

**MASTER INTERLOCAL AGREEMENT
BETWEEN THURSTON COUNTY & THE NISQUALLY INDIAN TRIBE
FOR ADMINISTRATION OF RCSP FUNDS**

This Agreement is entered into in duplicate originals this 29 day of June, 2021 between the NISQUALLY INDIAN TRIBE, a federally recognized Indian Tribe, hereinafter "TRIBE", and THURSTON COUNTY, a municipal corporation, hereinafter "COUNTY," collectively referred to as "parties" and individually as "party," pursuant to RCW 39.34.080.

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service, activity, or undertaking that each public agency is authorized by law to perform; and

WHEREAS, it is to the mutual advantage of the COUNTY and the TRIBE to have the COUNTY administer the funding allocated by the Thurston Regional Planning Council ("TRPC") from the Federal Highway Administration to the TRIBE. The fund is called the Rural Community Support Program ("RCSP") and is for construction of transportation facilities within the jurisdiction of TRIBE that will benefit the citizens residing within the jurisdictions of both the TRIBE and the COUNTY;

NOW THEREFORE, by virtue of RCW 39.34.080 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

**I
GENERAL**

- 1.0 It is the purpose of the Agreement to permit the parties to expend Rural Community Support Program ("RCSP") funds held by the COUNTY set aside for the purposes of transportation improvements by the TRIBE.

**II
DURATION**

- 2.0 This Agreement is effective on the date written above and shall remain in effect for the remainder of the calendar year in which it is signed and throughout the following calendar year. Thereafter, this Agreement shall renew automatically from year to year effective January 1 to December 31 of each calendar year, unless either party notifies the other in writing to terminate or make substantial changes to this Agreement by April 1 of the preceding calendar year or is terminated pursuant to Article IX, Termination. Prior to commencement, this Agreement shall be filed or posted in accordance with RCW 39.34.040.

**III
ADMINISTRATION OF RCSP FUNDS**

- 3.0 In the event that the COUNTY receives RCSP funds which have been allocated to the TRIBE by TRPC, the COUNTY shall contribute those funds to the TRIBE for transportation improvement projects within its jurisdiction.
- 3.1 The COUNTY and the TRIBE shall execute a Memorandum of Understanding ("MOU") which shall identify the project and describe the terms of use of the funds. Exhibit A contains an example MOU.
- 3.2 The TRIBE shall provide all planning, design, construction, contract administration, project coordination, and all other work and resources necessary to construct transportation improvements within its jurisdiction, as confirmed by the Tribal Administrator. The COUNTY's contribution is limited to the RCSP funds held by the COUNTY, which have been allocated to

the TRIBE by TRPC, to the TRIBE for transportation improvement projects within the TRIBE's jurisdiction. The TRIBE shall have the discretion to choose the projects that are appropriate for its jurisdiction. The TRIBE shall provide all inspection, operation, maintenance, and upgrades necessary to ensure the safety, function, accessibility and intended purpose of its transportation improvement projects. The TRIBE shall be solely responsible for ensuring the transportation improvements made as part of this agreement meet all existing and future applicable regulations.

IV PAYMENT OF RCSP FUNDS

- 4.0 The COUNTY shall contribute RCSP funds held by COUNTY, which have been allocated to the TRIBE by TRPC, to the TRIBE for transportation improvement projects within the TRIBE's jurisdiction.
- 4.1 Such payment by COUNTY to TRIBE shall not constitute agreement or verification as to the appropriateness of any transportation improvement expenditure.
- 4.2 In no event will the payment to the TRIBE by the COUNTY exceed the amount of RCSP funds held by the COUNTY allocated to the TRIBE by TRPC.
- 4.3 If this Agreement is terminated pursuant to Article IX, Termination, the COUNTY may use any remaining RCSP funds allocated to the TRIBE by TRPC for COUNTY road projects.

V RELATIONSHIP OF THE PARTIES

- 5.0 The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party. This Agreement is for the benefit of the parties, and no third party beneficiary relationship is intended. No separate legal entity is created by this Agreement. No joint organization is created. No common budget is to be established. No personal or real property is to be jointly acquired or held.

