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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 Prairie Creek 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.

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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.

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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

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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	PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT
Executive Director	
[TITLE]	Name:_____

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Ryan N Mello

Date: Jan 14 2021 11:12 PST

Title:_____

Date: _____

_____

Approved as to Form:

_____
Attorney

Attested to:

_____

Attested to:

_____
Audrey Persons
Clerk of Board of Supervisors

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Project Name: South Prairie Creek Floodplain Reconnection, RM 2.7-2.8 Phase 1

Scope of Work: Pierce Conservation District will purchase in fee simple the Soler Farm, a 73-acre parcel that is adjacent to approximately 1.1-stream miles. Purchasing this land presents a rare opportunity to implement a multi-benefit floodplain reconnection project that would reduce flood risk and maintenance costs, restore vital salmon habitat, and keep the property in agricultural production.

Location of the project: South Prairie Creek River Mile 2.7 – 2.8, at Spring Site Road, Parcel numbers: 0519144703, 0519141702, 0519142702, 0519143010.

Project Timeframe: January 2021- December 2021

Total project cost: $1,239,000

Flood Control Zone District grant share: $1,000,000

Local share: $239,000

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FLOOD RISK REDUCTION AND WATERSHED MANAGEMENT ECONOMIC STIMULUS GRANT PROGRAM SCOPE OF WORK

PIERCE COUNTY
FLOOD CONTROL
ZONE DISTRICT

INSTRUCTIONS: Please submit a Project Scope of Work form for each project funding request. If you need additional Scope of Work forms you can download them from the Flood Control Zone District website at www.piercefloodcontrol.org. If you have any questions, please contact the District Administrator at 253-651-3649 or pcfczd@co.pierce.wa.us.

Please save your form and title it using the follow convention:
YYYY_MMDD_JURISIDICTION_PROJECT_SOW.docx
(e.g., 2013_0601_PierceCounty_leveesetback_SOW.docx)

JURISIDICTION	Pierce Conservation District
DO YOU HAVE A CURRENT ILA WITH THE FLOOD CONTROL ZONE DISTRICT?	☒ **YES** ☐ **NO**
IF NO, WHICH JURISDICTION WILL BE SPONSORING YOUR PROJECT? (If no sponsoring jurisdiction, provide contact information to initiate an ILA with your organization)	Click or tap here to enter text.
PROJECT TITLE	South Prairie Creek Floodplain Reconnection, RM 2.7-2.8 Phase 1
TOTAL PROJECT COST	$1,239,000
REQUESTED AMOUNT	$1,000,000
APPROX PROJECT START DATE (funds available 1/1/2021)	January 2021
APPROX PROJECT END DATE (must be completed no later than 12/31/2021)	December 2021

(1) Description of proposed project. Include:

- **Project location**
- **Problem that will be addressed**
- **Other details as applicable to your project, including (but not limited to):**

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- **Description of flooding**
- **Listed species present and fish utilization information,**
- **Water quality impairment to be addressed,**
- **Quality of existing habitat, and**
- **Any other pertinent information.**

For ranking purposes, please explain how this project/proposed solution will:

- **Protect lives and reduce public risk;**
- **Improve water quality or habitat;**
- **Provide a long-term solution to the problem;**
- **Create jobs or promote economic stimulus; and**
- **Achieve multiple benefits, if applicable.**

Project location: South Prairie Creek River Mile 2.7 – 2.8, at Spring Site Road, Parcel numbers: 0519144703, 0519141702, 0519142702, 0519143010. (Design and ultimate reconnection would also likely include Pierce County and Pierce Conservation District owned parcels upstream and downstream of the project site, equating to total reconnection of 1.1 river miles.)

Problem that will be addressed: South Prairie Creek regularly floods, including as recently as February 2020, causing damage to both State Highway 162 and Pierce County roads. This is particularly true at Spring Site Road, where the creek makes two 90-degree turns crossing Hwy 162 and is tight lined to the highway adjacent to the Soler Farm. The Soler Farm, 73-acres adjacent to approximately 1.1-stream miles, is currently for sale and presents a rare opportunity to implement a multi-benefit floodplain reconnection project that would reduce flood risk and maintenance costs, restore vital salmon habitat, and keep the property in agricultural production.

