

**INTERLOCAL AGREEMENT BETWEEN
THE PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT AND
PIERCE CONSERVATION DISTRICT FOR DISTRICT FUNDED PROJECTS**

THIS AGREEMENT is made and entered into by and between PIERCE CONSERVATION DISTRICT, a Special Purpose District 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 Municipality 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 Special Purpose District's South PrairieCreek Floodplain Reconnection, RM 2.7-2.8 Phase 1 Project (or "Project") was awarded up to \$1 million.

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 Special Purpose District 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 this Resolution, 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. If the Soler Farms Parcel is sold prior to fee acquisition by the Special Purpose District, this ILA shall terminate and the Special Purpose District shall notify the Flood Control District within 5 business days.

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 Special Purpose District 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 Special Purpose District and the District Administrator.

5. Payment and Use of Funds. The District shall pay Funds to the Special Purpose District only for Project-related expenses, in accordance with a schedule and procedure approved by the District Administrator as set forth in Attachment A, referenced in paragraph 4. The Special Purpose District 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 Special Purpose District 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 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.

Special Purpose District 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 Special Purpose District 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 Special Purpose District 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 Special Purpose District 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 Special Purpose District 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 Special Purpose District 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 Special Purpose District 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 Special Purpose District, 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 Special Purpose District 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 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:

PIERCE CONSERVATION DISTRICT

Selena Corwin

Name:

PIERCE COUNTY FLOOD
CONTROL ZONE DISTRICT



Name:

Title: Acting Executive Director

Title: Chair

Date: May 18, 2020

Date: May 24, 2021

Approved as to Form:

Attorney

Attested to:

Attested to:

Attested to:

Audrey Persons
Clerk of Board of Supervisors