

**CHEHALIS RIVER BASIN FLOOD CONTROL
INTERLOCAL AGREEMENT**

This Interlocal Agreement (“Agreement”) is entered into by and between the Grays Harbor County [Chehalis Basin] Flood Control Zone District, the Lewis County Flood [Chehalis Basin] Control Zone District, the [Thurston County Chehalis Basin Flood Control Zone District][Thurston County], and the Chehalis Tribe (the “Tribe”) (collectively, the “Members”).

RECITALS

WHEREAS, significant flooding of the Chehalis River and its tributaries inflicts catastrophic damages and disruption of commerce, transportation, communication and essential services which not only impair the ability to provide public safety and health services but also have adverse economic impacts; and

WHEREAS, the jurisdictions within the Chehalis River Basin that suffer the most flood damages are within large portions of Grays Harbor, Lewis, Thurston County, and the Chehalis Tribe; and

WHEREAS, the flooding and closure of Interstate 5 impacts transportation and commerce affecting the State of Washington (the “State”); and

WHEREAS, these jurisdictions share a common and compelling interest in jointly managing flows through their territories to reduce or mitigate flood damages and losses; and

WHEREAS, an initial entity known as Chehalis River Basin Flood Authority (the “Initial Authority”) was created in 2008 by eleven local jurisdictions by interlocal agreement to comprehensively address flooding issues throughout the basin to reduce such damages; and

WHEREAS public meetings regarding flooding in the Chehalis River Basin were held in 2009 and 2010; and

WHEREAS the Initial Authority completed a flood hazard mitigation plan in June 2010; and

WHEREAS the State awarded \$2.5 million to the Initial Authority to form a basin-wide flood Authority by June 2011; and

WHEREAS, the Initial Authority desires to comply with such direction; and

WHEREAS, the Initial Authority has studied governance and financing structures authorized under existing State law and has selected chapter 86.15 RCW for the creation of flood control zone districts and chapter 39.34 RCW as the means for the Members (defined herein) to enter into an interlocal agreement to engage in multi-jurisdiction flood control activities by June 2011;

WHEREAS, each Member (other than the Tribe) has the authority to engage in flood control management activities pursuant to chapter 86.15 RCW; and

WHEREAS, the Initial Authority has recommended legislative amendments under chapter 86.15 RCW that provide for a multi-jurisdiction flood control zone districts, but such amendments are not yet approved by the State Legislature;

NOW, THEREFORE, it is agreed as follows:

ARTICLE 1. Definitions.

(a) “Agreement” means this interlocal agreement, as it may hereafter be amended or modified, together with all exhibits and appendices hereto, as they may hereafter be amended or modified.

(b) “Asset Transfer Agreement” means an agreement between the Authority and a Member by which the Member transfers title to the Authority, with or without monetary consideration, to be operated and maintained as part of the Authority.

(c) “Authority” means the Chehalis River Basin Flood Control Authority created under this Agreement.

(d) “Authorized Issuer” means either (a) the Authority (or a successor entity); or (b) a Member or other entity authorized to issue bonds for the benefit of the Authority and approved by the Board.

(e) “Board” means the Board of Directors of the Authority.

(f) “Budget Allocations” means each Member’s allocation of an expense as determined by the Board pursuant to Article 6 of this Agreement.

(g) “Budget Contribution” means each Member’s contribution, including Budget Allocations and in-kind services, towards the Authority’s budget as determined by the Board pursuant to Article 5.6 of this Agreement.

(h) “ByLaws” means the ByLaws of the Authority, as adopted and amended by the Board.

(i) “Executive Officer” means the chief executive officer for the Authority appointed by and serving at the pleasure of the Board.

(j) “Majority Vote” means Board approval of a proposal on the basis of a simple majority of all Voting Directors, allowing one vote per Voting Director. A “simple majority” means a majority of all Voting Directors, not just the Voting Directors present and voting.

(k) “Members” means the Tribe, Grays Harbor County [Chehalis Basin] Flood Control Zone District, Lewis County [Chehalis Basin] Flood Control Zone District, Thurston

County Chehalis Basin Flood Control Zone District and any other flood control zone district or entity that, consistent with Article 19, has accepted the terms of and is party to this Agreement.

