

Pierce County In-Lieu Fee Program Mitigation Spending Agreement

AN AGREEMENT REGARDING THE AUTHORIZATION TO SPEND MONEYS FROM THE PIERCE COUNTY IN-LIEU FEE PROGRAM ACCOUNT PURSUANT TO THE PIERCE COUNTY IN-LIEU FEE PROGRAM BASIC AGREEMENT AND PROVISIONS CONTAINED IN 33 CFR PARTS 325 AND 332, AS REVISED, EFFECTIVE JUNE 9, 2008 (FEDERAL MITIGATION RULE).

I. PURPOSE

Under this agreement, the District Engineer of the US Army Corps of Engineers, Seattle District (hereinafter the “district engineer”) and the Washington State Department of Ecology (hereinafter “Ecology”) authorize Pierce County to spend a portion of mitigation fees collected through Pierce County’s federally-certified In-Lieu Fee Mitigation Program (hereinafter “PCILF”). The federal rule governing operations of mitigation banks and in-lieu fee programs used to satisfy mitigation requirements associated with Department of the Army permits (33 CFR Part 332) requires that, “Disbursements from the program account may only be made upon receipt of written authorization from the district engineer, after the district engineer has consulted with the IRT.” [332.8(i)(2)]. This agreement pertains solely to activities conducted by the PCILF pursuant to the Final Program Instrument signed into effect on____, 2015.

This spending agreement shall supplement the spending authority provisions contained in the final program instrument (see Basic Agreement Article IV.B and Appendix F).

The PCILF Sponsor (Pierce County Surface Water Management, or PCSWM) has accepted mitigation fees in the amount of \$ _____ for the unavoidable impacts to aquatic resources as described below. PCSWM has identified a mitigation site at which these fees will be used to implement mitigation as identified in Article III below.

Upon acceptance of these fees PCSWM is agreeing to implement mitigation and assume all associated obligations and liabilities according to terms of the Final Program Instrument for the PCILF Program.

II. IMPACT PROJECTS AND MITIGATION FEES COLLECTED

Impact Site Name	Permit Number	Total Mitigation Fees Collected	Land Fees	Credit Fees	Mitigation Site Where Funds Will Be Used
Insert rows as necessary					

Service Area: _____

Detailed descriptions of each impact are provided on attached sheets [describe attachments].

III. ALLOCATION INTO PCILF PROGRAM ACCOUNTS

The following information is repeated in the fee ledger (Exhibit 8).

A. Total Mitigation Fees Collected for impacts above: \$ _____

Land Fee Account: \$ _____ (100% of total Land Fees)

Program Administration Account: \$ _____ (15% of total Credit Fees)

Contingency Account: \$ _____ (10% of total Credit Fees)

Long Term Management Account: \$ _____ (5% of total Credit Fees)

Individual Mitigation Projects Account: \$ _____ (70% of total Credit Fees)

B. Total Mitigation Fees Collected in the Service Area*: \$ _____

**from all projects*

Land Fee Account: \$ _____ (100% of total Land Fees)

Program Administration Account: \$ _____ (15% of total Credit Fees)

Contingency Account: \$ _____ (10% of total Credit Fees)

Long Term Management Account: \$ _____ (5% of total Credit Fees)

Individual Mitigation Projects Account: \$ _____ (70% of total Credit Fees)

C. Current Balance of Mitigation Fees in Service Area (Collected minus Used, plus Interest Earned): \$ _____ as of (date) _____.

Land Fee Account: \$ _____

Program Administration Account: \$ _____

Contingency Account: \$ _____

Long Term Management Account: \$ _____

Individual Mitigation Projects Account: \$ _____

III. MITIGATION PROJECT DETAILS

Name of mitigation site: _____

Service Area: _____

Parcel Number(s): _____

Anticipated Mitigation Project Costs:

Property Rights Acquisition: \$ _____

Project Implementation: \$ _____

[Insert other details as relevant, including description of IRT review process]

The IRT has reviewed the proposed site, and has approved the site and mitigation concept design.

