

**INTERLOCAL AGREEMENT BETWEEN  
THE PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT AND  
THE NORTHWEST SEAPORT ALLIANCE FOR DISTRICT FUNDED  
PROJECT**

THIS AGREEMENT is made and entered into by and between THE NORTHWEST SEAPORT ALLIANCE (“NWSA”), a Port Development Authority in the State of Washington, 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 NWSA and the District.

**RECITALS**

A. In Resolution No. 2020-07, the Board adopted the 2021 District budget, which includes the Flood Risk Reduction and Watershed Management Economic Stimulus Grant Program that will be funded by the District in 2021. Through a competitive process, the NWSA’s Parcel 15 Bridge across Wapato Creek Project, Wapato Creek Bridge and Culvert Removal, (or “Project”) was selected to receive up to \$931,640.

B. 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” shall mean the funds authorized for payment by the District to the NWSA for Project expenses, as set forth in Resolution No. 2020-07 and any subsequent budget resolutions or resolutions approving modifications to or funds for the Project.

1.4 "Project" means the project or improvement authorized by Resolution No. 2020-02, Resolution 2020-11, and this Agreement, including amendments thereto.

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 pursuant to Section 7 of this agreement, or until termination by one or both of the Parties pursuant to this Section.

2.2 Either Party may terminate this Agreement by providing written notice of termination to the other Party no less than sixty (60) days prior to the effective date of termination. This Agreement may be terminated pursuant to Section 7 of this Agreement. This Agreement also may be terminated upon mutual agreement of the Parties expressed in writing.

2.3 Sections 10 and 11 of this Agreement shall survive any termination of this Agreement.

3. Project Scope and Approval—Permits and Approvals. NWSA shall obtain and be responsible for all approvals and permits for the Project and is responsible for compliance with all applicable laws, rules, and regulations.

4. Project Work. Attachment A to this agreement includes a description of the Project work, and a schedule of the Project work. It has been developed in agreement between the NWSA and the District Administrator.

5. Payment and Use of Funds. The District shall pay Funds to the NWSA only for Project-related expenses, to be paid within ninety (90) days of the receipt of the NWSA's properly completed Form B Reimbursement Request. The NWSA 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.

6. Withholding or Denial of Funds. The District reserves the right to withhold or deny payment of Funds for failure of the NWSA 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 4.

7. Funding Duration. The District shall provide Funds for the budget year 2021. Only applicable Project work completed in the fourth quarter of 2020 and during 2021 shall be eligible for reimbursement. This Agreement shall terminate automatically on March 31, 2022, ninety (90) days after the close of the current budget year, which ends December 31 of each year.

NWSA may appeal to the Board of Supervisors, in writing, no later than December 1, 2021 to be granted an extension.

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

8.1 The NWSA shall prepare and file written reports describing its request for and expenditure of the Funds no less than quarterly, or more frequently, as required by the District Administrator as set forth in Attachment B. The NWSA shall prepare and file a final report after final distribution of Funds, as required by the District Administrator, and will make a brief presentation to the FCZD Board of Supervisors at a regularly-scheduled meeting in 2022.

8.2 The NWSA 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 NWSA 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 NWSA 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. The NWSA agrees that it is financially responsible for and will repay to the District all indicated amounts following an audit exception, which occurs due to the negligent or intentional acts of the NWSA, 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 NWSA 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 NWSA'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 Project 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 shall receive and give all notices, approvals, reports and documents under this Agreement.

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

THE NORTHWEST SEAPORT ALLIANCE

  
John Wolfe, Chief Executive Officer

Date: 12/31/2020

PIERCE COUNTY FLOOD  
CONTROL ZONE DISTRICT

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

Date: \_\_\_\_\_

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Approved as to Form:

Dana Henderson  
\_\_\_\_\_  
Attorney

Attested to:

Juliet Campbell

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Juliet Campbell  
Commission Records Specialist/Clerk

Attested to:

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Audrey Persons  
Clerk of Board of Supervisors