(l) “Non-Voting Director” means a director of the Board designated as a Non-Voting Director pursuant to this Agreement.

(m) “State” means the State of Washington.

(n) “Supermajority Vote” means Board approval of an item accomplished by securing affirmative votes of at least two-thirds of all Voting Directors (not just the Voting Directors present and voting), allowing one vote per Voting Director.

(o) “Tribe” means the Chehalis Tribe.

(p) “Voting Director” means a director of the Board designated a Voting Director pursuant to the Agreement.

ARTICLE 2. Formation of Chehalis River Basin Flood Control Authority.

3.1 Formation.

There is hereby created a consolidated flood control authority, herein after called the “Chehalis River Basin Flood Control Authority” (the “Authority”). The boundaries of the Authority are limited to the boundaries of the individual Members that are within the Chehalis River Basin. The Authority is a public body and an instrumentality of the Members, which exercises the activities described herein as authorized by the Interlocal Cooperation Act (RCW 39.34). The Authority is or shall be incorporated under RCW 39.34.030(3) as a public nonprofit corporation in the manner set forth in RCW 24.06, and it may, with Board approval be incorporated or reorganized in any other form permitted by law, including without limitation reorganization as a municipal corporation.

3.2 Purposes.

The Authority’s purposes include those related to flood management of the Chehalis River, its major tributaries, and the Chehalis watershed which require:

(a) coordinated and cooperative efforts in conducting scientific hydrologic and hydraulic studies to determine and predict the sources, characteristics, behavior and forces of flood waters in the watershed and the effects that land use, land development, and jurisdictional practices may have on floods;

(b) planning for and updates to the multi-jurisdictional comprehensive Flood Hazard Mitigation Plan, including the integration of local land use and floodplain plans and recommendations for jurisdictional floodplain management and regulation;

(c) constructing, purchasing land, and operating and maintaining flood control, land and management facilities to prevent or minimize flood damage;

(d) entering into agreements with Members or other jurisdictions, private agencies, the State, and/or with the US Army Corps of Engineers to promote efficiency, undertake comprehensive basin-wide approaches to flood management and minimize damages caused by flooding or conditions that could lead to flooding, including providing for a local sponsor for a water resource project or projects within the Chehalis River Basin [should such project or projects be approved as further provided under Article 7.2 herein];

(e) responding to flood emergencies;

(f) coordinating and planning cooperatively with other regional or local water utilities and water resource agencies to integrate flood management with water resource management in the Chehalis River Basin, the State and the larger Northwest region; and

(g) carrying out, or furthering other flood management and water resource purposes that the members determine consistent with the provisions of this Agreement.

ARTICLE 4. Powers.

To further its purposes, the Authority has the full power and authority to exercise all powers authorized or permitted under RCW 39.34 and any other laws that are now, or in the future may be, applicable or available to the Authority and incidental or conducive to the attainment of the purposes of this Agreement. The powers of the Authority include but are not limited to the authority to:

(a) acquire, construct, receive, own, manage, lease and sell real property, personal property, intangible property and other flood management assets;

(b) operate and maintain facilities;

(c) enter into contracts;

(d) hire and fire personnel;

(e) sue and be sued;

(f) cause the exercise of the power of eminent domain (through its Members at their individual discretion, unless and until the Authority has that power under applicable law);

(g) allocate revenue requirements to the Members to fund the purposes of the Authority;

(h) impose, alter, regulate, control and collect rates and assessments;

(i) borrow money (through the Members or other entities at their individual discretion or as authorized by RCW 39.34 now or as hereafter provided by law);

(j) lend money or provide services or facilities to the Members or other governmental agencies;

- (k) invest its funds;
- (l) establish policies, guidelines, or regulations to carry out its powers and responsibilities;
- (m) purchase insurance, including participation in polled insurance and self-insurance programs, and indemnify the Members, officers and employees in accordance with law;
- (n) exercise all other powers within the authority of, and that may be exercised individually by each of the Members with respect to flood or storm water control, flood mitigation, flood prevention, integrated water resources planning, or any other purposes related thereto;
- (o) cooperate with and assume local sponsorship responsibility for projects with the US Army Corps of Engineers;
- (p) assume the responsibilities of equipping, operating and maintaining an early flood warning system;
- (q) enter into agreements with other agencies or private individuals in furtherance of emergency management and planning under chapter 38.52 RCW with respect to resources under the control of the Authority; and
- (r) exercise all other powers that the Authority may exercise under the law relating to its formation and that are not inconsistent with this Agreement, chapter 39.34 RCW or other applicable law.

