

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.	<u>5B</u>
Date of Meeting	<u>December 1, 2020</u>

DATE: November 17, 2020

TO: Managing Members

FROM: John Wolfe, CEO

Sponsor: Jason Jordan, Director, Environmental and Planning Services

Project Manager: Mark Rettmann, Environmental Project Manager II

SUBJECT: Consent: Flood District Grant Program, and ILA/Grant Acceptance for PCT Truck Queue Bridge Project

A. ACTION REQUESTED

As referenced in NWSA Resolution No. 2020-02, Exhibit A, Delegation of Authority Master Policy, Paragraph 8.b.i. requires authorization from Managing Members to enter into an ILA with another public agency.

Request authorization for Acceptance of a Flood District Grant that is anticipated to be awarded in late December 2020 in an amount up to \$931,640 for the Wapato Creek Bridge and Culvert Removal Project, Master Identification No. 201070.01, and enabling the Chief Executive Officer or his designee to enter into an Interlocal Agreement (ILA) with the Pierce County Flood Control Zone District.

B. SYNOPSIS

The Pierce County Flood Control Zone District (Flood District) has indicated that The Northwest Seaport Alliance's (NWSA's) Wapato Creek Bridge and Culvert Removal Project (Project) will likely be awarded a grant in late December 2020 in an amount up to \$931,640 under their "Flood Risk Reduction and Watershed Management Economic Stimulus Grant Program" (Grant) which requires entering into an ILA. The Flood District Board is anticipated to approve the grant and the amount in mid-December. The grant would offset costs from the Managing Members' authorized Project and current Capital Investment Plan allocation of \$3,070,000 for this Project (MID No. 201070.01).

C. BACKGROUND

The Project replaces a failing culvert with a bridge that provides access across Wapato Creek from East Alexander Avenue to the Pierce County Terminal (PCT) truck queueing lot, leased to Everport Terminal Services, at the Port of Tacoma's Parcel 15. This is the only access to Parcel 15 and a portion of which is also used as a foreign trade zone and parking area for

imported automobiles. The current Capital Investment Plan allocates \$3,070,000 for this Project (MID No. 201070.01).

The Flood District Grant's purpose is to increase safety while stimulating the economy and is providing grants for projects that reduce the impact of flooding and provide a flood reduction and watershed management benefit. A staff briefing memorandum regarding this grant was provided to the Managing Members on September 17 prior to applying for the grant later in September. The Flood District will likely award a grant in late December 2020 in an amount up to \$931,640 for this Project which requires entering into an ILA.

D. PROJECT DESCRIPTION AND DETAILS

The Project is a culvert improvement project that will replace an undersized and failing culvert on Wapato Creek with a bridge and improve hydrology, flood control, fish passage, and fish habitat. The project will improve hydrology, flood control, and fish passage by removing the undersized culvert which causes constriction in the tidally-influenced creek, restore the disturbed area of the creek and add fish habitat with planting vegetation and placing fish mix/sediment and installing Large Woody Material (LWM) in the creek. The improvement to fish passage and habitat will benefit numerous species of salmon and trout.

Project Objectives

The objective of this Project is to maintain access to Parcel 15 while also improving hydrology, flood control, fish passage, and fish habitat. Specifically, this objective will be accomplished by:

- Completing a temporary bridge over a failing culvert (Completed)
- Providing a two-lane freeway type bridge over Wapato Creek
- Providing for enhanced fish passage, hydrology, and flood control under and through the structure meeting state requirements
- Removing failing culvert, fish barrier and temporary bridge
- Restoring the disturbed creek area with fish mix/sediment, plantings and Large Woody Material (LWM)

Scope of Work

The project generally includes:

- Soil removal around existing culvert (Completed)
- Construction of a temporary 33' long bridge (Completed)
- Reconstruction of the temporary roadway (Completed)
- Complete necessary design and permitting for new bridge (Completed)
- Construction of a 70' long two-lane bridge
- Associated driveway and bridge approach improvements on city right-of-way
- Site improvements adjacent to the new bridge and old crossing, including utilities, paving, stormwater and striping
- Removal of the temporary bridge and culvert

