

1 Sponsored by: Councilmember Joyce McDonald
2 Requested by: County Executive/Public Works and Utilities
3
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5

6 **RESOLUTION NO. R2013-5s**

7
8

9 **A Resolution of the Pierce County Council Authorizing the Pierce County 10 Executive to Execute an Interlocal Agreement with the Pierce 11 County Flood Control Zone District to Provide Services to 12 the Pierce County Flood Control Zone District.**

13

14 **Whereas**, the County Council formed the Pierce County Flood Control Zone
15 District (District) by passing Ordinance No. 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, the County Director of Public Works and Utilities
19 administers the affairs of the District, and the County Treasurer acts as the District's
20 treasurer; and

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

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

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

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

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



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Flood Control Zone District
Cathy Sala, Council Office
Jeff Cox, Council Office
Keri Rooney, Executive Office
Al Rose, Executive Office

2/12/2013 jms
Date/initials

1 **Whereas**, a cooperative Agreement between the County and the District will
2 benefit each Party and is both authorized by state law and of importance to the health,
3 safety and property of the citizens of the County; and

5 **Whereas**, the District and the County are each authorized to enter into this
6 Agreement pursuant to RCW Chapter 39.34 (the Interlocal Cooperation Act) and RCW
7 86.15.095; **Now Therefore**,

9 **BE IT RESOLVED** by the Council of Pierce County:

11 Section 1. The Pierce County Executive is hereby authorized to enter into an
12 interlocal agreement, substantially in the same form of Exhibit A which is attached
13 hereto and incorporated herein by reference, with the Pierce County Flood Control Zone
14 District relating to the provision of support services.

15 ADOPTED this 5th day of February, 2013.

18 ATTEST:

21 Denise D. Johnson
22 Denise D. Johnson
23 Clerk of the Council

PIERCE COUNTY COUNCIL
Pierce County, Washington

Joyce McDonald
Joyce McDonald
Council Chair



INTERLOCAL AGREEMENT BETWEEN PIERCE COUNTY AND THE PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT REGARDING SUPPORT SERVICES

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

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

WHEREAS, in accordance with state law, the County Council acts ex officio as the Board of Supervisors of the District, the county director of public works and utilities administers the affairs of the District, and the county treasurer acts as the District's treasurer; and

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

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

WHEREAS, the County has the expertise, resources and infrastructure necessary to support the District in its development and implementation of an annual District budget and work program; and

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

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

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



1 WHEREAS, the District and the County are each authorized to enter into this
2 Agreement pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act) and RCW
3 86.15.095;

4
5 NOW, THEREFORE, the Parties agree as follows:

6
7 1. Purpose and Scope of the Agreement.

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

13
14 1.2 The cooperative flood and stormwater control program entered into
15 pursuant to this Agreement will be funded by District revenues, and will be established
16 by the District's budget and work program ("Annual Scope of Services"), as approved by
17 resolution by the District's Board of Supervisors.

18
19 1.3 To carry out and administer this Agreement, the Chair of the District's
20 Board of Supervisors or designee and the Pierce County Public Works and Utilities
21 Director shall enter into a memorandum that establishes the duties and responsibilities
22 of the District and the County, and their respective officers, employees, contractors and
23 agents. The memorandum shall be consistent with this Agreement and the Annual
24 Scope of Services. The memorandum shall not be considered a part of this Agreement,
25 and may be amended from time to time by the Chair of the District's Board of
26 Supervisors and the Pierce County Public Works and Utilities Director. In the event of a
27 disagreement between the Chair of the District's Board of Supervisors or designee and
28 Pierce County Public Works and Utilities Director regarding the respective duties and
29 responsibilities of the District and the County, or the interpretation and application of the
30 memorandum, the District Executive Committee and the County Executive shall resolve
31 the disagreement.

32
33 2. District Obligations.

34
35 2.1 The District's Board of Supervisors shall adopt an initial Annual Scope of
36 Services for 2013, and Annual Scope of Services thereafter, as prescribed in RCW
37 86.15.140.