ARTICLE 5. Organization and Board of Directors.

5.1 Composition, Bylaws and Meetings.

The Authority shall be governed by a Board comprised as follows: one Non-Voting Director appointed *ex officio* by the State; one Voting Director appointed by each Member; and one Voting Director appointed jointly by the cities within the boundaries of the Authority. Initially, the Board shall consist of one Non-Voting Director and five Voting Directors, but shall be reduced if Members withdraw or are terminated, or increased if additional Members are admitted, both pursuant to the terms of this Agreement.

The Board shall adopt Bylaws consistent with this Agreement, that specify, among other matters, the dates, times and location of meetings; the Board powers and duties; the process for selecting officers, including the Executive Officer and a Chair and Vice Chair of the Board; the appointment of committees; or other policies or practices that aide the operation of the Board and the participation of the public in its business. The Board shall meet as required by the Bylaws. The Board is a public body and all of its meetings must be open and public, and conducted in compliance with the Open Public Meetings Act (chapter 42.30 RCW).

5.2 Provision for an Elected Board of Directors.

If legislative authority is enacted subsequent to the execution of this Agreement that provides for a public election of the board of directors for a multi-jurisdiction flood control zone entity, the Board may decide that all or some of the Voted Members shall be elected, in accordance with applicable law. The State and the Tribe shall continue to each appoint a member.

5.3 Powers of the Board.

The Board has the power to take all actions on the Authority's behalf in accordance with voting provisions set forth in this Agreement. The Board may delegate to specific Authority officers or employees any action that does not require Board approval under this Agreement.

5.4 Board Actions and Voting.

(a) Upon the request of any director of the Board, Robert's Rules of Order shall govern the Board proceeding. All directors, except those appointed by the State, shall be a Voting Director and all Board actions, unless otherwise provided in subsection (b) of this Article 5.4, must be approved by a Majority Vote of Voting Directors. If any Member has been declared to be in default of its obligations under this Agreement, the Voting Director representing the Member shall become a Non-Voting Director until the Board has declared the default to be cured.

(b) A Supermajority Vote of the Board shall be required in order to approve the following items or actions:

- (1) Approval or amendment of the Authority's budget, including the Budget Contributions;
- (2) A decision to request Members to issue debt for or on behalf of the Authority;
- (3) Adoption or amendment of the Bylaws, or amendment of the applicable requirements of Chapter 24.06 RCW; and
- (4) A transfer of the Authority's assets, liabilities and obligations to a successor entity under Article 14.2 herein, including without limitation converting the Authority to a municipal corporation pursuant to any newly enacted legislation.

5.5 Staff, Consultants and Contractors.

The Authority shall consist of the Executive Officer and such other positions as established by the Board. The Executive Officer shall administer the Authority in its day-to-day operations consistent with the policies adopted by the Board. Only the Board shall be authorized to hire or retain legal counsel and independent accountants and auditors. The Executive Officer shall appoint persons to fill other staff positions, and those appointments may be subject to ratification by the Board if the Bylaws so provide. The Board may also provide that administrative, professional or technical services be performed by contract.

5.6 Budgets, Financial Management & Borrowing.

(a) The Treasurer of the Authority shall be the Treasurer of _____ County, unless a replacement or successor is determined by action of the Board.

(b) The Authority’s budget fiscal year shall be either the calendar year, or two calendar years as the Board may determine.

(c) At least _____ months prior to the commencement of each budget year, a recommended operating budget and work plan for the Authority for the next budget year shall be adopted by the Board at least _____ months prior to the commencement of the budget year and transmitted to each Member. The adopted budget shall contain an itemization of all categories of budgeted expenses and shall contain an itemization of the amount of each Member’s contribution, including Budget Allocations and in-kind services (together, the “Budget Contribution”), towards that budget.

(d) Approval of the budget by the Board shall obligate the Members to make whatever contribution(s) is budgeted for the Member.

