

6 **RESOLUTION NO. 2018-4** 7 8

9 **A Resolution of the Pierce County Flood Control Zone District Approving
10 an Interlocal Agreement with Pierce County Regarding
11 Support Services, and Repealing Resolution No. 2013-1.**
12
13

14 **Whereas**, the County Council formed the Pierce County Flood Control Zone
15 District by passing Ordinance 2011-95s on April 3, 2012; and
16

17 **Whereas**, in accordance with state law, the County Council acts ex officio as the
18 Board of Supervisors of the District, a county engineer administers the affairs of the
19 District, and the county treasurer acts as the District's treasurer; and
20

21 **Whereas**, the District desires to carry out flood and stormwater control services
22 throughout the County as efficiently and effectively as possible; and
23

24 **Whereas**, the District is authorized under RCW 86.15.080(8) to enter into
25 cooperative agreements with other governments, such as the County, to carry out the
26 flood and stormwater control mission of Chapter 86.15 RCW; and
27

28 **Whereas**, the County has the expertise, resources and infrastructure necessary
29 to support the District in its development and implementation of an annual District
30 budget and work plan; and
31

32 **Whereas**, the County has provided flood and stormwater control services to the
33 citizens of the County since its formation as a county and has developed an extensive
34 expertise in providing flood and stormwater control services; and
35

36 **Whereas**, the County can assist the District in efficiently and effectively carrying
37 out the District's mission to provide flood and stormwater control services for the people
38 of the County; and
39

40 **Whereas**, a cooperative agreement between the County and the District will
41 benefit each Party and is both authorized by state law and of importance to the health,
42 safety and property of the citizens of the County; and
43

44 **Whereas**, the District and the County are each authorized to enter into a
45 cooperative agreement pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act)
46 and RCW 86.15.095; and
47

1 **Whereas**, on December 10, 2012, the Board of Supervisors of the District
2 adopted Resolution No. 2012-14, which approved the "Interlocal Agreement Between
3 Pierce County and the Pierce County Flood Control Zone District Regarding Support
4 Services" ("County/District Interlocal Agreement"); and

6 **Whereas**, on February 5, 2013, the Pierce County Council adopted Resolution
7 No. R2013-5s, which approved the County/District Interlocal Agreement, with a
8 modification to Section 3.8 of that Agreement; and

10 **Whereas**, on June 5, 2013, the Board of Supervisors of the District adopted
11 Resolution No. 2013-1, which approved the "Interlocal Agreement Between Pierce
12 County and the Pierce County Flood Control Zone District Regarding Support Services"
13 ("County/District Interlocal Agreement") and repealed Resolution 2012-14; and

15 **Whereas**, the District Executive Committee reviewed the "Interlocal Agreement
16 Between Pierce County and the Pierce County Flood Control Zone District Regarding
17 Support Services" at their meetings in February, April, and May of 2018 and worked
18 with staff from Pierce County to identify areas of the County/District Interlocal
19 Agreement that would benefit from clarifications and updates to conform with new
20 information, and is recommending the "Interlocal Agreement Between Pierce County
21 and the Pierce County Flood Control Zone District Regarding Support Services," which
22 is attached as Exhibit A to this Resolution, **Now, therefore**

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

27 Section 1. The Chair of the Board is authorized to sign the "Interlocal Agreement
28 Between Pierce County and the Pierce County Flood Control Zone District Regarding
29 Support Services," Exhibit A to this Resolution.

31 Section 2. Resolution No. 2013-1 is repealed.

34 **ADOPTED** this 18th day of July, 2018.

38 ATTEST:

44 Kate Kennedy
44 Kate Kennedy, Clerk of the Board

PIERCE COUNTY FLOOD CONTROL
ZONE DISTRICT
Pierce County, Washington

Rick Truett
Board Chair

1 **INTERLOCAL AGREEMENT BETWEEN PIERCE COUNTY AND THE**
2 **PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT**
3 **REGARDING SUPPORT SERVICES**

4
5 This Agreement is hereby entered into by Pierce County, a home rule charter
6 County in the State of Washington ("County"), and the Pierce County Flood Control
7 Zone District, a quasi-municipal corporation of the State of Washington ("District") (the
8 "Parties" or when singular, the "Party") and shall be effective upon execution by Pierce
9 County and the District.

