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## RESOLUTION NO. 2020-5

**A Resolution of the Pierce County Flood Control Zone District, Relating to District Flood and Stormwater Projects, and Approving an Interlocal Agreement Between the District and the Pierce Conservation District.**

**Whereas**, in Resolutions No. 2018-7 and Resolution 2019-5, the District's 2019 budget resolution and revised budget resolution, the District appropriated District funds for the Puget Sound Shorelines Project within the District's Strategic Reserve; and

**Whereas**, the amount of \$50,000 for each of the years 2019 -- 2024 in Exhibit C-1 of the 2019 Budget Resolution is for Flood District capital improvement planning purposes only and is not an appropriation of funds for the PS Shoreline Project; and

**Whereas**, the "PS Shoreline Project" is the Conservation District's project to restore Puget Sound shorelines while maintaining protection from floods (Project); and

**Whereas**, the Project will consist of partnerships with Puget Sound shoreline property owners, implemented through agreements between the Conservation District and property owners (1) to construct, operate, maintain, repair, replace, and/or improve flood control facilities, (2) to remove human barriers, such as bulkheads, and replace them with living shoreline features engineered to protect the shoreline from erosion and mudslides, while improving habitat for humans, fish, and wildlife, and (3) to install living shoreline features where no structures currently exist, but where concerns of erosion, sloughing, and mudslides present dangers and where living shoreline features will act as a preventative measure to protect public access to Puget Sound and protect upland assets; and

**Whereas**, pursuant to RCW 86.15.080(11) this project is included within the authorized purposes of the Flood District which has authority to "provide grant funds to political subdivisions of the state that are located within the boundaries of the zone, so long as the use of the grant funds is within the purposes authorized under" Chapter 86.15 RCW. These authorized purposes include (1) planning, constructing, acquiring, maintaining, and operating facilities, improvements, and works to control, conserve, and remove flood waters; (2) taking action necessary to protect life and property from flood water damage; (3) controlling, conserving, retaining, and removing flood waters; and (4) cooperating or joining with any agency or political subdivision of the state that are located within the zone to carry out the purposes of Chapter 86.15 RCW; and

1               **Whereas**, pursuant to RCW 89.08.220(4) the Project is within the  
2 authorized purposes of the Conservation District which has authority to "cooperate or  
3 enter into agreements with, and within the limits of appropriations duly made available  
4 to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or  
5 any occupier of lands within the district in the carrying on of preventative and control  
6 measures and works of improvement for the conservation of renewable natural  
7 resources within the district..."; and  
8

9               **Whereas**, pursuant to Chapter 39.34 RCW, RCW 86.15.080, and RCW  
10 89.08.220(4), the Parties desire to authorize funding for the Project consistent with the  
11 2019 Budget Resolution and pursuant to the terms and conditions of Exhibit A to this  
12 Resolution. **Now, therefore**  
13

14               **BE IT RESOLVED by the Board of Supervisors of the Pierce County Flood**  
15 **Control Zone District as follows:**  
16


17               Section 1. The Board of Supervisors approves the "Interlocal Agreement  
18 Between the Pierce County Flood Control Zone District and the Pierce Conservation  
19 District Funded Projects (Funding Only)," Exhibit A to this Resolution.  
20

21               **ADOPTED** this 8<sup>th</sup> day of JULY, 2020.  
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24

25 **ATTEST:**  
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**PIERCE COUNTY FLOOD CONTROL  
ZONE DISTRICT**

Pierce County, Washington

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Audrey Persons, Clerk of the Board

  
Dave Morell, Board Chair

## EXHIBIT A

### FLOOD DISTRICT RESOLUTION NO. 2018-7 (2019 BUDGET RESOLUTION)

#### **INTERLOCAL AGREEMENT BETWEEN THE PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT AND PIERCE CONSERVATION DISTRICT**

THIS AGREEMENT is made and entered into by and between the PIERCE CONSERVATION DISTRICT, a quasi-municipal corporation of the State of Washington (Conservation District) and the PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi-municipal corporation of the State of Washington (Flood District) (collectively "Parties" or individually a "Party").

#### **RECITALS**

A. The Flood District Board adopted Resolution No. 2018-7, the Flood District's 2019 budget resolution (2019 Budget Resolution). Exhibit B of the 2019 Budget Resolution, which is titled "Pierce County Flood Control Zone District – 2019 Annual Budget," lists the "PS Shoreline Project," with an expenditure of \$50,000 from the Strategic Reserve Fund. Exhibit C-1 of the 2019 Budget Resolution, titled "Pierce County Flood Control Zone District – CIP 2019-2024," includes the "PS Shoreline Project" under the category of "Strategic Reserve," and lists the amount of \$50,000 for each of the years 2019 -- 2024. The amount of \$50,000 for each of the years 2019 -- 2024 in Exhibit C-1 of the 2019 Budget Resolution is for Flood District capital improvement planning purposes only, and is not an appropriation of funds for the PS Shoreline Project.