Along with partners at the Puyallup Tribe, Pierce County Public Works, Forterra, and South Puget Sound Salmon Enhancement Group, we are proposing the acquisition of the Soler Farm, the demolition of the derelict buildings on site, and initial design of the floodplain reconnection project. This project would immediately put people to work in the form of contractors to conduct the demolition and engineers to design the reconnection project. Acquiring the property and conducting initial design will enable project partners to apply for future funding through the Salmon Recovery Funding Board, Puget Sound Acquisition and Restoration fund, or the National Estuary Program to implement the full floodplain reconnection. The Soler Farm has an existing agriculture easement, which allows up to 18% of the land to be converted from agricultural use, which would be used to reconnect the creek to its natural floodplain. This will eliminate the two 90-degree bends where the creek crosses Hwy 162, both reducing the factors exacerbating the flooding and adding more storage capacity for flood waters. The area where the current buildings and manure lagoon stand will be converted back into pasture and the upland area of the farm will be leased and/or sold to a producer upon completion of the restoration project. In addition to having positive outcomes for floods, fish, and farms, the economic benefits of this project would be both immediate and long lasting.

Listed species present and fish utilization information: South Prairie Creek is also one of the highest priority salmon streams in the Puyallup Watershed for recovering Endangered Species Act Listed Steelhead and Bull Trout, Chinook as well as unlisted stocks of Coho, Chum, and Pink salmon.

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Description of flooding: The primary benefit of rerouting SP Creek through the Soler property is that it would no longer be bound between two roads; SR 162 and the South Prairie Creek - Carbon River Road as well as the Foot Hills Trail. This configuration forever limits riparian function and assures an aggressive pattern of channel maintenance necessary to protect major transportation routes. Both Spring Site Road and Hwy 162 have flooded as a result of the current creek alignment in 2006, 2009, and again in 2020, see Figures 1 and 2 below. The 2006 flood flow fell between a 10-year and 25-year recurrence interval at 6,450cfs. An adjacent floodplain restoration project just upstream of this proposed project location will lend an estimated increased in 34-acre feet of water storage over the 120-acre project area. A floodplain reconnection project on the Soler property will eliminate overbank flooding over State and County roadways and will also result in roughly 1.1-miles of restored spawning and rearing habitat for salmon and trout.

Rerouting the stream channel through Soler would immediately release 0.4 miles of constrained channel to natural processes and meandering. This action has numerous benefits including reduced stream gradient, reduced stream power, and expanded floodplain, all of which lessens scour events and promotes the establishment of natural fluvial processes ushering a cascade of beneficial responses including: pool formation, LWD collection and retention (now actively removed from bridge piers under the two SR 162 crossings) and maturation of the riparian community that would eventually lead to better more complete shading of the stream.

Quality of existing habitat: With the creek bound between two roads, there is minimal existing habitat, perhaps 10 – 20 feet of riparian buffer, with minimal shading, no pool formation or LWD, and no stream meanders.

Benefits to Agriculture: The property in question is in current use by a lessee who pastures cattle. Project partners have been in contact with the lessee and will take design considerations into account to keep this land in productive use. Many of the buildings on the property are a liability risk and by demolishing them and restoring their footprint to pasture lands we will be adding productivity to the property. We will also be reducing risk to livestock and the need to transport livestock in the emergency of a flood event.

Protecting lives and reducing public risk: As detailed above, and in Figures 1 and 2 below, South Prairie Creek floods regularly due in large part to the conditions described above regarding the disruption of natural processes. This flooding results in risk to life and livestock, property damage, and high maintenance costs for local and state governments on adjacent transportation routes.

Water quality impairment to be addressed: South Prairie Creek has a Fecal Coliform Bacteria and Temperature water cleanup plan, or TMDL, approved by the EPA. Restoration activities began in 2006 but as of this writing both fecal coliform and temperature are outside of state standards. Though not identified as a source, the demolition of buildings, particularly the manure lagoon and restoration of that area into pasture, along with the floodplain reconnection project and associated riparian restoration, resulting in greater shade, slower moving water, and deeper pools, will lead to improvements in both water quality and temperature.

