

**INTERLOCAL AGREEMENT BETWEEN
THE PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT AND
THE CITY OF SUMNER FOR DISTRICT FUNDED PROJECTS
(FUNDING ONLY)**

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

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 referred to as "CPOD." Pursuant to RCW 86.15.110, the Board must approve by resolution the construction of flood control and storm water control improvements.

B. The Board has adopted Resolution No. 2017-6, the District's 2018 budget resolution ("2018 Budget Resolution"). Attachment C of the 2018 Budget Resolution, which is titled "Summary of 2018-2023 Capital Improvement Projects," lists the "Lower White River 24th Street Setback" as a project, with an estimated expenditure of \$609,725 in 2019. Attachment B of the 2018 Budget Resolution, which is the Budget for 2018, describes the "strategic reserve" as a category of expenditure for 2018. The amount of \$390,275 is authorized as an expenditure from the strategic reserve for the "Lower White River 24th Street Setback" project.

C. The District desires to provide funding for the "Lower White River 24th Street Setback" project consistent with the 2018 Budget Resolution and the terms and conditions of this Agreement.

D. The City has developed a long-term vision for addressing the flooding and habitat challenges of the Lower White River. This long-term vision currently includes four projects between river miles 2.5 and 4.9 of the Lower White River: the White River Restoration project--river miles 2.5-4.2 (restoration of 162 acres of a former golf course and farmland and creation of a branching side channel habitat); the Pacific Point Bar project--river miles 3.9-4.9 (creation of floodplain habitat and an alcove and setback of a half-mile of the existing levee on the right bank); the Left Bank Setback project--river miles 4.4-4.8 (restoration of 20 acres of floodplain/riparian habitat and setback of a half-mile of the existing levee on the left bank); and the Stewart Road Bridge project--river mile 4.9 (replacement of the Bridge, provision for natural riverine processes downstream from the Bridge, reduction of flooding, and connection of habitat).

E. Pursuant to Chapter 39.34 RCW and RCW 86.15.080, the District desires to authorize funding for the "Lower White River 24th Street Setback" project and the City projects described in Recital D above through this Agreement rather than multiple agreements.

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 "CIP Project" means the Lower White River 24th Street Setback project, as listed in the "Summary of 2018-2023 Capital Improvement Projects" in the 2018 Budget Resolution.

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

1.4 "Funds" mean the funds authorized by the District for payment to the City for the estimated expenses of any Project, as authorized by District resolutions, including but not limited to budget resolutions. The District has approved \$390,275 for the CIP Project in 2018, and estimates an expenditure of \$609,775 for the CIP Project in 2019.

1.5 "Project" means the CIP Project and any of the following: the White River Restoration project—river miles 2.5-4.2; the Pacific Point Bar project—river miles 3.9-4.9; the Left Bank Setback project—river miles 4.4-4.8; and the Stewart Road Bridge project, all as described in Recital D of this Agreement, or substantially similar projects in nature and scope.

1.6 "Projects" means the CIP Project and the Projects described in Section 1.5 above.

1.7 "2018 Budget Resolution" means District Resolution No. 2017-6, 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. The City shall provide notice in writing of any breach or termination of this Agreement following failure to remedy an alleged breach to the District Administrator, and the District shall provide notice in writing of any breach or termination of this Agreement following failure to remedy an alleged breach to the City Public Works Director.

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

4. Approval and payment of Funds. The District Administrator shall approve the payment of Funds for any Project pursuant to a procedure and schedule developed by the District Administrator, with input from the City. The procedure and schedule shall take into account other funds that the City receives from other sources.

5. Payment and Use of Funds. The City shall use Funds only for Project related expenses and costs, including but not limited to design, property acquisition, permitting and construction. The District's financial responsibility for any Project shall be limited to the payment of Funds, which is based on the estimated cost of the Project. If the actual cost of a Project is greater than the estimated cost of a Project, the District shall not be responsible or liable for any Project related expenses and costs in excess of Funds.

6. Withholding or Denial of Funds. The District reserves the right to withhold or deny payment of Funds for a Project for failure of the City to comply with any material term or condition of this Agreement, or for failure of a Project to conform substantially to the Project plans, specifications and drawings.

7. Multiple Projects. The City is authorized to proceed with the CIP Project in accordance with this Agreement, the CPOD, the 2018 Budget Resolution, and all District resolutions. Upon inclusion of a Project other than the CIP Project in the CPOD or District resolutions, the City may proceed with such Project after giving written notice of the commencement of such Project to the District Administrator. If the City identifies another project in addition to the Projects, and the District

approves funding for the project, the parties must enter into a separate agreement for the project before District funds may be used for the project.

8. Multi-Year Projects. The City may request and the District may approve funding for a Project that will be constructed or completed in two or more budget years. In the case of a multi-year Project, the District's obligation to provide Funds for any subsequent budget year is conditioned upon appropriation of Funds by the Board for the subsequent budget year. If the Board approves Funds for a multi-year Project in one budget year but fails to approve Funds for the Project in a subsequent budget year, (1) this Agreement shall remain in force for all other Projects that have received an appropriation of Funds for the subsequent budget year, and (2) this Agreement shall remain in force for the multi-year Project only until the District has paid all Funds appropriated for the Project in the previous budget year, at which time this Agreement shall terminate with regard to the multi-year Project.