- Stream restoration for fish habitat improvements

Grant Acceptance and Interlocal Agreement

An ILA is required to accept the Grant and funds. The ILA is with the Flood District and would allow the Flood District to provide funding for the Project. In general, the ILA includes the following:

- Term, Termination, and Survival: The term will be until all funds have been distributed or March 31, 2022, whichever comes first. An extension may be requested by December 1, 2021.
- Document Submissions: Requires submission of quarterly progress reports and reimbursement requests and other Project records and documents.
- Approval, Payment, and Use of Funds: Details how funds will be approved, paid, and used. Funds must be used for Project related expenses.
- Hold harmless and indemnifications: Applies to each party.
- Withholding or Denial of Funds: For failure to comply with the ILA or conform substantially to the Project plans, specifications, and drawings

Schedule – Project (New Bridge and Culvert Removal)

Advertise for Bid (completed)	June 24, 2020
Open Bids (completed)	July 21, 2020
Notice of Award (completed)	August 5, 2020
Contract Execution	August 31, 2021
Substantial Completion	October 30, 2021
Final Completion	November 30, 2021

Schedule – Grant

Pre-application (completed)	August 20, 2020
Full application (completed)	September 30, 2020
District Board approval	December 9, 2020
Applicant notification	December 16, 2020
Funding available	January 1, 2021
Completion of Project & Reimbursement Sought	December 31, 2021

E. FINANCIAL IMPLICATIONS

Source of Funds

Grant award of \$931,640 from the Pierce County Flood District Grant program.

Financial Impact

The grant award will offset costs incurred in the previously authorized project budget of \$3,070,000 for MID No. 201070.01. The grant will be recorded as non-operating income when reimbursement is requested. The 2021 budget assumed a \$700,000 grant to be received in Q3 of 2021. Any funds received in addition to \$700,000 will result in an increase in Distributable Income and Distributable Cash (all else being unchanged).

F. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1) Do not accept the grant. Proceed with the project without accepting the grant. Project cost fully paid for by the NWSA.

Alternative 2) Accept the grant and enter into an ILA. Project cost offset by the amount of the approved grant and reimbursements. Minimal administrative work necessary to enter into the ILA and administer the grant (i.e., reporting, recordkeeping) and will be conducted within the existing Project budget.

Alternative 2 is the recommended course.

G. ENVIRONMENTAL IMPACTS/REVIEW

The environmental impacts of the project were reviewed as part of the project authorization. The grant itself has no impact on the environmental impacts of the Project.

H. ATTACHMENTS TO THIS REQUEST

- Draft ILA

I. PREVIOUS ACTIONS OR BRIEFINGS

<u>Date</u>	<u>Action</u>	<u>Amount</u>
August 4, 2020	Managing Members Authorization	\$720,000
June 2, 2020	Managing Members Authorization	\$2,050,000
January 16, 2019	Executive Authorization	\$200,000
January 9, 2019	Declaration of Emergency – Ratified by Managing Members on February 5, 2019	\$0
January 2, 2019	Executive Authorization	\$100,000
TOTAL		\$3,070,000

ATTACHMENT A

Project Name: Wapato Creek Bridge and Culvert Removal

Project Proponent & Reference: The Northwest Seaport Alliance (NWSA), Master Identification Number 201070.01

Scope of Work: This project will replace the failing CMP culvert, an undersized fish barrier, with a full-span, drilled shaft supported bridge (approximately 41 feet wide and 66 feet long). In addition to the new bridge construction and culvert removal, the proposed project includes repairs to an existing concrete stormwater outfall pipe, restoration of the streambed where the culvert was located, and recontouring and restoration of the slopes along Wapato Creek.

Location of the project: This project is located at 4215 State Route 509, Tacoma, WA (Parcel 5000350150, Port Parcel 15). See attached Vicinity Map

Project Timeframe: October 2019 - October 2021

Total project cost: \$2,728,577

Flood Control Zone District grant share: \$931,640

Local share: \$1,796,937

ATTACHMENT A



**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

PIERCE COUNTY FLOOD
CONTROL ZONE DISTRICT

John Wolfe, Chief Executive Officer

Title: _____

Date: _____

Date: _____

Approved as to Form:

Attorney

Attested to:

Attested to:

Audrey Persons
Clerk of Board of Supervisors



Item No: 5B_supp
Date of Meeting: December 1, 2020

Flood District Grant Acceptance and ILA for Wapato Creek Bridge and Culvert Removal Project

**Presenter: Mark Rettmann
Title: Environmental Project Manager II**

Action Requested

Flood District Grant Acceptance and ILA for Wapato Creek Bridge and Culvert Removal Project

As referenced in NWSA Resolution No. 2020-02, Exhibit A, Delegation of Authority Master Policy, Paragraph 8.b.i., requires authorization from Managing Members to enter into an ILA with another public agency.