10
11 WHEREAS, the County Council formed the District by passing Ordinance 2011-
12 95s on April 3, 2012; and

13
14 WHEREAS, in accordance with state law, the County Council acts ex officio as
15 the Board of Supervisors of the District, the county engineer administers the affairs of
16 the District, and the county treasurer acts as the District's treasurer; and

17
18 WHEREAS, the District desires to carry out flood and stormwater control services
19 throughout the County as efficiently and effectively as possible; and

20
21 WHEREAS, the District is authorized under RCW 86.15.080(8) to enter into
22 cooperative agreements with other governments, such as the County, to carry out the
23 flood and stormwater control mission of Chapter 86.15 RCW; and

24
25 WHEREAS, the County has the expertise, resources and infrastructure necessary
26 to support the District in its development and implementation of an annual District
27 budget and work plan; and

28
29 WHEREAS, the County has provided flood and stormwater control services to the
30 citizens of the County since its formation as a county and has developed an extensive
31 expertise in providing flood and stormwater control services; and

32
33 WHEREAS, the County can assist the District in efficiently and effectively carrying
34 out the District's mission to provide flood and stormwater control services for the people
35 of the County; and

36
37 WHEREAS, a cooperative Agreement between the County and the District will
38 benefit each Party and is both authorized by state law and of importance to the health,
39 safety and property of the citizens of the County; and

40
41 WHEREAS, the District and the County are each authorized to enter into this
42 Agreement pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act) and RCW
43 86.15.095;

1
2 NOW, THEREFORE, the Parties agree as follows:

3
4 1. Purpose and Scope of the Agreement.

5
6 1.1 The purpose of this Agreement is to provide the terms and conditions
7 under which the County and the District will cooperate to combine their respective
8 financial resources and technical and administrative expertise to effectively and
9 efficiently provide flood and stormwater control services to the people of the County.

10
11 1.2 The cooperative flood and stormwater control program entered into
12 pursuant to this Agreement will be funded by District revenues, and will be established
13 by the District's annual budget and annual work plan, as approved by resolution of the
14 District's Board of Supervisors.

15
16 2. Definitions.

17
18 2.1 "Administrative overhead costs" shall mean each employee providing
19 services benefits from agency, department and divisional overhead that allows for the
20 services to be performed such as location, communications, information technology,
21 leadership, rent, office supplies, telephone bills, workspace, and utilities. Overhead
22 rates have been determined based on centralized service and departmental cost pool
23 expenses applied to each fund based on a distribution methodology.

24
25 2.2 "Annual budget" means the District annual budget that is adopted by the
26 Board of Supervisors, which per RCW 86.15.140 must be divided into the following
27 appropriation items: (1) overhead and administration; (2) maintenance and operation;
28 (3) construction and improvements; and (4) bond retirement and interest. The annual
29 budget must be adopted at the same time as the Pierce County budget. In preparing the
30 annual budget, the Board of Supervisors shall show the total amount to be expended in
31 each appropriation item and the proportionate share of each appropriation item to be
32 paid from each District account, and shall for the appropriation item of construction and
33 improvement list each flood control improvement or stormwater control improvement
34 and the estimated expenditure to be made for each.

35
36 2.3 "Annual work plan" means the plan adopted by the Board of Supervisors as
37 part of the annual budget, which shall describe the tasks to be performed and the
38 respective roles and responsibilities of the County and the District for each task.

39
40 2.4 "Comprehensive plan of development" means a plan for flood control or
41 stormwater control that has been prepared for the river, stream, or water course upon
42 which District funded improvements will be extended, enlarged, acquired or constructed,
43 pursuant to the requirements of RCW 86.15.110. District funded improvements must
44 generally contribute to the objectives of the comprehensive plan of development.

1 2. 5 "Direct costs" means a cost that can be related directly to a work product,
2 function, or service.