Creating jobs and promoting economic stimulus: The economic and jobs benefits derived from a project similar to this proposed project has resulted in prevailing wage jobs for local contractors, businesses, and their families for a 7-month period between April and October 2020. Some of the

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economy-stimulating benefits of that project include additional jobs and income for local tree farms in east Pierce County to supply 4,621 logs, purchase nearly 5,000 tons of aggregate from local gravel mines for streambed sediment, 7-months of concentrated contract work for 6 different local construction, electrical, demolition, well drilling, and lab companies, over $12,000 in permit fees to Pierce County Planning and Land Services, as well as 5-years of work for consulting firms that specialize in cultural, technical, and engineering services. Acquisition, design, permitting, and construction costs for this very similar project total over $6 million dollars of funding leveraged from 9 different sources of federal, state, tribal, and local funds, all coming together to invest in improvement of Pierce County floodplains. The current proposed South Prairie Creek Floodplain Reconnection, RM 2.7-2.8 Phase 1, at full build-out potential will lend very similar economic, flood-reduction, fish recovery, all while supporting agriculture for one of few remaining dairy businesses in Pierce County.

A multi-benefit, long-term solution to the problem: Through acquisition, demolition, design, and implementation of this floodplain reconnection project, we will be providing both short term and long term benefits of economic stimulus, flood risk reduction, maintenance cost reduction, salmon habitat restoration, water quality improvement, and helping keep agriculture as a vital and productive component of the watershed.

Any other pertinent information.



Figure 1. Overbank flooding of South Prairie Creek across Spring Site Road and over Highway 162, onto the Soler project property. Photo taken November 7, 2006 during a 6,450 cfs 10-25 year flood event.

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Figure 2. Flooding over Spring Site Road onto Soler Property.

(2) Describe Environmental Process, including work to-date, as well as work still to be completed, and timeline for completion. **For ranking purposes, please also include:** • **Any obligations or environmental commitments associated with the work (i.e. Habitat Conservation Plan, System Wide Improvement Framework, NPDES/TMDL).**
For Phase 1, acquisition will be the initial focus with a target of closing by late spring/early summer 2021 to allow for a late summer/fall work period for demolition of the buildings.
(3) Describe work completed to-date to secure needed property rights to perform this work.
Property acquisition due diligence and communications with the broker as well as the current lessee is the extent of work completed to date.
(4) If applicable, identify the management plan (i.e. flood control, stormwater control, watershed management or hazard mitigation plan) within which implementation of the project is an element or is recommended.
This project is identified as a priority in both the 2013 Rivers Flood Hazard Management Plan and the Salmon Habitat Protection and Restoration Strategy.
(5) Describe additional funding committed to the project, funding partners and their contribution.

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$239,000 in match to be secured by all partners including: Puyallup Tribe, Pierce County Public Works, Forterra, and South Puget Sound Salmon Enhancement Group. Through completion, using an adjacent project as a comparison, this project will result in $5 - $8 million in leveraged funds from local, state, tribal, and federal sources. If this funding request is approved, proposals will be developed for the 2021 Salmon Recovery Funding Board grant round to initiate the design phase of the project.

PROJECT SCOPE & TASKS

These identified project activities will be referenced when you complete and submit a progress report for the project.

Project Task	Outcome or Deliverables
Acquisition	73 acres of multi-benefit agriculture/riparian habitat is acquired
Demolition	10 buildings are demolished
Design (Phase 2)	Partners secure additional funding for full design of the floodplain reconnection project.
Implementation (Phase 3)	Partners secure additional funding for floodplain reconnection implementation
ENTER PROJECT TASK	ENTER OUTCOME/DELIVERABLE
ENTER PROJECT TASK	ENTER OUTCOME/DELIVERABLE

Please include the following with your application:

1. **Final Engineering studies and plans; and**
    - **a.** Engineering studies, plans, and project designs will be developed as part of future funding through the local Salmon Recovery Lead Entity using either opportunity funds or the full Salmon Recovery Funding Board grant round**.** As one of the highest priority stream reaches for restoration in the WRIA 10/12 Salmon Habitat Protection and Restoration Strategy and adjacent to previously funded projects for both acquisition and restoration, it is highly likely that this project would secure funding through the process. Other opportunities for design and implementation funding include the Puyallup Floodplains by Design project, led by Pierce County Surface Water Management and which all the listed project partners are affiliated with.

2. **Project cost estimate: $1,239,000 –** Current list price for the property is $795,000 pending appraisal; associated closing costs are projected at $35,000; demolition of buildings is projected at $350,000; reduced indirect fee to 5% minimum allowable by internal policy - $59,000. Project partners will secure match for completing demolition.