Request authorization for Acceptance of a Flood District Grant that is anticipated to be awarded in late December 2020 in the amount up to \$931,640 for the Wapato Creek Bridge and Culvert Removal Project, Master Identification No. 201070.01, and enabling the Chief Executive Officer or his designee to enter into an Interlocal Agreement (ILA) with the Pierce County Flood Control Zone District.

Background

Flood District Grant Acceptance and ILA for Wapato Creek Bridge and Culvert Removal Project

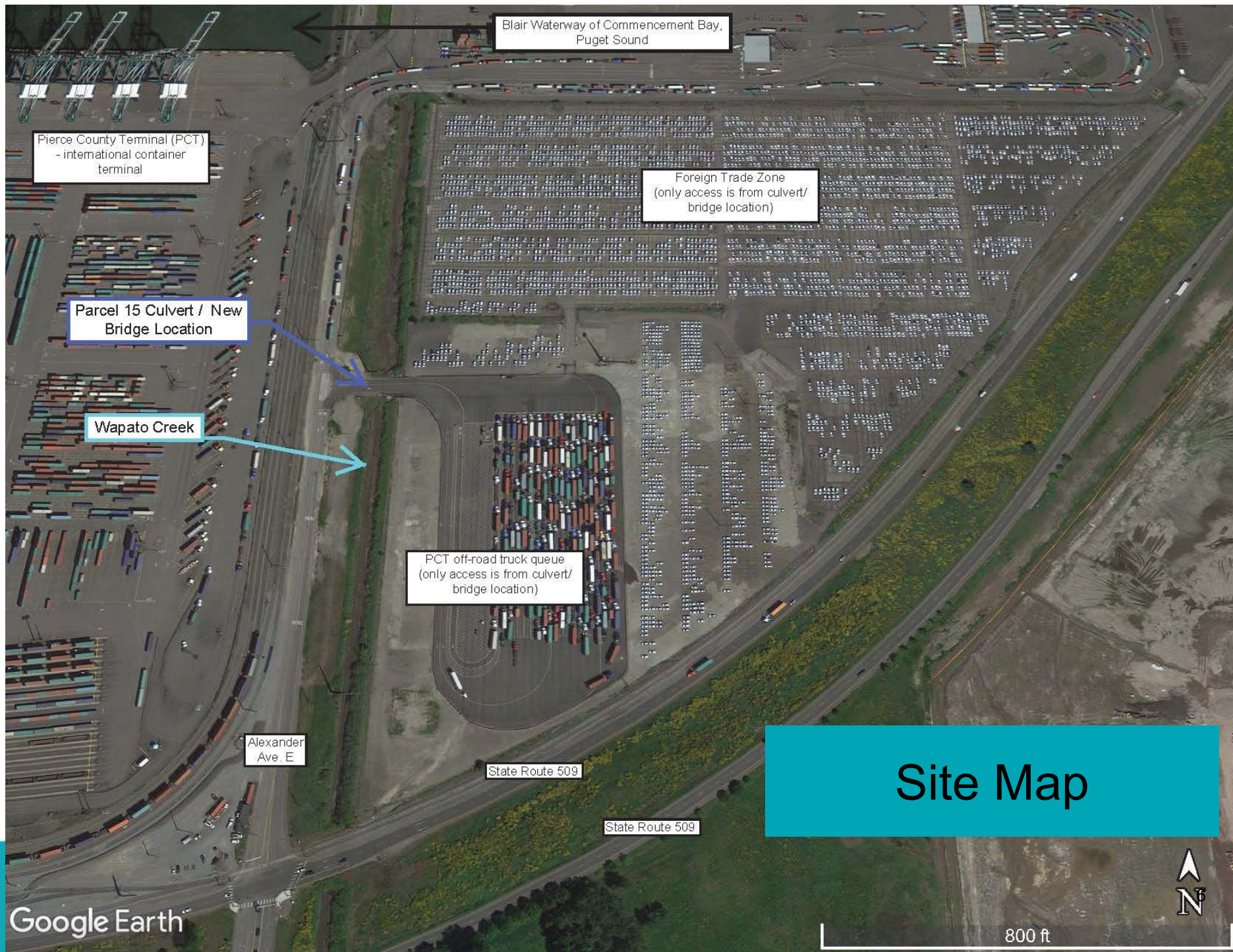
- Project Background
 - Replaces a failing culvert with a bridge
 - Maintains access across Wapato Creek to Parcel 15 (PCT truck lot & FTZ)
 - Also improves hydrology, flood control, fish passage, and fish habitat
 - Last MM Authorization on 8/4/2020 for \$3.07M total
 - Bid, awarded, and is now under construction
- Pierce County Flood Control Zone District (Flood District) Grant
 - Economic stimulus grant for flood reduction and watershed management
 - Applied September 2020 after notifying MMs on 9/17/20 (memo)
 - Informally notified likely to be awarded up to ~\$931K grant in late December 2020 which requires entering into an ILA