3
4 2.6 "Indirect costs" means that the cost of certain administrative activities
5 provided by the General Fund is distributed based on the County's Central Services
6 Cost Allocation Plan. The major activities or costs which are allocated include Finance
7 Department, Executive Administration, Prosecuting Attorney and Legislative
8 Administration. The IT Financial and Human Resources Systems Allocation distributes
9 costs related to the operation, support, and enhancement of countywide financial and
10 human resources related IT systems. County funds are charged a portion of financial/
11 and human resources costs assembled by Finance and Performance Management.
12 Fifteen percent (15%) of the IT Enterprise Allocation is included in this allocation to
13 distribute costs to funds that do not directly consume IT resources but indirectly benefit
14 from these services. The cost of auditing county-wide systems is allocated to
15 departments based upon their share of total prior year expenditures. Certain
16 departmental audit costs are allocated to specific departments based upon an estimate
17 provided by the State Auditor. The amount shown in the schedule is an estimate. Actual
18 costs are billed as incurred. Departments should budget the amount shown in the
19 schedule unless a different number can be justified.

20
21 3. Administration.

22
23 3.1 The Pierce County Executive shall appoint the "county engineer," as
24 provided for in RCW 85.15.060 ("County Engineer"), to be responsible for the
25 performance and oversight of the County services under this Agreement ("County
26 Services"). On the Effective Date, the Pierce County Executive has appointed the
27 Deputy Director of the Department of Planning and Public Works as the County
28 Engineer.

29
30 3.2 The County Engineer may delegate the responsibility for the
31 administration and implementation of the County Services to a subordinate position.
32 The subordinate position shall be designated and referred to as the "County
33 Administrator." On the Effective Date, the County Engineer has delegated such
34 responsibility to the Assistant County Engineer. The County Engineer shall give the
35 District at least sixty (60) days advance notice of a change in the subordinate position.
36 The Parties agree that the County Engineer's delegation of such responsibility to the
37 Assistant County Engineer, or any other subordinate position, shall not relieve the
38 County Engineer of the responsibility for oversight of the County Services, unless
39 agreed otherwise by the Pierce County Executive and the Chair or Vice Chair of the
40 Board of Supervisors.

41
42 3.3 A District Executive Director, who shall be appointed by and report to the
43 Board of Supervisors, shall administer and perform the duties and responsibilities of the
44 District under this Agreement, and shall oversee the County Services under this
45 Agreement.

1 3.4 The Chair of the Board of Supervisors or designee and the County
2 Engineer or designee shall adopt standard operating policies and procedures for
3 administration and implementation of this Agreement and delivery of the County
4 Services. These policies and procedures shall not be considered a part of this
5 Agreement, and may be amended from time to time by the Chair of the Board of
6 Supervisors or designee and the County Engineer or designee. In the event of a
7 disagreement between the Chair of the Board of Supervisors or designee and County
8 Engineer or designee regarding interpretation and application of the policies and
9 procedures the District Executive Committee and the Pierce County Executive shall
10 resolve the disagreement.

11 4. District Obligations.

14 4.1 The District's Board of Supervisors shall adopt a comprehensive plan of
15 development and resolutions for the extension, enlargement, acquisition or construction
16 of flood control or stormwater control improvements, as required by RCW 86.15.110,
17 and an annual budget and annual work plan in accordance with RCW 86.15.140.

19 4.2 The District shall pay for the costs incurred by the County consistent with
20 this Agreement and the adopted budget and annual work plan. These costs shall
21 include the following:

23 4.2.1 Actual incurred costs, such as direct labor, employment benefits,
24 equipment rental, sub-contractors, materials and supplies, utilities and permits.

26 4.2.2 Direct costs related to flood control and stormwater control
27 improvements and projects, including but not limited to costs for planning, design,
28 administration, environmental, property acquisition, property management, construction,
29 construction engineering and utility relocation.

31 4.2.3 Indirect costs normally associated with public works construction
32 improvements and projects and related to flood control and stormwater control
33 improvements and projects, in addition to administrative overhead costs of section

35 4.2.4 Administrative overhead costs for the services provided by County
36 employees to the District. The administrative overhead costs shall be billed to the
37 District in accordance with the standard methodologies for determining such costs as
38 reviewed and approved by the County.