(e) Budget Contributions shall be due to the Treasurer of the Authority as determined by the Board. If any Member is delinquent by more than _____ months in the payment of its approved Budget Contribution to the Authority, the Member shall be treated as a terminated Member pursuant to Article 9 of this Agreement until such delinquency has been paid.

(f) The Authority’s books and records shall be open to inspection by the State Auditor.

ARTICLE 6. Budget Allocations and Amendments.

(a) For purposes of Article 6, the following definitions shall apply:

“Analysis” means the Economic Benefit Analysis conducted by FCS group dated _____, 2011, as the data and assumptions in that analysis may be updated from time to time to reflect changes in assessed values, the IMPLAN model assumptions and other factors deemed appropriate by the Board.

“AV Factor” means the Total Assessed Value of Land and Improvements in the Floodplain Area for each Member divided by the sum of the Total Assessed Value of Land and Improvements in the entire Floodplain Area, as these values are shown in Table 13 of the Analysis.

“Basin-Wide Costs” means the expense being allocated less the Floodplain Costs.

“Direct Economic Factor” means the Direct Economic Value Added per Day in the Floodplain Area for each Member divided by the Direct Economic Value Added per Day in the entire Floodplain Area, as these values are shown in Table 13 of the Analysis.

“Flood Plain Costs” means the total expense being allocated multiplied by Total Economic Value Added per Day in the Floodplain Area divided by the Total Economic Value Per Day in the entire Basin Area, as these values are shown in Table 13 of the Analysis.

“Total Economic Factor” means the Total Economic Value Added per Day in the Floodplain Area for each Member divided by the Total Economic Value Added Per Day in the entire Floodplain Area, as these values are shown in Table 13 of the Analysis.

(b) In determining Budget Allocations for expenses or portions of expenses identified by the Board as providing disproportionate benefit to specific areas, the Board shall consider the assessed valuation, economic value added per day, prevented loss, construction value, increased assessed value, economic activity value, zoning and development conditions and other factors the Board deems appropriate to allocate the benefits of expenditures to the various areas.

(c) In determining Budget Allocations for expenses or portions of expenses identified by the Board as providing proportionate benefits to all areas within the Authority, each Member shall be allocated the following amounts:

- i. The Basin-Wide Cost multiplied by the Member’s Total Economic Factor;
- ii. Half the Floodplain Cost multiplied by the Member’s Direct Economic Factor;
and
- iii. Half the Floodplain Cost multiplied by the Member’s AV Factor.

(d) Unless otherwise specified in this Agreement, no separate dues, charges or assessments shall be imposed or required of the Members except upon the approval of the Board. In the event a Member agrees to totally fund an additional project, not currently approved in the budget, the budget may be amended to reflect the funding of the total cost of such project by the requesting Member.

ARTICLE 7. Capital Plans, Operations and Maintenance.

7.1 Flood Management Plan.

The Authority shall prepare an initial Flood Management Plan (the “Plan”) describing a system of flood control facilities designed to manage and control flood waters of the Chehalis River Basin and its major tributaries, and the costs and financing thereof. The Board may from time to time amend the Plan.

7.2 Vote for Major Capital Improvements.

If it is necessary to incur indebtedness in excess of \$_____ to pay for major capital improvement projects under the Plan, the Authority shall not proceed with such financing unless (i) the initial Plan is approved by an advisory vote of the electors within the Authority, or (ii) the

issuance of general obligation debt is approved by electors throughout the Authority, consistent with RCW 86.15.170.

ARTICLE 8. Issuance of Bonds.

It is anticipated that the Authority may require capital funding from time to time to support facilities, technology and equipment needs. An Authorized Issuer may issue bonds to provide for the Authority's capital funding needs and all Members shall be required to participate equitably in providing for the payment of those obligations when requested to do so by the Board. It is expressly contemplated that Members may become subject to differential Budget Contributions over time based upon the benefit conferred to such agencies. Such requests for participation in a borrowing program shall be conveyed in writing to each Member, together with the proposal allocation of responsibility as between Members. If a Member elects not to participate as requested by the Board, it may within 45 days of receiving the request propose in writing to the Board an alternative means of supporting the proposed debt program. The Board may accept, reject or modify the proposal and shall re-issue notice to all Members of its decision. If a Member does not participate as requested by the Board in the borrowing program (either through the initial proposed participation or through an alternative means of support that is accepted by the Board), the membership of that Member may be terminated pursuant to Article 9 of this Agreement.

