

1.3 "Funds" means the funds authorized by the District for payment to the Municipality for Project expenses, as set forth in District resolutions, including

but not limited to budget resolutions. The District has authorized $ [*insert dollar amount*] for Project expenses in [*insert* year], and determined that the estimated cost of the Project over six years will be $ [*insert dollar amount*].

1.4 "Project" means the project or improvement authorized by District resolution.

2. Term of Agreement—Termination of Agreement--Survival of Agreement.

2.1 This Agreement shall be effective upon execution by both Parties, and shall remain in effect until distribution of all Funds in accordance with this Agreement, or until termination by one or both of the Parties pursuant to this Section.

2.2 Either Party may terminate this Agreement for material breach by the other party, which has not been remedied within sixty (60) days of notice of breach. The Municipality shall provide notice to the District Administrator, and the District shall provide notice to the chief executive employee of the Municipality. The Parties may terminate this Agreement by mutual agreement expressed in writing. The District may terminate this Agreement as provided in Section 7 of this Agreement.

2.3 If this Agreement is terminated, Sections 8.2, 10 and 11 shall survive termination.

3. Design and Construction--Submission of Plans, Specifications and Drawings. The Municipality shall design, construct and install the Project in compliance with all applicable laws, rules and regulations. The Municipality shall obtain and be responsible for all approvals and permits for the Project. Prior to bidding the Project, the Municipality shall submit to the District Administrator a copy of the Project plans, specifications and drawings.

4. Project Work and Funding Sources. At times and in a format approved by the District Administrator, the Municipality shall submit a description of the Project funding sources, a schedule of the Project work, and a schedule of the receipt of all Project funds, including the Funds.

5. Payment and Use of Funds. The District shall pay Funds to the Municipality only for the Municipality's Project related expenses, in accordance with a schedule and procedure approved by the District Administrator. The Municipality acknowledges and understands that the financial obligations of the District pursuant to this Agreement are limited to payment of the Funds. Accordingly, the District shall not be responsible for and shall not provide any funds toward Project expenses in excess of the Project cost estimate or in excess of the Funds. Furthermore, where funds for the Project are provided by multiple non-Municipality funding sources, and the actual Project cost is less than the estimated Project cost, the Municipality shall use its best efforts to request

payment from the District in a percentage that is equal to the District's percentage of non-Municipality funds.

6. Withholding or Denial of Funds. The District reserves the right to withhold or deny payment of Funds for failure of the Municipality to comply with the terms and conditions of this Agreement, or for failure of the Project to meet the description of the Project stated in Section 1.4.

7. Multi-Year Projects. The District shall provide Funds for the budget year in which this Agreement is executed, and anticipates providing funds for subsequent budget years, if the Project description provides for construction and installation over multiple years. If the Project description provides for construction and installation over multiple years, the District's obligation to provide Funds for subsequent budget years is conditioned upon appropriation of Funds by the Board in subsequent budget years. If the Board fails to appropriate Funds for any subsequent budget year, the District reserves the right to make final distribution of appropriated Funds and to close out this Agreement as soon as possible, in accordance with the terms and conditions of this Agreement. After close out, the District may terminate this Agreement. The Parties acknowledge and understand that if the District terminates this Agreement under this Section 7, the Parties must enter into a new Agreement for any subsequently appropriated Funds for the Project.

8. Reports—Audits—Records Retention--Inspections.

8.1 The Municipality shall prepare and file written reports describing its request for and expenditure of the Funds, as required by the District Administrator. The Municipality shall prepare and file such other written reports, including but not limited to a final report after final distribution of Funds, as required by the District Administrator.

8.2 The Municipality shall retain all records and documents relating to the Funds for a minimum of seven (7) years after final payment of Funds by the District, unless required by law to be retained for a longer period, in which case the longer period shall apply.

8.3 Upon reasonable notice, the Municipality shall make available to the District Administrator for inspection, review and audit all records and documents relating to the Funds.

9. Project Ownership and Maintenance. The Municipality shall take ownership of, and shall be obligated to design, construct, operate, maintain, repair and replace the Project. The District shall have no obligation or responsibility for the design, construction, operation, maintenance, repair and replacement of the Project.

10. Audit Exception Repayments. Following an audit of the payment of Funds, the Municipality shall repay to the District all amounts that the District

determines should not have been paid to the Municipality, due to the negligent or intentional acts of the Municipality, its officers, officials, employees, agents, contractors or volunteers.

11. Hold Harmless and Indemnification.

11.1 To the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party, and all of its officers, officials, employees, agents, contractors and volunteers, from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or resulting from any negligent acts, errors, omissions of the indemnifying Party and its officers, officials, employees, agents, contractors and volunteers in performing obligations under this Agreement or in implementing the Project. However, if any such injuries and damages to persons or property are caused by or result from the concurrent negligence of the District or its officers, officials, employees, agents, contractors and volunteers, and the Municipality or its officers, officials, employees, agents, contractors and volunteers, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its officers, officials, employees, agents, contractors or volunteers.