40 4.2.5 The District shall pay for any other costs agreed to by the Chair or
41 Vice Chair of the Board of Supervisors and the Pierce County Executive to the degree
42 those costs are included in the annual adopted budget. The Chair or Vice Chair, as
43 applicable, and the Pierce County Executive shall give notice of the agreement to the
44 District Administrator and the Executive Director, and shall report the agreement to the
45 District Executive Committee.

1 4.3 The District shall perform all necessary services to administer this
2 Agreement and the District responsibilities and duties, including but not limited to
3 providing staff support to the Board of Supervisors, District Executive Committee,
4 Advisory Committee, and other committees as may be established by the Board of
5 Supervisors.

6 4.4 The District shall respond to requests for disclosure of District public
7 records in accordance with the District's public records resolution. If requested by the
8 County, the District shall assist the County in responding to requests for disclosure of
9 County public records that relate to the District, this Agreement or the County Services.

10 5. County Obligations.

11 5.1 Unless otherwise decided by the District through resolution of the Board of
12 Supervisors, the office of the County Council shall provide clerical services for the
13 District and the Board of Supervisors.

14 5.2 If consistent with the annual budget and annual work plan and if requested
15 by the District Executive Committee, the County, shall provide other support services,
16 including but not limited to policy analysis of legislation and budgets, government
17 relations support, technical services assistance, Advisory Committee assistance, and
18 communications support.

19 5.3 Consistent with this Agreement, the annual budget, the annual work plan
20 and instructions and requests of the District, the County shall perform and implement all
21 County Services, including but not limited to the following:

22 5.3.1 Operate and maintain flood control and storm water control
23 projects, improvements, equipment and facilities, including levees
24 and revetments;

25 5.3.2 Plan for capital projects and improvements, including but not limited
26 to feasibility studies, engineering, permitting, property acquisition, and construction;

27 5.3.3 Plan for flood risk and stormwater risk reduction, including but not
28 limited to development of the comprehensive plan of development;

29 5.3.4 Provide technical assistance to jurisdictions and project
30 proponents; and

31 5.3.5 Design and develop communications materials to convey the work
32 of the District, including but not limited to the annual report, website, mailings, post
33 cards, and other communications tools.

34 5.4 The County shall perform other duties and responsibilities agreed to by
35 the Chair or Vice Chair of the Board of Supervisors or designee and the Pierce County

1 Executive.

2

3 5.5 The County shall keep and prepare records that explain and describe the
4 County Services and the costs and charges therefor, in a form and manner determined
5 by the District

6

7 5.6 The County shall respond to requests for inspection and copying of
8 County public records that relate to the District, this Agreement or the County Services
9 in accordance with Chapter 2.04 of the Pierce County Code. If requested, the County
10 shall assist the District in responding to requests for disclosure of District public records.
11 The County shall notify the District as soon as possible of the receipt of a request for
12 disclosure of County public records that relate to the District, this Agreement or the
13 County Services, and if requested by the District, shall keep the District informed of the
14 status and handling of such request.

15

16 5.7 Consistent with the District's policies and procedures for adoption of the
17 annual budget and annual work plan, the County shall prepare and submit for review
18 and approval by the District an annual budget and annual work plan that meets the
19 requirements of RCW 86.15.140, together with such other documents as requested by
20 the District Executive Committee or Executive Director.

21

22 5.8 The County has authority to take emergency action on behalf of the
23 District. If the County takes emergency action, it shall advise the District of the
24 emergency action as soon as practicable.

25

26 **6. Invoices and Payments.**

27

28 6.1 In the month following performance of County Services, the County shall
29 submit to the District Executive Director or designee invoices for the County Services in
30 a form and manner determined by the District. Upon approval of the invoices in a
31 manner and procedure determined by the District, the District shall pay the invoices.

32

33 6.2 The expenses for District operations, and capital expenses not provided
34 by the County, shall be charged directly to the District Operating Fund (Fund 154) or the
35 District Capital Fund (Fund 322) as appropriate.

