

**INTERLOCAL AGREEMENT BETWEEN
THE PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT AND
[*City of Orting*] FOR DISTRICT FUNDED PROJECTS**

THIS AGREEMENT is made and entered into by and between [*The City of Orting*], 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 Resolution 2013-3s, passed on September 11, 2013, the District Board of Supervisors ("Board") adopted the District comprehensive plan, which is a document titled "Pierce County Flood Control Zone District Comprehensive Plan of Development" and is commonly referred to as "CPOD." The Resolution requires the Board to approve by resolution before construction all flood control and storm water control improvements.

B. In Resolution No. 2013-4, the Board adopted the 2014 District budget, which includes the capital projects and improvements that will be funded by the District in 2014. The [*Calistoga Levee Setback*] is listed in the Resolution as one of such capital projects and improvements ("Project").

C. In Resolution No. 2013-1, passed on June 5, 2013, the Board approved an interlocal agreement between the District and Pierce County ("District/County ILA"), pursuant to which the District authorized and directed Pierce County to administer and implement the District's budget and work program, which includes design and construction of capital projects and improvements in the District's annual budget and the CPOD.

D. Consistent with the District/County ILA, Pierce County has entered into an interlocal agreement with the Municipality to design, construct, operate, maintain, repair and replace the Project ("Municipality/County ILA"). The Municipality/County ILA acknowledges that funding for the Project will be provided in part by the District, subject to the terms and conditions of an interlocal agreement between the Municipality and the District.

E. 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 Municipality for Project expenses, as set forth in Resolution No. 2013-4 and any subsequent budget resolutions or resolutions approving modifications to or funds for the Project. In Resolution No. 2013-4, the District authorized \$6.4mil for Project expenses in 2014, and determined that the estimated cost of the Project over six years will be \$8.5mil.

1.4 "Project" means the project or improvement authorized by Resolution No. 2013-3s, 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 in accordance with 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. The Municipality shall obtain approval of the Project plans, specifications and drawings in accordance with the Municipality/County ILA. The Municipality shall design, construct and install the Project only as authorized by Pierce County and the Municipality/County ILA, and in compliance with all applicable laws, rules and regulations. The Municipality shall obtain and be responsible for all approvals and permits for the Project.

4. Project Work and Funding Sources. At times and in a format approved by the District Administrator, the Municipality shall submit a description of the Project work, a description of the Project funding sources, a schedule of the Project work, and a schedule of the receipt of all Project funds, including the Funds.

5. Payment and Use of Funds. The District shall pay Funds to the Municipality only for the Municipality's Project related expenses, in accordance with a schedule and procedure approved by the District Administrator. The Municipality 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. Furthermore, where the funds for the Project are provided by multiple non-Municipality funding sources, and the actual Project cost is less than the Project cost estimate, the Municipality shall use its best efforts to request payment from the District in a percentage that is equal to the District's percentage of non-Municipality funds.

6. Withholding or Denial of Funds. The District reserves the right to withhold or deny payment of Funds for failure of the Municipality to comply with the terms and conditions of this Agreement or the Municipality/County ILA, or for failure of the Project to meet the description of the Project stated in Section 1.5.

7. Multi-Year Projects. The District shall provide Funds for the budget year in which this Agreement is executed, and anticipates providing funds for subsequent budget years, if the Project description provides for construction and installation over multiple years. If the Project description provides for construction and installation over multiple years, the District's obligation to provide Funds for subsequent budget years is conditioned upon appropriation of Funds by the Board in subsequent budget years. If the Board fails to appropriate Funds for any subsequent budget year, this Agreement shall terminate automatically thirty (30) days after the close of the current budget year, which ends December 31 of each year.

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

8.1 The Municipality shall prepare and file written reports describing its request for and expenditure of the Funds, as required by the District Administrator. The Municipality shall prepare and file such other written reports, including but not limited to a final report after final distribution of Funds, as required by the District Administrator.

8.2 The Municipality 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 Municipality 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 Municipality shall take ownership of, and shall be obligated to design, construct, operate, maintain, repair and replace, the Project in accordance with the Municipality/County ILA. 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 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 of the Municipality, 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 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.

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 Municipality'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 projects 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 and the [Ken Wolfe or Mark Bethune], respectively, 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:

City of Orting

Name: Joachim Pestinger
Mayor: Joachim Pestinger
Date: 1/29/14

Attested to:
Approved As to Form

Christopher D Bach
Name: Christopher D Bach
Title: City Attorney

PIERCE COUNTY FLOOD
CONTROL ZONE DISTRICT

Name: Joyce McDonald
Title: Chair
Date: 2/4/14

Attested to:

Cathy Sala
Cathy Sala
Clerk of Board of Supervisors