IV. AUTHORIZATION FOR EXPENDITURE OF FUNDS FROM THE MITIGATION RESERVES PROGRAM ACCOUNT

Upon execution of this agreement, PCSWM is authorized to spend the following moneys from the accounts listed below for the mitigation project described in Article III above:

- Land Fee Account: (\$ _____)
- Program Administration Account: (\$ _____)
- Contingency Account: (\$ _____)
- Long Term Management Account: (\$ _____)
- Individual Mitigation Projects Account: (\$ _____)

V. ADDITIONAL PROVISIONS

- A. This Spending Agreement shall satisfy the federal rule requirement that, “Disbursements from the program account may only be made upon receipt of written authorization from the district engineer, after the district engineer has consulted with the IRT.” [332.8(i)(2)].
- B. Nothing in this agreement shall prevent PCSWM from spending up to 75% of funds allocated to Administrative Accounts as authorized in the Program Instrument Appendix F, Section 4.0.
- C. Expenditure of funds authorized by this agreement shall pertain only to those accounts under the same service areas where impacts occurred.
- D. Spending Authorization Provided: Only upon execution of this agreement is PCSWM authorized to spend moneys allocated to the Accounts within each service area as noted above (with the exception that up to 75% of funds within the Program Administration Account may be spent without further authorization).
- E. Limits: The authorization provided under this agreement shall not extend to expenditures from any other PCILF account for any other purpose.
- F. Reporting requirements unaffected: This agreement shall not affect reporting requirements outlined in the program instrument.
- G. Duration: This agreement shall remain in effect until three (3) years from the later of the two dates in the signature block below.
 - 1. For spending by PCSWM after the first 3 years, spending may be authorized by the Corps and/or Ecology’s issuance of a letter approving a subsequent agreed-to spending plan for the remainder of the Establishment phase until all credits are released and the site enters the Long Term Management.

- H. Additional Spending Authority Requests. Whether or not three years have elapsed, the Sponsor may request subsequent releases of funds. Such subsequent releases of funds will require an additional approval by the Corps and Ecology, using this template, and will supplement this agreement.
- I. Revocation: In the event of default as defined in the Basic Agreement Article V.R. and Appendix S, this spending agreement may be revoked.
- J. Effect of Agreement: This Agreement does not in any manner affect statutory authorities and responsibilities of the signatory Parties. This Agreement is not intended, nor may it be relied upon, to create any rights in third parties enforceable in litigation with the United States or the State of Washington. This Agreement does not authorize, nor shall it be construed to permit, the establishment of any lien, encumbrance, or other claim with respect to the PCILF Program property, with the sole exception of the right on the part of the Corps and Ecology to require the Sponsor to implement the provisions of this Agreement, including recording conservation easements or similarly restrictive covenants, required as a condition of the issuance of permits for discharges of dredged and fill material into waters of the United States associated with construction and operation and maintenance of a Mitigation Site.
- K. Attorneys' Fees: If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each party to the litigation shall bear its own attorneys' fees and costs of litigation.
- L. Availability of Funds: Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act, 32 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Agreement may be construed to require the obligation, appropriation, or expenditure of any money from the United States Treasury, in advance of an appropriation for that purpose.
- M. Headings and Captions: Any paragraph heading or caption contained in this Agreement shall be for convenience of reference only and shall not affect the construction or interpretation of any provision of this Agreement.
- N. Counterparts: This Agreement may be executed by the Parties in any combination, in one or more counterparts, all of which together shall constitute one and the same agreement.
- O. Binding: This Agreement, pursuant to the program instrument, shall be immediately, automatically, and irrevocably binding upon the Sponsor and its heirs, successors, assigns and legal representatives upon execution by the Sponsor, the Corps, and Ecology.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the date herein below last written.

UNITED STATES ARMY CORPS OF ENGINEERS:

[Name] Date
Mitigation Manager/Co-chair of the IRT

John G. Buck Date
Colonel, Corps of Engineers, Seattle District

U.S. Army Corps of Engineers, Seattle District
Regulatory Branch
Seattle District, Corps of Engineers
4735 E. Marginal Way South
P.O. Box 3755
Seattle, WA 98124-3755

WASHINGTON STATE DEPARTMENT OF ECOLOGY:

[Name] Date
Alternative Mitigation Lead/ Co-chair of the IRT
Shorelands and Environmental Assistance Program
P.O. Box 47600
300 Desmond Drive
Olympia, WA 98504-7600

SPONSOR:

[Name] Date
Pierce County In-Lieu Fee Program Administrator
Pierce County Public Works
Division of Surface Water Management
2702 South 42nd Street, Suite 201
Tacoma, WA 98409-7322