38
39 2.2 The District shall pay for the costs incurred by the County consistent with
40 this Agreement and the approved Annual Scope of Services, as follows:

41
42 2.2.1 The District shall pay the County for all actual incurred costs such as
43 direct labor, employment benefits, equipment rental, sub-contractors, materials and
44 supplies, utilities and permits.

45
46 2.2.2 The District shall pay the County for direct costs related to flood and
47 stormwater control projects, including but not limited to costs for planning, design,



1 administration, environmental, property acquisition, property management, construction,
2 construction engineering, utility relocation. The District shall pay the County for indirect
3 costs normally associated with public works construction projects and related to flood
4 and stormwater control projects, in addition to the overhead costs described in section
5 2.2.3.

6
7 2.2.3 The District shall pay the County for administrative overhead costs for the
8 services provided by County employees to the District. The overhead costs shall be
9 billed to the District in accordance with the standard methodologies for determining such
10 costs as reviewed and approved by the County.

11
12 2.3 If the County seeks reimbursement of County costs incurred after the
13 effective date of Ordinance No. 2011-95s and prior to the District's adoption of an
14 Annual Scope of Services, the District shall make such payments if the costs are
15 reasonably related to and contribute to the performance of activities necessary to
16 commence operation of the District or to prepare, authorize or implement the Annual
17 Scope of Services.

18
19 2.4 Unless otherwise provided by the Board, by the Executive Committee or
20 by a memorandum under paragraph 1.3, the District will operate in accordance with
21 Pierce County policies and procedures.

22
23 3. County Obligations.

24
25 3.1 Unless otherwise decided by the District through resolution of the Board of
26 Supervisors, the office of the County Council shall provide clerical services for the
27 District and the District's Board of Supervisors.

28
29 3.2 The County, consistent with the Annual Scope of Services, shall provide
30 other support services to the District, including but not limited to policy analysis of
31 legislation and budgets, government relations support, technical services and
32 communications support.

33
34 3.3 The County, consistent with the Annual Scope of Services, shall support
35 the District in administering and implementing the District work programs, by providing
36 appropriate technical expertise and personnel.

37
38 3.4 Administrative duties under RCW 86.15.060 shall be vested in the Pierce
39 County Public Works and Utilities Director, and the scope of such duties shall be
40 consistent with the provisions of RCW 86.15.060 and all resolutions adopted by the
41 Board.

42
43 3.5 The Pierce County Public Works and Utilities Department shall maintain
44 and be the repository of the official records of the District. Such records shall be
45 available to the District during regular business hours. Requests for inspection and
46 copying of District official records shall be met as provided for in Chapter 42.56 RCW
47 and in PCC Chapter 2.04, unless otherwise provided under paragraph 2.4.



1
2 3.6 For the budget year 2013 and thereafter, and consistent with the District's
3 procedure for adoption of the Annual Scope of Services, the County shall prepare and
4 submit for review and approval by the District an annual budget meeting the
5 requirements of RCW 86.15.140 and an annual work program for the District.

6
7 3.7 The County shall implement the Annual Scope of Services as adopted by
8 the District's Board of Supervisors unless otherwise directed by the County Council.

9
10 3.8 In the event of a threat of imminent harm to property or public safety due
11 to flooding, the County may analyze and prioritize the threat and report to the District.
12 The County has authority to take emergency action on behalf of the District. If the
13 County takes emergency action, it shall advise the District of the emergency action as
14 soon as practicable.

15
16 4. Invoices and Payments.

17
18 4.1 The County and the District may, by memorandum entered pursuant to
19 paragraph 1.3, authorize county departments to conduct business on behalf of the
20 District. County departments shall submit to the Chair of the Board of Supervisors or
21 designee invoices for services provided to the District and upon approval of such
22 invoices shall be reimbursed from District funds. Expenses for District operations, and
23 capital expenses not provided by the County, shall be charged directly to the District
24 Operating Fund (Fund 154) or the District Capital Fund (Fund 322) as appropriate;
25 provided that before payment the Chair of the Board of Supervisors or designee shall
26 review and approve or disapprove such expenses.

27
28 4.2 County indirect costs for the District's operating and capital funds shall be
29 allocated to those two funds through the approved County indirect cost plan and
30 charged directly.

31
32 5. Limitations on County Expenditures.

33
34 5.1 Pursuant to Section 2 of Pierce County Ordinance No. 2012-16s, the
35 Pierce County Council has appropriated \$300,000 from the County's Surface Water
36 Management Fund for the use of the District in 2012 ("2012 County Appropriation").
37 The Parties acknowledge that this 2012 County Appropriation is the only source of
38 revenue for the District in 2012.

39
40 5.2 The County's services shall not exceed the District's annual budget. The
41 Parties agree that any County services in excess of the District's annual budget shall
42 not be a debt and obligation of the District.

43
44 6. Financial and Accounting Reporting.

45
46 6.1 Starting in 2013, the County shall provide the District with semi-annual
47 reports regarding services rendered under and in compliance with the Annual Scope of



1 Services. The report and any required supporting documents shall be submitted to the
2 District no later than March 31 and September 30.

3
4 6.2 At the end of each calendar year, the County shall complete a
5 reconciliation of fund transfers and costs incurred. No later than April 1, the County
6 shall provide to the District an annual report of costs and ending fund balance for
7 District funds in the previous calendar year.

8
9 6.3 All reports will be submitted to the Clerk of the Board.

10
11 7. Legal Relations: No Third Party Beneficiaries, Venue, Indemnification, Costs and
12 Fees, Insurance, Survival, and Independent Contractor.

13
14 7.1 It is understood and agreed that this Agreement is solely for the benefit of
15 the Parties hereto and gives no right to any third party.

16
17 7.2 The County is an independent contractor with regard to the services
18 provided under this Agreement. The County shall retain all authority for rendition of
19 services, standards of performance, control of personnel, and other matters incident to
20 the performance of services by County pursuant to this Agreement. The County shall
21 be solely responsible for its acts and omissions and for the acts and omissions of its
22 employees, agents, contractors, consultants and representatives during the
23 performance of this Agreement. Nothing in this Agreement shall be considered to create
24 the relationship of employer and employee or principal and agent between the Parties.
25 If the District contracts directly with another contractor, the County shall not be
26 responsible for performance or actions or inactions relating to such contract unless the
27 County is a party thereto.

28
29 7.3 This Agreement shall be interpreted in accordance with the laws of the
30 State of Washington. The Superior Court of Pierce County, Washington, shall have
31 exclusive jurisdiction and venue over any legal action arising under this Agreement.

32
33 7.4 To the maximum extent permitted by law, each Party shall defend,
34 indemnify and hold harmless the other Party, and all of its officials, employees,
35 principals and agents, from any and all claims, demands, suits, actions, fines, penalties,
36 and liability of any kind, including injuries to persons or damages to property, which
37 arise out of or are related to any negligent acts, errors, omissions of the indemnifying
38 Party and its contractors, agents, employees and representatives in performing
39 obligations under this Agreement.

40
41 Provided, that if any such damages and injuries to persons or property are caused
42 by or result from the concurrent negligence of the District or its contractors, employees,
43 agents, or representatives, and the County or its contractor or employees, agents, or
44 representatives, each Party's obligation hereunder applies only to the extent of the
45 negligence of such Party or its contractor or employees, agents, or representatives.



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

6
7 7.5 The County shall provide insurance coverage, or self-insurance, for the
8 acts and omissions of its officers, employees and agents in providing the services and
9 carrying out the obligations of this Agreement, to the same extent and in the same
10 amount as is provided generally by the County for its officers, employees and agents.
11 The County shall provide proof of its insurance coverage or self-insurance at the
12 request of the District. The District and any employees of it shall not be covered under
13 the County's insurance or self-insurance program. In the event the County obtains
14 insurance coverage for the Board of Supervisors or employees of the District, the costs
15 of such insurance shall be reimbursable to the County by the District.

16
17 7.6 The provisions of this section shall survive any termination of this
18 Agreement.

19
20 8. Duration, Termination, and Waiver.

21
22 8.1 This Agreement shall take effect upon its signing by both Parties and shall
23 remain in effect until December 31, 2013, and shall automatically renew annually
24 thereafter unless on or before December 1 of any year either or both parties notifies the
25 other in writing that the Agreement shall not renew.

26
27 8.2 Notwithstanding the preceding paragraph, either Party may terminate this
28 Agreement for convenience upon sixty (60) days written notice to the other Party. In
29 addition, this Agreement may be terminated at any time by mutual agreement of the
30 Parties.

31
32 8.3 Failure to require full and timely performance of any provision at any time
33 shall not waive or reduce the right to insist upon complete and timely performance of
34 such provision thereafter.

35
36 9. Dispute Resolution.

37
38 9.1 Should a dispute arise between the Parties out of or related to this
39 Agreement, the Parties will notify the other in writing of any dispute that the respective
40 Party believes should be resolved.

41
42 9.2 The Parties will communicate regularly and commit to act in good faith to
43 resolve the dispute.

44
45 9.3 If the dispute cannot be remedied within thirty (30) days after written
46 notice, the Parties shall consider submitting the matter to a mutually agreed upon non-
47 binding mediator. The Parties shall share equally in the cost of the mediator.



1
2 10. Administration, Identification of Contacts, and Notice.

3
4 This Agreement shall be administered by the Chair of the Board and the Pierce
5 County Public Works and Utilities Director, who shall be contacted as provided below:

6
7 Any formal notice or communication to be given by the District
8 to the County under this Agreement shall be deemed properly given, if
9 delivered, or if mailed postage prepaid and addressed to:

10
11 County: Brian J. Ziegler, P.E.
12 Director, Public Works and Utilities Department
13 2702 South 42nd St., Suite 201
14 Tacoma, WA 98409-7322
15 (253) 798-7250

16
17 Any formal notice or communication to be given by the County
18 to the District under this Agreement shall be deemed properly given, if
19 delivered, or if mailed postage prepaid and addressed to:

20
21 District: Chair, Board of Supervisors
22 Pierce County Flood Control Zone District
23 Room 1046
24 930 Tacoma Avenue South
25 Tacoma, WA 98402

26
27 The name and address to which notices and communications
28 shall be directed may be changed at any time, and from time to time, by
29 either the District or the County giving notice thereof to the other as
30 herein provided.

31
32 11. Entire Agreement; Amendment.

33
34 11.1 This Agreement is a complete expression of the terms hereto and any oral
35 representation or understandings not incorporated herein are excluded.

36
37 11.2 Any modification, amendment, or clarification to this Agreement shall be in
38 writing and signed by both Parties. Copies of such shall be attached hereto and by this
39 reference made a part of this Agreement as though fully set forth herein.

40
41 12. Assignment.

42
43 Neither Party shall transfer or assign this Agreement without the prior written
44 consent of the other Party.



1 13. Severability.

2
3 If any provisions of this Agreement are held invalid by a court of competent
4 jurisdiction, the remainder of this Agreement shall not be affected thereby if the Parties
5 mutually agree that such remainder would then continue to serve the purposes and
6 objectives originally contemplated.

7
8 14. Filing.

9
10 This Agreement shall be filed with the Pierce County Auditor in conformance with
11 RCW 39.34.040, any cost of such filing shall borne by Pierce County.

12
13 IN WITNESS WHEREOF, the parties have caused this Agreement to be
14 executed.

15
16 **PIERCE COUNTY**

17
18
19
20 Pierce County Executive

Dated _____

21
22
23 Approved as to Form:

24
25
26
27 Deputy Prosecuting Attorney

Dated _____

28
29
30 **PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT**

31
32
33
34 Chair, Board of Supervisors

Dated _____

35
36
37 Approved as to Form:

38
39 District Legal Counsel

40
41
42 By: _____

Dated _____