36

37 6.3 County indirect costs for the District's operating and capital funds shall be
38 allocated to those two funds through the approved County indirect cost plan and
39 charged directly.

40

41 **7. Limitation on County Expenditures.**

42

43 7.1 The County Services shall not exceed the District's annual budget. The
44 Parties agree that any County Services in excess of the District's annual budget shall
45 not be a debt and obligation of the District.

1 8. Financial and Accounting Reporting.

2
3 8.1 The District shall be responsible for preparing and submitting all required
4 financial reports and audits to the State of Washington, unless otherwise agreed by the
5 Chair of the Board of Supervisors or designee and the County Engineer or designee.
6 The County shall assist the District in the preparation of all financial reports and audits,
7 submitting to the District all financial information and materials requested by the District.

8
9 8.2 The County shall submit to the District monthly financial reports regarding
10 revenue and expenditures, in relation to annual budget appropriations.

11
12 8.3 At the end of each calendar year, the County shall complete a
13 reconciliation of fund transfers and costs incurred. No later than April 1, the County
14 shall provide to the District an annual report of costs and ending fund balance for
15 District funds in the previous calendar year.

16
17 9. Legal Relations: No Third Party Beneficiaries, Venue, Indemnification, Costs and
18 Fees, Insurance, Survival, and Independent Contractor.

19
20 9.1 It is understood and agreed that this Agreement is solely for the benefit of
21 the Parties hereto and gives no right to any third party.

22
23 9.2 The County is an independent contractor with regard to the services
24 provided under this Agreement. The County shall retain all authority for rendition of
25 services, standards of performance, control of personnel, and other matters incident to
26 the performance of services by County pursuant to this Agreement. The County shall
27 be solely responsible for its acts and omissions and for the acts and omissions of its
28 employees, agents, contractors, consultants and representatives during the
29 performance of this Agreement. Nothing in this Agreement shall be considered to create
30 the relationship of employer and employee or principal and agent between the Parties.
31 If the District contracts directly with another contractor, the County shall not be
32 responsible for performance or actions or inactions relating to such contract unless the
33 County is a party thereto.

34
35 9.3 This Agreement shall be interpreted in accordance with the laws of the
36 State of Washington. The Superior Court of Pierce County, Washington, shall have
37 exclusive jurisdiction and venue over any legal action arising under this Agreement.

38
39 9.4 To the maximum extent permitted by law, each Party shall defend,
40 indemnify and hold harmless the other Party, and all of its officials, employees,
41 principals and agents, from any and all claims, demands, suits, actions, fines, penalties,
42 and liability of any kind, including injuries to persons or damages to property, which
43 arise out of or are related to any negligent acts, errors, omissions of the indemnifying
44 Party and its contractors, agents, employees and representatives in performing
45 obligations under this Agreement.

1 Provided, that if any such damages and injuries to persons or property are caused
2 by or result from the concurrent negligence of the District or its contractors, employees,
3 agents, or representatives, and the County or its contractor or employees, agents, or
4 representatives, each Party's obligation hereunder applies only to the extent of the
5 negligence of such Party or its contractor or employees, agents, or representatives.

6
7 The foregoing indemnity is specifically and expressly intended to constitute a
8 waiver of each Party's immunity under industrial insurance, Title 51 RCW, as respects
9 the other Party only, and only to the extent necessary to provide the indemnified Party
10 with a full and complete indemnity of claims made by the indemnitor's employees. This
11 waiver has been mutually negotiated.

12
13 9.5 The County shall provide insurance coverage, or self-insurance, for the
14 acts and omissions of its officers, employees and agents in providing the services and
15 carrying out the obligations of this Agreement, to the same extent and in the same
16 amount as is provided generally by the County for its officers, employees and agents.
17 The County shall provide proof of its insurance coverage or self-insurance at the
18 request of the District. The District and any employees of it shall not be covered under
19 the County's insurance or self-insurance program. In the event the County obtains
20 insurance coverage for the Board of Supervisors or employees of the District, the costs
21 of such insurance shall be reimbursable to the County by the District.