11.2 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 by the Parties.

12. Amendment. This Agreement may be modified by written instrument approved by the Municipality's governing body and the Board and signed by the authorized representatives of the Parties.

13. Waiver. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this Agreement. No waiver shall be effective unless made in writing.

14. No Third Party Rights. Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party.

15. Entirety. This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the projects and constitutes the entire agreement between the Parties.

16. Counterparts. This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated document.

17. Filing of Documents. The District Administrator and the [*insert name of Municipality's employee or officer*], respectively, shall receive and give all notices, approvals, reports and documents under this Agreement.

18. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other provision.

IN WITNESS WHEREOF, authorized representatives of the Parties hereto have signed their names in the spaces below:

| | |
|---|---|
| _____ | PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT |
| _____ | _____ |
| Name:_____ | Name:_____ |
| Title:_____ | Title:_____ |
| Date: _____ | Date: _____ |
| Attested to: | Attested to: |
| _____ | _____ |
| Name:_____ | Kate Kennedy |
| Title:_____ | Clerk of Board of Supervisors |

# INTERLOCAL AGREEMENT BETWEEN THE PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT AND [*insert name of municipality*] FOR DISTRICT FUNDED PROJECTS (FUNDING AND OPERATION AND MAINTENANCE)

THIS AGREEMENT is made and entered into by and between [*insert name of municipality*], a municipal corporation of the State of Washington ("Municipality") and the PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi-municipal corporation of the State of Washington ("District") ("Parties" or when singular "Party"), and shall be effective upon execution by the Municipality and the District.

## RECITALS

A. The District Board of Supervisors ("Board") has adopted the District comprehensive plan, which is titled "Pierce County Flood Control Zone District Comprehensive Plan of Development" and is commonly referred to as "CPOD." The Board must approve by resolution the construction of all flood control and storm water control improvements.

B. The Board has adopted a budget resolution, which includes capital projects and improvements that will be funded by the District. The [*insert name of project or improvement*] is listed in the resolution as one of such capital projects and improvements ("Project").

C. The District desires to provide funding for the Project consistent with the budget resolution and the terms and conditions of this Agreement.

D. Pierce County is the service provider for the District, pursuant to an interlocal agreement between the District and Pierce County. It is anticipated that the District (and/or Pierce County) will enter into an interlocal agreement with the Municipality to [*add "own," if applicable*] operate, maintain, and repair the Project, following construction of the Project by the Municipality.

E. Pursuant to Chapter 39.34 RCW and RCW 86.15.080, the Parties desire to enter into this Agreement to establish the terms and conditions of District funding for the Project.

## AGREEMENT

In furtherance of the foregoing and in consideration of the following terms and conditions, the Parties agree as follows:

1. Definitions. In this Agreement, the following terms shall have the following meanings.

1.1 "Board" means the Board of Supervisors of the District.

1.2 "District Administrator" means the Director of the Pierce County Public Works and Utilities Department, or designee.

1.3 "Funds" means the funds authorized by the District for payment to the Municipality for Project expenses, as set forth in District resolutions, including but not limited to budget resolutions. The District has authorized $ [*insert dollar amount*] for Project expenses in [*insert* year], and determined that the estimated cost of the Project over six years will be $ [*insert dollar amount*].

1.4 "Project" means the project or improvement authorized by District resolution.

2. Term of Agreement—Termination of Agreement--Survival of Agreement.

2.1 This Agreement shall be effective upon execution by both Parties, and shall remain in effect until distribution of all Funds in accordance with this Agreement, or until termination by one or both of the Parties pursuant to this Section.

2.2 Either Party may terminate this Agreement for material breach by the other party, which has not been remedied within sixty (60) days of notice of breach. The Municipality shall provide notice to the District Administrator, and the District shall provide notice to the chief executive employee of the Municipality. The Parties may terminate this Agreement by mutual agreement expressed in writing. The District may terminate this Agreement as provided in Section 7 of this Agreement.

2.3 If this Agreement is terminated, Sections 8.2, 10 and 11 shall survive termination.

3. Project Approval and Inspection—Permits and Approvals. The Municipality shall design, construct and install the Project in compliance with all applicable laws, rules and regulations. The Municipality shall obtain and be responsible for all approvals and permits for the Project. The District must approve the plans, specifications and drawings of the Project prior to bidding of the Project. The District shall have the right to inspect the Project during construction, upon notice to the Municipality. The Municipality acknowledges that the District (or Pierce County) will not operate, maintain and repair the Project unless the Municipality and the District (or Pierce County) enter into an interlocal agreement for such operation, maintenance and repair.