B. The "PS Shoreline Project" is the Conservation District's project to restore Puget Sound shorelines while maintaining protection from floods (Project). The Project will consist of partnerships with Puget Sound shoreline property owners, implemented through agreements between the Conservation District and property owners (1) to construct, operate, maintain, repair, replace, and/or improve flood control facilities, (2) to remove human barriers, such as bulkheads, and replace them with living shoreline features engineered to protect the shoreline from erosion and mudslides, while improving habitat for humans, fish, and wildlife, and (3) to install living shoreline features where no structures currently exist, but where concerns of erosion, sloughing, and mudslides present dangers and where living shoreline features will act as a preventative measure to protect public access to Puget Sound and protect upland assets.

C. Pursuant to RCW 86.15.080(11) the Flood District has authority to “provide grant funds to political subdivisions of the state that are located within the boundaries of the zone, so long as the use of the grant funds is within the purposes authorized under” Chapter 86.15 RCW. These authorized purposes include (1) planning, constructing, acquiring, maintaining, and operating facilities, improvements, and works to control, conserve, and remove flood waters; (2) taking action necessary to protect life and property from flood water damage; (3) controlling, conserving, retaining, and removing flood waters; and (4) cooperating or joining with any agency or political subdivision of the state that are located within the zone to carry out the purposes of Chapter 86.15 RCW. The Project is included within these authorized purposes.

D. Pursuant to RCW 89.08.220(4) the Conservation District has authority to “cooperate or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of preventative and control measures and works of improvement for the conservation of renewable natural resources within the district...” The Project is included within these authorized purposes.

E. Pursuant to Chapter 39.34 RCW, RCW 86.15.080, and RCW 89.08.220(4), the Parties desire to authorize funding for the Project consistent with the 2019 Budget Resolution and pursuant to the terms and conditions of this Agreement.

## **AGREEMENT**

The Parties agree as follows:

1. Definitions. The following terms shall have the following meanings:
2.
  - 1.1 “Board” means the Board of Supervisors of the Flood District.
  - 1.2 “Individual Projects” are specific projects within the scope of the overall Project which are funded in whole or in part with Funds and are the subject of Individual Project Contracts.
  - 1.3 “Individual Project Contracts” are the contracts executed by and between the Conservation District and Individual Property Owners for Individual Projects.
  - 1.4 “Individual Property Owners” are property owners who own property on the Puget Sound shoreline and who enter into Individual Property Contracts with the Conservation District for Individual Projects.

1.5 "Flood District Administrator" means the Pierce County Engineer, which position currently is held by the Deputy Director of the Department of Planning and Public Works, or designee.

1.6 "Funds" mean the funds authorized by the Flood District for payment to the Conservation District for the costs and expenses of the Project, as authorized by Exhibit B of the 2019 Budget Resolution and any subsequent Flood District resolutions.

1.7 "Project" means the "PS Shoreline Project" as described in the District's 2019 Budget Resolution, including all Individual Projects.

1.8 "2019 Budget Resolution" means Flood District Resolution No. 2018-7, which is attached to this Agreement as **Exhibit A**.

2. Term, Termination, and 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 earlier termination pursuant to Sections 2.2 and 8 of this Agreement.

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.

2.3 The Parties may terminate this Agreement by mutual agreement expressed in writing.

2.4 If this Agreement is terminated, Sections 9.2, 10, 11 and 12 of this Agreement shall survive termination.

3. Filing of Project Report and Individual Project Contract. Within thirty (30) days of the effective date of this Agreement, or a later date approved by the Flood District Administrator and the Flood District Executive Director, the Conservation District shall file with the Flood District a report that describes the Project (including Individual Projects) in such detail as is required by the District Administrator. At least thirty (30) days before executing the first Individual Contract, the Conservation District shall file with the Flood District the proposed Individual Contract. Upon request of the Flood District, the Conservation District shall file any executed Individual Contract with the Flood District.

4. Compliance of Individual Project Contracts. The Individual Project Contracts shall comply with all applicable laws, rules and regulations. The Conservation District shall obtain and be responsible for all approvals and permits for each Individual Project.

5. Use, Approval and Payment of Funds. The Conservation District shall use Funds only for Project-related expenses and costs. With input from the Conservation District Executive Director, the Flood District Administrator shall adopt a procedure and schedule for approving the payment of Funds for the Project. The procedure and schedule shall take into account other funds that the Conservation District receives from other sources. The Procedure and Schedule shall authorize the payment of Funds only for Project-related expenses of the Conservation District, unless advance payment of Funds is approved generally or specifically by the Flood District Administrator and the Flood District Executive Director. The Flood District's financial liability and responsibility for the Project shall be limited to the payment of Funds.

