SC-103419

ORIGINAL

INTERLOCAL AGREEMENT BETWEEN THE PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT AND CITY OF PUYALLUP FOR OPPORTUNITY FUND PROJECTS

THIS AGREEMENT is made and entered into by and between CITY OF PUYALLUP, 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. In Ordinance 2011-95s, passed on April 3, 2012, the Pierce County Council formed the District, as authorized by Chapter 86.15 RCW.

B. In Resolution No. 2013-2 ("Resolution"), the District Board of Supervisors:

1. Allocated and set aside ten percent (10%) of the District's annual regular property tax revenues as an "Opportunity Fund" for use by Pierce County (on behalf of unincorporated Pierce County), cities and towns on Opportunity Fund projects;

2. Established methods for allocation of Opportunity Fund revenues and declared the purposes and uses of the Opportunity Fund;

3. Provided for accrual and roll over of a Municipality's Opportunity Fund allocation;

4. Authorized the District Administrator to develop rules and procedures for administering and carrying out the Opportunity Fund, which includes review of proposed Opportunity Fund projects by the District Administrator or designee, and review and approval of such projects by the Board; and

5. Approved this form of Agreement between the Parties.

C. Pursuant to Chapter 39.34 RCW and RCW 86.15.080(11), the Parties desire to enter into this Agreement to provide for Opportunity Fund projects as authorized by the Board.

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 "Municipality" means cities and towns in Pierce County and Pierce County.

1.4 "Opportunity Fund" means the portion of the District's annual regular property tax revenues that has been allocated and set aside by the District for use by the Municipalities on Projects, as authorized by Resolution No. 2013-2, including amendments thereto.

1.5 "Project" means a specific improvement, study, plan or activity that meets the purposes and uses of Resolution No. 2013-2, including amendments thereto, and that has been approved by the Board.

1.6 "Project Rules" means the Opportunity Fund Administrative Guidelines established by the District Administrator for the Opportunity Fund program, including amendments thereto.

2. Term of Agreement—Termination of Agreement--Survival of Agreement. This Agreement shall be effective upon execution by both Parties, and shall remain in effect until terminated by one or both of the Parties. 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 also may be terminated upon mutual agreement of the Parties expressed in writing. Sections 12 and 13 of this Agreement shall survive any termination of this Agreement.

3. Rules and Regulations; District Administrator. The Municipality acknowledges receipt of and agrees to satisfy and follow the Project Rules.

4. Project Eligibility. The Municipality may apply for and seek approval of proposed Projects. The proposed Projects may be a future Project or a pending Project, as defined by the Project Rules.

5. Project Applications. The Municipality must submit an application for each proposed Project to the District Administrator, on a form approved by the District Administrator. The application must be accompanied by plans, drawings,

descriptions, studies, reports, schedules, costs, budgets and/or other data and information required by the Project Rules or requested by the District Administrator.

6. Multi-Year Projects. A Project may be implemented over multiple years and may be financed by the Municipality's allocation of the Opportunity Fund in the year of Project approval and by the Municipality's anticipated allocation of the Opportunity Fund in future years. However, District approval of a Project shall not be construed as nor constitute a District obligation or commitment to authorize a property tax levy or set aside a portion of a property tax levy for the Opportunity Fund in calendar years beyond the year in which a Project is approved.

7. Use and Vesting of Opportunity Fund Allocation. The Municipality shall use Opportunity Fund allocations only for expenses related to the Projects. The unexpended portion of the Municipality's allocation of Opportunity Fund revenues in a calendar year shall be rolled over and reserved for use by the Municipality on Projects in subsequent calendar years. The District shall have no obligation to set aside or allocate Opportunity Funds in calendar years after the calendar year in which the Project is approved. The Municipality understands and acknowledges that the Board has the right and discretion to modify or terminate the Opportunity Fund and its program, and will consider this possibility in providing for and implementing any Project.

8. Project Approval—Implementation of Projects. After approval of a Project, the District Administrator shall prepare a written description of the Project, which shall be deemed to be an amendment to this Agreement. The District Administrator shall provide a copy of the Project description to the Municipality. The Municipality shall implement the Project only as authorized by the Board and described in the amendment. In implementing the Project, the Municipality shall comply with all applicable laws, rules and regulations, and shall be responsible for obtaining all approvals and permits for the Project.

9. Distribution of Opportunity Fund Allocations. After an actual expenditure is incurred for a Project, the Municipality shall request distribution of Opportunity Fund allocations in a manner and pursuant to a process required by the Project Rules. However, after Board approval of a Project, the Municipality may request advance distribution of all or a part of the Opportunity Fund allocation for the Project, prior to expenditure of funds on the Project, in accordance with terms and conditions in the Project Rules.

10. Reports—Audits—Records Retention--Inspections. The Municipality shall prepare and file written reports describing the progress on and the status of the Project, as required by the Project Rules. The Municipality shall prepare and file such other written reports, including but not limited to a final report after Project completion, as required by the Project Rules. The Municipality shall retain all records and documents relating to a Project for a minimum of seven (7) years

after substantial completion of the Project, unless required by law to be retained for a longer period, in which case the longer period shall apply. Upon reasonable notice, the Municipality shall make available to the District Administrator for inspection, review and audit all records and documents relating to the Project and the expenditure of the Opportunity Fund allocations, as required by Project Rules.

11. Project Ownership and Maintenance. If the Project involves the acquisition, extension, enlargement, or construction of an improvement, the Municipality shall take ownership of, and shall be obligated to operate, maintain, repair and replace such improvement. The District shall have no obligation or responsibility for the operation, maintenance, repair and replacement of such improvement.

12. Audit Exception Repayments. The Municipality 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 by the Municipality, its officers, officials, employees, agents, contractors or volunteers.

13. Hold Harmless and Indemnification.

13.1 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 a 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.

13.2 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.

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

15. 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.

16. 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.

17. 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.

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

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

CITY OF PUYALLUP

Bill McDonald
City Manager

Date: 4/7/14

Attested to:

Brenda Arline
City Clerk

Approved as to form:

Kevin Yamamoto
City Attorney

PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT

Brian Ziegler
District Administrator

Date: 4/14/14

Attested to:

~~Cathy Sala~~
Clerk of Board of Supervisors