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

9.1 The City shall prepare and file written reports for the expenditure of Funds, as required by the District Administrator. The City 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.

9.2 The City shall retain all records and documents relating to 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 City shall make available to the District Administrator for inspection, review and audit all records and documents relating to the City's expenditure or application of Funds.

10. Project Ownership, Operation, Maintenance, Repair and Replacement. The Parties agree that the City does not own, operate, maintain, repair or replace levees. The Parties acknowledge that this Agreement addresses only the design, construction, and installation of the Projects and the payment of Funds for the Projects. Pursuant to the Interlocal Agreement between the District and Pierce County regarding support services, the County operates and maintains flood control and storm water control projects, improvements, equipment and facilities, including levees. The Parties acknowledge that the City and Pierce County intend to enter into an agreement regarding ownership, operation and maintenance of the Projects. The Parties will enter into any agreement or amendment to this Agreement that is necessary to implement such agreement between the City and Pierce County.

11. Audit Exception Repayments. Following an audit of the payment of Funds, the City shall repay to the District all amounts that the District determines

should not have been paid to the City, to the extent those payments were due to the negligent or intentional acts of the City, its officers, officials, employees, agents, contractors, volunteers, successors or assigns.

12. Hold Harmless and Indemnification.

12.1 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 Projects. 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, volunteers, successors or assigns and the City 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.

12.2 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.

13. Amendment. This Agreement may be modified by written instrument approved by the City Council and the Board and signed by the authorized representatives of each.

14. 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.

15. 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.

16. 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.

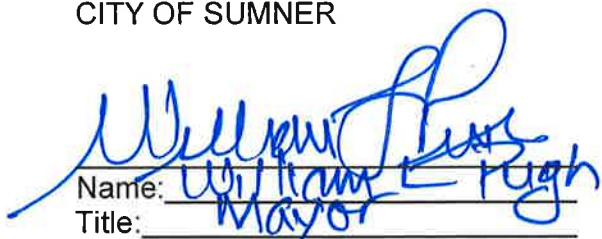
17. Counterparts. This Agreement may be signed in counterparts and, if so signed, shall be deemed one integrated document.

18. Filing of Documents. The District Administrator or designee and the City Public Works Director or designee, respectively, shall receive and give all notices, approvals, reports and documents under this Agreement.

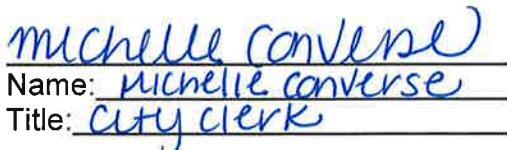
19. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality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

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

CITY OF SUMNER


Name: William E. Hugh
Title: Mayor
Date: 11/10/18

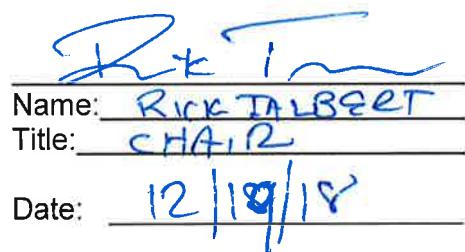
Attested to:


Name: Michelle Converse
Title: CITY CLERK

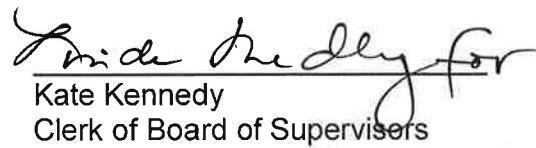
Approved as to form:


City Attorney

PIERCE COUNTY FLOOD
CONTROL ZONE DISTRICT


Name: Rick Albert
Title: Chair
Date: 12/10/18

Attested to:


Kate Kennedy
Clerk of Board of Supervisors

RESOLUTION NO. 2018-8

**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 City of
Sumner for District Funded Projects.**

Whereas, Resolution No. 2017-6, the District's 2018 budget resolution, appropriated District funds for the City of Sumner's "Lower White River 24th Street Setback" project; and

Whereas, in Resolution No. 2016-6, the District Board of Supervisors approved two forms of interlocal agreement between the District and municipalities regarding the payment and use of District funds, one form for District funds only, and one form for both District funds and operation and maintenance; and

Whereas, the City's long-term vision for addressing the flooding and habit challenges of the Lower White River includes four projects on the Lower Green River, one of which is the Lower White River 24th Street Setback project; and

Whereas, the District's form of interlocal agreement for District funds only applies to one project, not multiple projects; and

Whereas, including all of the City's projects on the Lower White River in one Interlocal agreement avoids multiple agreements and allows the District and the City to address the projects and funding for them in a logical and cohesive way; and

Whereas, the District and the City are authorized to enter into this Agreement pursuant to RCW 39.34.080 and RCW 86.15.080(11); Now, therefore

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

1
2 Section 1. The Board of Supervisors approves the "Interlocal Agreement
3 Between the Pierce County Flood Control Zone District and the City of Sumner for
4 District Funded Projects (Funding Only)," Exhibit A to this Resolution.

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6 **ADOPTED** this 19th day of December, 2018.
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10 ATTEST:

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14 Kate Kennedy
15
16 Kate Kennedy, Clerk of the Board

PIERCE COUNTY FLOOD CONTROL
ZONE DISTRICT
Pierce County, Washington

RT
Rick Talbert, Board Chair