22
23 9.6 The provisions of this section shall survive any termination of this
24 Agreement.

25
26 10. Effective Date, Duration, Termination, and Waiver.

27
28 10.1 This Agreement shall take effect on _____, 2018 ("Effective Date")
29 and shall remain in effect until December 31, 2020, and shall automatically renew for
30 one-year periods thereafter unless on or before December 1 of any year either or both
31 parties notifies the other in writing that the Agreement shall not renew.

32
33 10.2 Notwithstanding the preceding paragraph, either Party may terminate this
34 Agreement for convenience upon sixty (60) days written notice to the other Party. In
35 addition, this Agreement may be terminated at any time by mutual agreement of the
36 Parties.

37
38 10.3 Failure to require full and timely performance of any provision at any time
39 shall not waive or reduce the right to insist upon complete and timely performance of
40 such provision thereafter.

41
42 11. Dispute Resolution.

43
44 11.1 Should a dispute arise between the Parties out of or related to this
45 Agreement, the Parties will notify the other in writing of any dispute that the respective
46 Party believes should be resolved.

1
2 11.2 The Parties will communicate regularly and commit to act in good faith to
3 resolve the dispute.

4
5 11.3 If the dispute cannot be remedied within thirty (30) days after written
6 notice, the Parties shall consider submitting the matter to a mutually agreed upon non-
7 binding mediator. The Parties shall share equally in the cost of the mediator.

8
9 12. Administration, Identification of Contacts, and Notice.

10
11 Any formal notice or communication to be given by the District to the County under
12 this Agreement shall be deemed properly given, if delivered, or if mailed postage
13 prepaid and addressed to:

14
15 County: Toby D. Rickman, P.E.
16 Deputy Director, Planning and Public Works Department
17 2702 South 42nd St., Suite 201
18 Tacoma, WA 98409-7322
19 (253) 798-_____
20 Attention: Melissa McFadden, P.E.

21
22 Any formal notice or communication to be given by the County to the District under
23 this Agreement shall be deemed properly given, if delivered, or if mailed postage
24 prepaid and addressed to:

25
26 District: Chair, Board of Supervisors
27 Pierce County Flood Control Zone District
28 Room 1046
29 930 Tacoma Avenue South
30 Tacoma, WA 98402
31 Attention: Kjristine Lund, Executive Director

32
33 The name and address to which notices and communications shall be directed may
34 be changed at any time, and from time to time, by either the District or the County
35 giving notice thereof to the other as herein provided.

36
37 13. Entire Agreement; Amendment.

38
39 13.1 This Agreement is a complete expression of the terms hereto and any oral
40 representation or understandings not incorporated herein are excluded.

41
42 13.2 Any modification, amendment, or clarification to this Agreement shall be in
43 writing and signed by both Parties. Copies of such shall be attached hereto and by this
44 reference made a part of this Agreement as though fully set forth herein.

45
46 14. Assignment.

1
2 Neither Party shall transfer or assign this Agreement without the prior written
3 consent of the other Party.
4

5 **15. Severability.**
6

7 If any provisions of this Agreement are held invalid by a court of competent
8 jurisdiction, the remainder of this Agreement shall not be affected thereby if the Parties
9 mutually agree that such remainder would then continue to serve the purposes and
10 objectives originally contemplated.
11

12 **16. Filing.**
13

14 This Agreement shall be filed with the Pierce County Auditor in conformance with
15 RCW 39.34.040, and any cost of such filing shall borne by Pierce County.
16

17 IN WITNESS WHEREOF, the parties have caused this Agreement to be
18 executed.
19
20
21

22 **PIERCE COUNTY**
23
24

25 _____
26 Pierce County Executive

27 Dated _____
28

29 Approved as to Form:
30
31

32 _____
33 Deputy Prosecuting Attorney

34 Dated _____
35

36
37 **PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT**
38
39

40 _____
41 Chair, Board of Supervisors

42 Dated _____
43

44 Approved as to Form:
45

46 District Legal Counsel

1
2
3 By: _____
4
5

Dated _____