VI HOLD HARMLESS AND INDEMNIFICATION

- 6.0 The COUNTY shall hold harmless, indemnify and defend the TRIBE, its officers, officials, employees and agents, solely for third party claims relating to bodily injury, sickness, or death, or real or personal property damage or destruction and loss of use thereof, including costs and attorneys' fees in defense thereof, caused by or arising out of the COUNTY's negligence in the performance of its obligations under this Agreement.
- 6.1 The TRIBE shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, solely for third party claims relating to bodily injury, sickness, or death, or real or personal property damage or destruction and loss of use thereof, including costs and attorneys' fees in defense thereof, caused or arising out of the TRIBE's negligence in the performance of its obligations under this Agreement.
- 6.2 The COUNTY's obligations and the TRIBE's obligations hereunder shall not extend to bodily injury, sickness or death caused by or arising out of the sole negligence of the other party, its officers, officials, employees or agents.

- 6.3 In the event of the concurrent negligence of the parties, the COUNTY's and the TRIBE's obligations hereunder shall apply only to the percentage of fault attributable to each party, its officers, officials, employees or agents.
- 6.4 It is specifically and expressly understood that the hold harmless and indemnification provided in this permit constitutes the Tribe's waiver of immunity under the State Industrial Insurance Law, Title 51 RCW, solely for the purpose of this hold harmless and indemnification and that this waiver has been mutually negotiated by the parties.
- 6.5 The provisions of this Hold Harmless and Indemnification section shall survive the expiration or termination of this Agreement.

VII LIMITED WAIVER OF SOVEREIGN IMMUNITY

- 7.0 Nothing in this Agreement is or will be deemed to be a waiver of the TRIBE's sovereign immunity from suit, except that the TRIBE hereby provides a limited waiver of its sovereign immunity and consents to be sued by the COUNTY should the COUNTY commence an action to enforce the obligations of the TRIBE under this Agreement. This limited waiver is for the exclusive use and benefit of the COUNTY and will not apply to or extend to any third party or third party beneficiary. The TRIBE's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity, which is hereby incorporated by reference and included in this Agreement. The TRIBE shall provide a copy of said resolution to the COUNTY prior to the COUNTY's execution of this Agreement. Notwithstanding the foregoing, the COUNTY will not be entitled to levy upon any federal monies or grant monies received by the TRIBE in its governmental capacity.
- 7.1 All actions or suits arising out of this Agreement will be brought in Thurston County Superior Court. The TRIBE expressly agrees and consents to be sued in such court.
- 7.2 This Agreement has been and will be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement will be governed by the laws of the State of Washington and applicable federal law, both as to its interpretation and performance.

VIII INSURANCE

- 8.0 All parties shall maintain Commercial General Liability or equivalent for bodily injury, personal injury and property damage, subject to limits of not less than \$1,000,000 per loss. The general aggregate limit shall apply separately to this Agreement and be no less than \$2,000,000. From time to time as this agreement is automatically extended, the insurance limits shall be reviewed and adjusted as mutually agreed by the COUNTY and the TRIBE. The Director of Public Works is authorized to approve these changes. Participation in a governmental self-insured risk pool shall fulfill the above stated coverage requirements. An Evidence of Coverage acknowledgement letter from the jurisdictions' risk pools will be provided to each party upon request.
- 8.1 All parties shall maintain Automobile Liability insurance subject to limits of not less than \$1,000,000 per accident. Participation in a governmental self-insured risk pool shall fulfill the above stated coverage requirements. An Evidence of Coverage acknowledgement letter from the jurisdictions' risk pools will be provided to each party upon request.
- 8.2 All parties shall maintain workers' compensation insurance as required by Title 51 RCW and shall provide evidence of Coverage to each party's Risk Manager or Risk Management Division upon request.

- 8.3 All parties shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies and endorsements expiring before completion of services shall be promptly replaced with written notice mailed to the other party upon request.

IX TERMINATION

- 9.0 Either party may terminate this Agreement upon ninety (90) calendar days prior written notice to the other parties. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred, including contractual obligations, in accordance with the terms of this Agreement prior to the effective date of termination. Upon termination the COUNTY may use any remaining RCSP funds allocated to the TRIBE by TRPC for COUNTY road projects

X LEGAL RELATIONS

- 10.0 No liability shall attach to the parties by reason of entering into this Agreement except as expressly provided herein.

XI FORCE MAJEURE

- 11.0 Neither party will be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure will include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, epidemics, civil or public disturbances, or other similar occurrences. If any party is unable to perform under this Agreement due to a force majeure event, upon giving notice and reasonably full particulars to the other party, such obligation or condition will be suspended only for the time and to the extent commercially practicable to restore normal operations.

XII ADMINISTRATION

- 12.0 The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. Wherever written notice is required under this Agreement, such notice shall be provided to the representatives designated below. In the event such representatives are changed, the party making the change shall notify the other party.