Vicinity Map



Vicinity Map





Blair Waterway of Commencement Bay,
Puget Sound

Pierce County Terminal (PCT)
- international container
terminal

Foreign Trade Zone
(only access is from culvert/
bridge location)

Parcel 15 Culvert / New
Bridge Location

Wapato Creek

PCT off-road truck queue
(only access is from culvert/
bridge location)

Alexander
Ave. E

State Route 509

State Route 509

Site Map

Google Earth



800 ft

Wapato Creek Culvert (access to Parcel 15 from East Alexander Ave)



ILA Details

Flood District Grant Acceptance and ILA for Wapato Creek Bridge and Culvert Removal Project

- Interlocal Agreement (ILA)
 - Term: Until all funds have been distributed, or March 31, 2022, whichever comes first. May request extension by December 1, 2021.
 - Document Submissions: Requires quarterly progress reports and reimbursement requests and other supporting records.
 - Approval, Payment, and Use of Funds: Details how funds will be approved and paid. Funds must be used for project-related expenses.
 - Hold harmless and indemnifications: Applies to each party.
 - Withholding or Denial of Funds: For failure to comply with the ILA or conform substantially to the project plans, specifications, and drawings.
 - Other: Includes other typical ILA terms.

Project Schedule

Flood District Grant Acceptance and ILA for Wapato Creek Bridge and Culvert Removal Project

Project Construction Schedule	
Activity	Timeframe
Advertise Bids (completed)	June 24, 2020
Bid Opening (completed)	July 21, 2020
Contract Execution	August 31, 2020
Contract Completion	November 30, 2021

Grant Schedule	
Activity	Timeframe
Pre-application (completed)	August 20, 2020
Full application (completed)	September 30, 2020
Flood District Board approval	December 9, 2020
Applicant notification	December 16, 2020
Funding available	January 1, 2021
Completion of Project & Funding	December 31, 2021

Financial Implications

Flood District Grant Acceptance and ILA for Wapato Creek Bridge and Culvert Removal Project

- The current Capital Investment Plan (CIP) allocates \$3,070,000 for this project.
- The Grant would offset costs from the authorized Project Budget in the amount of the approved grant and reimbursement (~\$931K).
- The grant will be included in non-operating income.
- The 2021 budget assumed an award of a \$700,000 grant in Q3 of 2021. Any funds received in addition to \$700,000 will increase distributable cash and distributable income (all else being unchanged).

Conclusion

Flood District Grant Acceptance and ILA for Wapato Creek Bridge and Culvert Removal Project

Request authorization for Acceptance of a Flood District Grant that is anticipated to be awarded in late December 2020 in the amount up to \$931,640 for the Wapato Creek Bridge and Culvert Removal Project, Master Identification No. 201070.01, and enable the Chief Executive Officer or his designee to enter into an Interlocal Agreement (ILA) with the Pierce County Flood Control Zone District.