4. Project Work and Funding Sources. At times and in a format approved by the District Administrator, the Municipality shall submit a description of the Project funding sources, a schedule of the Project work, and a schedule of the receipt of all Project funds, including the Funds.

5. Payment and Use of Funds. The District shall pay Funds to the Municipality only for the Municipality's Project related expenses, in accordance

with a schedule and procedure approved by the District Administrator. The Municipality acknowledges and understands that the financial obligations of the District pursuant to this Agreement are limited to payment of the Funds. Accordingly, the District shall not be responsible for and shall not provide any funds toward Project expenses in excess of the Project cost estimate or in excess of the Funds. Furthermore, where funds for the Project are provided by multiple non-Municipality funding sources, and the actual Project cost is less than the estimated Project cost, the Municipality shall use its best efforts to request payment frpom the District in a percentage that is equal to the District's percentage of non-Municipality funds.

6. Withholding or Denial of Funds. The District reserves the right to withhold or deny payment of Funds for failure of the Municipality to comply with the terms and conditions of this Agreement, or for failure of the Project to meet the description of the Project stated in Section 1.4.

7. Multi-Year Projects. The District shall provide Funds for the budget year in which this Agreement is executed, and anticipates providing funds for subsequent budget years, if the Project description provides for construction and installation over multiple years. If the Project description provides for construction and installation over multiple years, the District's obligation to provide Funds for subsequent budget years is conditioned upon appropriation of Funds by the Board in subsequent budget years. If the Board fails to appropriate Funds for any subsequent budget year, the District reserves the right to make final distribution of appropriated Funds and to close out this Agreement as soon as possible, in accordance with the terms and conditions of this Agreement. After close out, the District may terminate this Agreement. The Parties acknowledge and understand that if the District terminates this Agreement under this Section 7, the Parties must enter into a new Agreement for any subsequently appropriated Funds for the Project.

8. Reports—Audits—Records Retention--Inspections.

8.1 The Municipality shall prepare and file written reports describing its request for and expenditure of the Funds, as required by the District Administrator. The Municipality shall prepare and file such other written reports, including but not limited to a final report after final distribution of Funds, as required by the District Administrator.

8.2 The Municipality shall retain all records and documents relating to the Funds for a minimum of seven (7) years after final payment of Funds by the District, unless required by law to be retained for a longer period, in which case the longer period shall apply.

8.3 Upon reasonable notice, the Municipality shall make available to the District Administrator for inspection, review and audit all records and documents relating to the Funds.

9. Project Ownership and Maintenance. The Municipality shall own, operate, maintain, repair and replace the Project, and the District shall have no obligation to own, operate, maintain, repair and replace the Project, unless agreed otherwise by the District (and/or Pierce County) and the Municipality pursuant to an interlocal agreement.

10. Audit Exception Repayments. Following an audit of the payment of Funds, the Municipality shall repay to the District all amounts that the District determines should not have been paid to the Municipality, due to the negligent or intentional acts of the Municipality, its officers, officials, employees, agents, contractors or volunteers.

11. Hold Harmless and Indemnification.

11.1 To the maximum extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party, and all of its officers, officials, employees, agents, contractors and volunteers, from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or resulting from any negligent acts, errors, omissions of the indemnifying Party and its officers, officials, employees, agents, contractors and volunteers in performing obligations under this Agreement or in implementing the Project. However, if any such injuries and damages to persons or property are caused by or result from the concurrent negligence of the District or its officers, officials, employees, agents, contractors and volunteers, and the Municipality or its officers, officials, employees, agents, contractors and volunteers, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its officers, officials, employees, agents, contractors or volunteers.

11.2 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 by the Parties.

12. Amendment. This Agreement may be modified by written instrument approved by the Municipality's governing body and the Board and signed by the authorized representatives of the Parties.

13. Waiver. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this Agreement. No waiver shall be effective unless made in writing.

14. No Third Party Rights. Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party.

15. Entirety. This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the projects and constitutes the entire agreement between the Parties.

16. Counterparts. This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated document.

17. Filing of Documents. The District Administrator and the [*insert name of Municipality's employee or officer*], respectively, shall receive and give all notices, approvals, reports and documents under this Agreement.

18. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other provision.

IN WITNESS WHEREOF, authorized representatives of the Parties hereto have signed their names in the spaces below:

| | |
|---|---|
| _____ | PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT |
| _____ | _____ |
| Name:_____ | Name:_____ |
| Title:_____ | Title:_____ |
| Date: _____ | Date: _____ |
| Attested to: | Attested to: |
| _____ | _____ |
| Name:_____ | Kate Kennedy |
| Title:_____ | Clerk of Board of Supervisors |