

**FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN
THE PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT AND
THE NISQUALLY LAND TRUST FOR DISTRICT GRANT FUNDED
PROJECTS**

THIS FIRST AMENDED AND RESTATED INTERLOCAL AGREEMENT ("Agreement") is made and entered into by and between the Nisqually Land Trust, a Washington nonprofit corporation, hereinafter referred to as the "Company", and the Pierce County Flood Control Zone District, a Washington quasi-municipal corporation, hereinafter referred to as the "District". The District and the Company are individually a "Party" and collectively the "Parties". This Agreement shall be effective upon execution by the Company and the District.

RECITALS

A. In Resolution No. 2022-3, the District adopted the 2023 District budget, which includes the Flood Risk Reduction and Watershed Management Economic Stimulus Grant Program that will be funded by the District in 2023. Through a competitive process, the Company was awarded up to \$63,500 for Ohop Valley Flood Risk Reduction ("Project") as further described in Resolution No. 2022-3.

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 providing grant funding for the Project.

C. This Agreement replaces the original interlocal agreement the District authorized in Resolution No. 2022-7, with deletions shown as stricken and additions underlined.

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 Company for Project expenses, as set forth in Resolution No. 2022-03 and

any subsequent budget resolutions or resolutions approving modifications to or funds for the Project.

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 the earlier of the automatic termination date identified in Section 7 of this Agreement, or until termination by one or both of the Parties pursuant to this Section.

2.2 Notwithstanding the termination date identified in Section 7, 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. Alternatively, this Agreement may be terminated without notice 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 Company shall obtain and be responsible for all applicable 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 Company and the District Administrator.

5. Payment and Use of Funds. The District shall pay Funds to the Company 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 Company 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 Company 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 through the budget year 2023 2024. Only applicable Project work completed in 2023 and 2024 shall be eligible for reimbursement. This Agreement shall terminate automatically on March 31, 2024 2025, ninety (90) days after the close of the current budget year, which ends December 31 of each year. The Company will not request, and the District will not grant, an extension to this termination date.

~~The Company may submit to the Board, in writing, no later than December 1, 2023 a request to be granted an extension.~~

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

8.1 The Company 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 Company shall prepare and file a final report after final distribution of Funds, using the progress report form, as required by the District Administrator. The Company will make a brief presentation to the Board at a regularly scheduled meeting in 2023.

8.2 The Company 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 Company 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 Company 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 Company 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 Company, 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 Company 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 Company'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. Governing Law; Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a dispute, such dispute shall be litigated only in the Superior Court of Pierce County, Washington.

18. Severability. The invalidity or unenforceability of any provision in this Agreement shall not affect the validity or enforceability of any other provisions that can be given effect without the offending provision.

19. Administration. This Agreement will be jointly administered by the Company and the District. This Agreement does not create any separate legal or administrative entity.

20. Financing; Budget. This Agreement does not contemplate joint financing of the activities within its scope, nor does it contemplate a joint budget.

21. Property Acquisition and Disposition. This Agreement does not contemplate the joint acquisition of property by the parties. At termination, each party will remain the sole owner of its own property.

22. Filing of Documents. The District Administrator shall receive and give all notices, approvals, reports, and documents under this Agreement.

23. Recording. In accordance with RCW 38.34.040, this Agreement shall be filed with the Pierce County Auditor or listed on the web sites of the Parties prior to its effective date.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces below:

NISQUALLY LAND TRUST

PIERCE COUNTY FLOOD CONTROL ZONE DISTRICT

TITLE

Jeanette Dorner, Executive Director

Date: 4/5/2024

Name:

Title: Chair

Date:

Approved as to Form:

Attorney

Attested to:

Attested to:

Audrey Persons
Clerk of Board of Supervisors