(a) Any general obligation indebtedness incurred by an Authorized Issuer shall be approved by a vote of the applicable electors to the extent required by RCW 86.15.170, and all other obligations shall be subject to an advisory vote pursuant to the requirements of Article 7.2.

(b) Each Member's participation in a borrowing program shall be integrated into Budget Contributions consistent with Article 6 to ensure that amounts are collected each year from Members and withdrawn or terminated Members sufficient to repay each Member's obligations in support of an Authority borrowing program on a timely basis.

(c) For as long as any obligations issued by an Authorized Issuer to an approved Authority borrowing program are payable from the Authority's pledge of debt service from Budget Contributions, the Authority irrevocably pledges to impose and take all reasonable action to collect all Members' Budget Contributions and amounts due from former Members in amounts sufficient to make timely payments to the issuer of those obligations, together with coverage and other amounts pledged to be collected with respect to the obligations.

(d) Each Member irrevocably covenants that it shall establish, maintain and collect taxes, rates, fees or other charges at levels adequate to provide revenues sufficient to enable the Member to make the payments of Budget Contributions required to be made under this Agreement, and that if the Member withdraws or is terminated from this Agreement pursuant to Article 9, that Member shall nevertheless continue to be obligated to pay its allocable share of the debt service from Budget Contributions with respect to the Authority obligations issued prior to the date that the Member so withdraws or is terminated from the Agreement. Each Member hereby acknowledges that this covenant may be relied upon by the owners of obligations issued for, on or behalf of the Authority, and that these covenants represent an irrevocable pledge to pay

such Budget Contributions as the Authority may impose in amounts sufficient to pay its share of the debt service on those obligations.

(e) To meet the requirements of United States Securities and Exchange Commission (“SEC”) Rule 15c2-12(b)(5) (the “Rule”) as applicable to a participating underwriter for obligations issued for or on behalf of the Authority, each Member that may be deemed to be an “Obligated Person” under the Rule shall make a written disclosure undertaking for the benefit of holders of the obligations and provide certificates or verifications all as may be reasonably request by an Authorized Issuer.

(f) Each Member further covenants that it shall take all actions necessary to prevent interest on obligations issued for or on behalf of the Authority from being included in gross income for federal income tax purposes, and it shall neither take any action nor make or permit any use of proceeds o those obligations or other funds treated as proceeds of those obligations at any time during the term of those obligations that will cause interest on those obligations to be included in gross income for federal income tax purposes.

(g) The provisions of this Article shall survive the expirations or termination of this Agreement.

ARTICLE 9. Withdrawal by or Termination of Members.

(a) Any Member may withdraw from this Agreement by giving one year’s written notice to the Board, by December 31 in any year, of its intention to terminate, effective December 31 of the following year.

(b) Notwithstanding the foregoing, the Board may terminate a Member’ membership in the Authority for nonpayment or delinquency in payment of a Budget Contribution or for failure to participate in a borrowing obligation program as approved by the Board. On the date of such termination, said former Member shall:

- (1) Lose its voting representation on the Board; and
- (2) Lose its right to receive a share of the Authority’s assets upon dissolution of the Authority.

(c) A terminated and/or withdrawing Member is deemed to forfeit any and all rights it may have to the Authority’s personal or real property, or any other ownership in the Authority, unless otherwise provided by the Board, provided further that this forfeit of rights shall not apply to personal property on loan to the Authority from the terminating or withdrawing Member.

(d) The termination and/or withdrawal of a Member shall not discharge or relieve any Member of its obligations to the Authority, including but not limited to bond obligations, contract obligations, cash financed capital projects, the Member’s share of fixed operating costs and any other expenses contained in the Member’s adopted budget for that year, and any assessments or other similar charges lawfully imposed by the Authority. The withdrawing or terminated Member’s allocable share shall in no event include an obligation for future expenses for which the Authority has not incurred a legal obligation.

(e) A Voting Director representing a Member that (1) has given notice of withdrawal, or (2) has been terminated by the Board which termination is effective at a future date, shall be authorized to cast votes at the Board only on budget items to be implemented prior to the withdrawal or termination date. A withdrawing or terminating Member will be excused from participating in a borrowing program approved per Article 8 where the debt instruments in support of that program will not be issued until after the Member is withdrawn or terminated, provided that the withdrawing or terminating Member is not authorized to vote on such borrowing program.