The COUNTY's representative shall be: Public Works Director, 9605 Tilley Rd SW, Tumwater WA 98512, 360-867-2300.

The TRIBE's representative shall be: Tribal Administrator, 4820 She-Nah-Num Dr SE, Olympia, WA, 98513, 360-456-5221

XIII CHANGES, MODIFICATIONS, AND AMENDMENTS

13.0 This Agreement may be changed, modified, amended or waived only by written agreement executed by each party's authorized governing authority as provided in chapter 39.34 RCW.

**XIV
GOVERNING LAW AND VENUE**

14.0 This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington both as to its interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in a court of competent jurisdiction in Thurston County, Washington.

**XV
WAIVER**

15.0 A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party.

**XVI
SEVERABILITY**

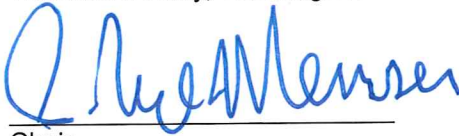
16.0 If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

**XVII
ENTIRE AGREEMENT**

17.0 This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

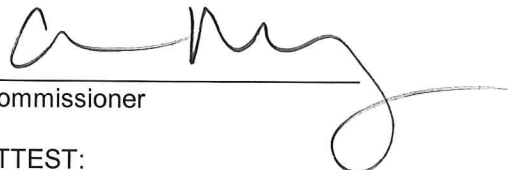
BOARD OF COUNTY COMMISSIONERS
Thurston County, Washington


Chair



Vice-Chair

NISQUALLY INDIAN TRIBE


Tribal Chairman

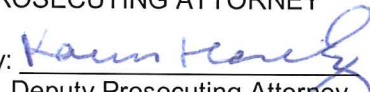


Commissioner
ATTEST:



Clerk of the Board
Approved as to form:

JON TUNHEIM
PROSECUTING ATTORNEY

By: 

Deputy Prosecuting Attorney

Approved as to form:

By: 

Attorney for the Nisqually Tribe

EXHIBIT A
(EXAMPLE MOU)

**Memorandum of Understanding Between
Thurston County Department of Public Works and
Nisqually Indian Tribe for
Project Title**

Prepared: xx, 20xx

I. PURPOSE

This Memorandum of Understanding (MOU) is entered into by and between the Thurston County Department of Public Works (hereafter "COUNTY") and the Nisqually Indian Tribe (hereafter "TRIBE") to permit the parties to expend Rural Community Support Program ("RCSP") funds held by the COUNTY set aside for the purposes of transportation improvements in the TRIBE.

This MOU is required under the terms of Interlocal Agreement ("ILA") # XXX-XXXX-XXX between the COUNTY and the TRIBE.

II. SERVICES

The TRIBE shall provide all planning, design, construction, contract administration, project coordination, and all other work and resources necessary to construct BLANK, per the approved project application as submitted to Thurston Regional Planning Council ("TRPC"). The project application can be found in Exhibit A.

III. PAYMENT

The parties to this Agreement agree the COUNTY shall contribute RCSP funds currently held by the COUNTY to the TRIBE for eligible transportation improvement projects within their jurisdiction. Such payment shall not constitute agreement or verification as to the appropriateness of any transportation improvement expenditure.

The amount payable to the TRIBE is \$XX,XXX.

The COUNTY will pay regular invoices during the project provided they are no more frequent than monthly and no less than \$5,000. The COUNTY will hold 10% until the project is completed and a Notification of Completion is submitted as stated below.

Upon completion of the transportation improvements by the TRIBE, and the COUNTY's receipt of a Notification of Completion and written attestation of compliance with all applicable

regulations from the Tribal Chairman, the COUNTY shall make payment to the TRIBE for the cost of the transportation improvement project previously withheld.

IV. RECORDS RETENTION AND AUDIT

During the progress of the work and for a period not less than six (6) years or other required state record retention period from the final date of payment, the records and accounts pertaining to the work and accounting therefore are to be kept available for inspection and audit by either party and/or the Federal Government and copies of all records, accounts, documents, or other data pertaining to the work will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 6-year retention period. Each party will promptly notify the other of any such litigation hold on records.

V. TERM

This MOU shall become effective upon execution. This MOU will be terminated after final payment to the TRIBE for the cost of the transportation improvement project or pursuant to the termination language in ILA # XXX-XXXX-XXX.

VI. SIGNATURES

The parties hereto have agreed to and signed this MOU as of the dates shown below.

Director, Thurston County Public Works

Date

Nisqually Tribal Chairman

Date