6. Withholding or Denial of Funds. The Flood District reserves the right to withhold or deny payment of Funds for failure of the Conservation District to comply with any material term or condition of this Agreement.

7. Project Completion and Funds over Multiple Years.

7.1. The Parties agree that the Project and Individual Projects are likely to be commenced and completed in multiple years. The Parties further agree that the District has approved expenditure of Funds for the 2019 calendar year only pursuant to Exhibit B of the 2019 Budget Resolution. The Parties further agree that the District has not approved expenditure of funds for the 2020 – 2024 calendar years, as the \$50,000 amounts in Exhibit C of the 2019 Budget Resolution are placeholder amounts for Flood District planning purposes only. Consistent with and restricted by these agreements, the Flood District authorizes the Conservation District to enter into Individual Project Contracts and contracts related to the Project that are effective for multiple years.

7.2. The Parties agree that the Flood District generally is not required to carry over to a subsequent calendar year any Funds authorized for expenditure in a previous calendar year, and specifically is not required to carry over to calendar year 2020 any unspent portion of the \$50,000 authorized for expenditure in Exhibit B of the 2019 Budget Resolution. However, the Conservation District is allowed to request the Flood District to carry over to a subsequent calendar year any unspent Funds authorized for expenditure in a previous calendar year.

7.3. The Project, Individual Projects, and Individual Contracts are subject to the terms and conditions of Sections 7.1 and 7.2 of this Agreement, which are incorporated by reference into the Individual Contracts and any contracts related to the Project that are entered into by the Conservation District.

8. Flood District Participation in Project. The Parties agree that the Flood District's only connection with the Project is to provide Funds for the financing, in whole or in part, of the Project, and that the Flood District will not own or have any responsibility for the Project or the Conservation District's acts or omissions with regard to the Project.

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

9.1. The Conservation District shall prepare and file with the Flood District written reports regarding the expenditure of Funds, to the extent and as required by the Flood District Administrator. The Conservation District shall prepare and file with the Flood District such other written reports, including but not limited to a final report after final distribution of Funds, to the extent and as required by the Flood District Administrator.

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

9.3. Upon reasonable notice in writing, the Conservation District shall make available to the Flood District for inspection, review and audit all records and documents relating to the Conservation District's expenditure or application of Funds.

10. Audit Exception Repayments. Following an audit of the payment of Funds, the Conservation District shall repay to the Flood District all amounts that the Flood District Administrator and Flood District Executive Director determines should not have been paid to the Conservation District.

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, volunteers, successors or assigns from any and all claims, injuries, damages, losses or suits, including attorneys' fees, arising out of or resulting from any negligent acts, errors, omissions of the indemnifying Party and its officers, officials, employees, agents, contractors, volunteers, successors or assigns 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 Flood District or its officers, officials, employees, agents, contractors, volunteers, successors or assigns and the Conservation District or its officers, officials, employees, agents, contractors, volunteers, successors or assigns, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its officers, officials, employees, agents, contractors, volunteers, successors or assigns.

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 indemnitee's employees. This waiver has been mutually negotiated by the Parties.

12. Amendment. This Agreement may be modified by written instrument approved by the Parties' legislative bodies and signed by the authorized representatives of each.

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 Notices, Reports and Documents. All notices under this Agreement shall be in writing. Unless provided otherwise in this Agreement, all notices, reports and other documents required by this Agreement to be filed with the Flood District shall be filed with the Flood District Administrator, and all notices, reports and other documents required by this Agreement to be filed with the Conservation District, shall be filed with the Conservation District Executive Director.

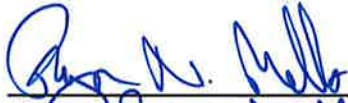
18. Approval by Districts. Unless provided otherwise in this Agreement, the Flood District Administrator shall exercise any Flood District right or approval under this Agreement, and the Conservation District Executive Director shall exercise any Conservation District right or approval under this Agreement.

19. 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 CONSERVATION  
DISTRICT

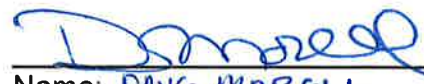
  
Name: Ryan N. Mello  
Title: Executive Director

Date: 8/31/20

Attested to:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PIERCE COUNTY FLOOD  
CONTROL ZONE DISTRICT

  
Name: DAVE MORELL  
Title: BOARD CHAIR

Date: 7/8/2020

Attested to:

  
Audrey Persons  
Clerk of Board of Supervisors