(f) The Board may establish additional generally applicable conditions and requirements for withdrawal or termination.

ARTICLE 10. Addition of New Members.

A flood control zone district or other entity may be admitted to the Authority by approval of the Board. As a condition of becoming a Member, a new Member must accept the terms of this Agreement. The Board may also require payment or other contributions or actions by a new Member as the Board may deem appropriate, and may set such start date for service as it deems appropriate, it being the intention of this provision that the addition of new Members shall not cause the pre-existing Members to incur additional cost.

ARTICLE 11. Advisory Committee.

To promote the participation of cities, towns and other interests (including, but not limited to, agriculture, fisheries and/or forestry interests) within the Authority's boundaries, the Board may establish an Advisory Committee. The Board shall also adopt procedures for the convening and administration of the Advisory Committee. The Advisory Committee may have up to 15 members. Each city and town located within the Authority's boundaries may appoint an elected official to the Advisory Committee and that member shall serve at the pleasure of the city or town that appointed such member. The remaining members (but no more than the aggregate number appointed by cities and towns) may be appointed by the Board. Citizen members appointed to the Advisory Committee must have a knowledge and understanding of flood management or other area of expertise necessary to carry out the purposes of this Agreement and be committed to the furtherance of flood management of the Chehalis River Basin. A citizen member may be removed from the Advisory Committee with or without cause upon by the Board.

ARTICLE 12. Indemnification and Hold Harmless.

(a) Each Member shall, indemnify and hold other Members, their officers, officials, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of that Member's wrongful acts or omissions in connection with the performance of its obligations under this Agreement, except to the extent the injuries or damages are caused by another Member. In the event of recovery due to the aforementioned circumstances, the Member responsible for any such wrongful acts or omissions shall pay any judgment or lien arising therefrom, including any and all costs and reasonable attorneys fees as part thereof. In the event more than one Member is held to be at fault, the obligation to

indemnify and to pay costs and attorneys fees, shall be only to the extent of the percentage of fault allocated to each respective Member by a final judgment of the court.

(b) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of a Member hereto, its officers, officials, employees, and volunteers, the Member's liability hereunder shall be only to the extent of the Member's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Party's waiver of immunity under Industrial Insurance Title 51 RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the Members. The provisions of this Article shall survive the expiration or termination of this Agreement.

(c) Each Member shall give the other Members proper notice of any claim or suit coming within the purview of these indemnities.

ARTICLE 13. Insurance.

The Board and Executive Officer shall take such steps as are reasonably practicable to minimize the liability of the Members associated with their participation in this Agreement, including but not limited to the utilization of sound business practice. The Board shall determine which, if any, insurance policies may be reasonably practicably acquired to cover the operations of the Authority and the activities of the Members pursuant to this Agreement (which may include general liability, errors and omissions, fiduciary, crime and fidelity insurance), and shall direct the acquisition of same.

ARTICLE 14. Duration and Dissolution.

14.1 Duration.

The Authority shall remain in existence for the longer of the following: (a) the period it holds any assets; (b) the period during which bonds are outstanding; or (c) the period it continues to include Members.

14.2 Dissolution; Successor Entity.

The Authority may be dissolved upon approval of the Board. Upon dissolution or termination of the Agreement under this Article 14, except as provided in an Asset Transfer Agreement, the Authority's assets initially shall be held by its then current Members as tenants in common. Each Member's ownership interest must be based on that Member's contribution to the overall budget at the time the Agreement is terminated or dissolved. The Authority's liabilities (including Bonds and other contractual obligations) initially shall also be distributed based on the overall budget at the time the Agreement is terminated or dissolved, as applicable. Assets and liabilities must be distributed in accordance with agreement or contract, under a voluntary mediation process, or by a court of law. A court may appoint an arbitrator or special master. Distribution shall be based on the best interests of efficient and economic flood control in the entire area served by the Members, subject to a rebuttable presumption that assets will be returned to the Member that originally transferred them to the Authority. That presumption may

be overcome by a showing that another asset distribution is in the best interests of efficient and economic flood management. The proceeds of any sale of assets must be distributed among the then current Member's overall budget at the time the Agreement is terminated or dissolved.

Notwithstanding the provisions above, upon approval of the Board, all assets, liabilities, and obligations of the Authority may be transferred to any successor entity (including without limitation, a joint operating authority, a multi-county flood control zone district, or other municipal corporation, as permitted under State law), and all obligations of Members and parties contracting with the Authority become obligations to the successor entity.

ARTICLE 15. Amendments.

This Agreement may be amended upon [the unanimous agreement of the Members.] This subsection shall not be construed to require unanimous consent for the addition of a new Member.

ARTICLE 16. Severability.

The invalidity of any clause, sentence, paragraph, subdivision, Article or portion thereof, shall not affect the validity of the remaining provisions of this Agreement.

ARTICLE 17. Conflict Resolution.

(a) Whenever any dispute arises between the Members or between the Members and the Authority (referred to collectively in this Article as the "parties") under this Agreement which is not resolved by routine meetings or communications, the parties agree to seek resolution of such dispute by the process described in this Article.

(b) The parties shall seek in good faith to resolve any such dispute or concern by meeting, as feasible. The meeting shall include the Chair of the Board, the Executive Officer, and the representative(s) of the Member(s).

(c) If the parties do not come to an agreement on the dispute or concern, any party may demand mediation through a process to be mutually agreed to in good faith between the parties within 30 days, which may include binding or nonbinding decisions or recommendations. The mediator(s) shall be individuals skilled in the legal and business aspects of the subject matter of this Agreement. The parties shall share equally the costs of mediation and assume their own costs.

(d) If the mediation process cannot be agreed upon within 30 days, or if all parties subject to the dispute agree within 30 days to proceed immediately to arbitration, the dispute or concern shall be settled by binding arbitration in accordance with Rules of the American Arbitration Association and Mediation Service, or other agreed upon arbitration rules. The location of the arbitration shall be mutually agreed, and its proceedings shall be governed by the laws of State. The arbitrator(s) shall be individual(s) skilled in the legal and business aspects of the subject matter of this Agreement. The cost of the arbitration shall be in the discretion of the arbitrator(s), provided, however, that no party shall be obligated to pay more than its own costs and the cost of the arbitrator, if there is one arbitrator, or the costs of its own appointed arbitrator

and the third arbitrator, if there are three arbitrators. Judgment upon award rendered by the arbitrator(s) shall be entered in [Thurston] County Superior Court.

ARTICLE 18. Venue.

The venue for any action related to this Agreement shall be in Superior Court in and for [Thurston] County, Washington.

ARTICLE 19. Filing.

As provided by RCW 39.34.040, this Agreement shall be filed prior to its entry in force with the Gray Harbor, Lewis and Thurston County Auditors, the Secretary of State, and such other governmental agencies as may be provided by law.

ARTICLE 20. No Third Party Beneficiaries.

There are no third-party beneficiaries to this Agreement except for the rights of bond owners as provided in Article 8. No person or entity other than a party to this Agreement shall have any rights hereunder or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Agreement.

ARTICLE 21. Entire Agreement.

This Agreement constitutes the entire and exclusive agreement between the parties relating to the specific matters covered in this Agreement. All prior or contemporaneous verbal or written agreements, understandings, representations or practices relative to the foregoing are superseded, revoked and rendered ineffective for any purpose. This Agreement may be altered, amended or revoked only as set forth in Article 15. No verbal agreement or implied covenant may be held to vary the terms of this Agreement, any statute, law or custom to the contrary notwithstanding.

ARTICLE 22. Execution.

This Agreement may be executed in one or more counterparts.

GRAYS HARBOR COUNTY
[CHEHALIS BASIN] FLOOD CONTROL
ZONE DISTRICT

LEWIS COUNTY [CHEHALIS BASIN]
FLOOD CONTROL ZONE DISTRICT

By _____
_____, _____

By _____
_____, _____

ATTEST:

ATTEST:

THURSTON COUNTY [CHEHALIS
BASIN] FLOOD CONTROL ZONE
DISTRICT

THE CHEHALIS TRIBE

By

_____, _____

By

_____, _____

ATTEST:

ATTEST:

Approved and Accepted by:

THE STATE OF WASHINGTON

By

_____, _____

ATTEST:
