

RESOLUTION NO. 2024-44

A RESOLUTION AUTHORIZING EXECUTION OF STATUTORY PARTNERSHIP AGREEMENT WITH SUSTAINABLE NORTHWEST

WHEREAS, the City of Rockaway Beach desires to ensure long-term water security through ownership and management of the Jetty Creek watershed, and through increasing water storage capacity; and

WHEREAS, the Environmental Protection Agency's (EPA) Community Change Grant Program has been identified as a potential source of funding; and

WHEREAS, the City of Rockaway Beach believes that a partnership with an experienced and respected organization would act to leverage the strengths of both parties in pursuit of city's desire for long-term water security; and

WHEREAS, this Statutory Partnership Agreement defines the terms and conditions of each party for the purpose of applying for and completing the EPA's Community Change Grant.

NOW, THEREFORE, BE IT RESOLVED THAT

Section 1. The City of Rockaway Beach City Council hereby approves the Statutory Partnership Agreement with Sustainable Northwest, attached as Exhibit A.

Section 2. The City of Rockaway Beach supports and authorizes the submission of a Community Change Grant application to the Environmental Protection Agency as described in Exhibits A and B.

Section 3. This Resolution shall be effective immediately upon adoption.

APPROVED AND ADOPTED BY THE CITY COUNCIL THE 13TH DAY OF NOVEMBER 2024.

APPROVED



Charles McNeilly, Mayor

ATTEST



Melissa Thompson, City Recorder

STATUTORY PARTNERSHIP AGREEMENT

This Partnership Agreement ("Partnership Agreement") is between Sustainable Northwest ("SNW") and the City of Rockaway Beach ("City").

Recitals.

- A. The parties desire to apply in partnership for an Environmental Protection Agency ("EPA") Community Change Grant ("CCG").
- B. A condition of CCG application is a partnership agreement between the applicants.
- C. Accordingly, the parties desire to enter into a partnership agreement.
- D. If awarded a CCG, the parties anticipate entering into a subsequent agreement identifying the duties and obligations of each party, allocating liability, and controlling the distribution of CCG funding.

The parties agree to the following:

Terms.

I. The Partnership

- 1) This Partnership Agreement is effective November 14, 2024, or on the date of the last signature appearing below, whichever is later ("Effective Date").
- 2) On the Effective Date, the parties ("Partners") form a partnership identified as the "Jetty Creek EPA Grant Partnership" ("Partnership").
- 3) This Partnership Agreement and the Partnership is formed exclusively for purposes of complying with the EPA CCG requirements. This Partnership Agreement does not create a partnership for purposes of ORS Chapters 67 or 70.
- 4) This Partnership Agreement and the Partnership are formed under and governed under the laws of the state of Oregon without regard to principles of conflict of laws. This paragraph does not constitute a waiver by the City of Rockaway Beach of any form of defense or immunity, whether governmental immunity or otherwise, from any claim or from the jurisdiction of any court.
- 5) Each Partner is responsible for the work of their own employees or volunteers and for completing roles and responsibilities as delegated in a subsequent written agreement.
- 6) The Partners will share programmatic costs consistent with the EPA-approved CCG budget.
- 7) The City grants SNW agency authority to act on behalf of the City for the limited purpose of completing and submitting CCG application materials.

II. Roles of the Partners

- 1) SNW.
 - a) SNW will be the Lead Applicant of the CCG.

- b) If the CCG is awarded, SNW will be responsible for the overall management, performance, oversight, and reporting responsibilities under the CCG, and for making subawards to collaborating entities.
 - i) SNW will issue a subaward to the City in the amount consistent with the final EPA approved grant budget ("City Subaward").
 - ii) SNW will issue a City Subaward that complies with the subaward requirements in the grant regulations at 2 CFR 200.331 and in EPA's Subaward Policy and related guidance.
 - iii) SNW will receive and distribute CCG funds from EPA.
 - iv) SNW will be responsible for advising the City regarding compliance with CCG expenditure requirements and performing compliance review of City project planning and contracts.
 - v) SNW will monitor and review compliance and legal issues related to the CCG, however, SNW will not act as an "Owners Representative" or perform any engineering or construction services.
- c) If the CCG is awarded, SNW will be responsible for the following project-specific activities:
 - i) Support the City in negotiating of the acquisition of 800-acres of identified forestland containing the Lower Jetty Creek Watershed ("Property").
 - ii) Facilitate project planning and communication with the current landowner of the Property, Nuveen Natural Capital and facilitate communications and discussion with City residents and other entities, as determined by the City.
 - iii) Procure legal services for Property acquisition.
 - iv) Perform due diligence for the Property acquisition process related to federal and state standards as required by CCG funding.
 - v) Support ongoing forest management planning throughout the duration of the CCG.
- d) SNW will obtain approval from a City-authorized representative before making management or contracting decisions supported by CCG funding.
- e) SNW will monitor and review compliance and legal issues related to SNW's activities and obligations under the CCG and will be responsible for CCG compliance of all SNW direct expenditures and SNW planning and management decisions.
- f) SNW will be responsible for all SNW costs unapproved for reimbursement under the CCG by EPA.

2) City

- a) If the CCG is awarded, the City will be responsible for the following project-specific activities:
 - i) The acquisition of the Property and assumption of all liability associated with the Property post-acquisition.
 - ii) The development of a forest stewardship plan, designed to support water quality and availability within the lower Jetty Creek Watershed.

- iii) The permitting, engineering, design and design approval, and contracting, and assumption of all liability associated with construction of the 3-million-gallon raw water reservoir adjacent to the City's current water intake facility at the base of Jetty Creek ("Reservoir").
 - iv) The assumption of liability related to Reservoir construction and operation.
 - v) The management of Reservoir construction and operation.
 - vi) Following Property acquisition, the implementation of forest management practices to ensure the acquired forestland provides an increased quantity of high-quality water to the City's water intake facility.
 - vii) The payment of all City costs incurred under the City Subaward unapproved for reimbursement under the CCG by EPA.
- b) The City will monitor and review compliance and legal issues related to the City's activities and obligations under the CCG and will be responsible for CCF compliance of all City direct expenditures and City planning and management decisions.

3) Joint Obligations

- a) The City will share decision making authority with SNW and other parties as specified in the Collaborative Governance Structure that is submitted to EPA as part of the CCG application.
- b) All payments to identified CCG contractors will be subject to approval by SNW and the City.

III. Dispute Resolution

- 1) The Partners will work cooperatively to resolve any disputes that may arise under this Partnership Agreement. If the Partners cannot resolve the dispute within twenty business days, then the party initiating the dispute resolution may initiate binding arbitration administered by the American Arbitration Association under the expedited procedures available under its Commercial Arbitration Rules.
- 2) EPA is not a party to this Partnership Agreement; therefore, any disputes between the Partners, or among the Partners and EPA, will be resolved under process permitted by CCG terms.

IV. Replacement of the City of Rockaway Beach as Statutory Partner

- 1) If the City is unable to perform its obligations, SNW will work with the City to identify and transition responsibilities to a qualified partner understanding the Jetty Creek Watershed and the City's water demands.
- 2) Any replacement entity requires prior approval by an authorized EPA official pursuant to 2 CFR 200.308(c)6.

V. Grant Application



- 1) SNW will not submit a CCG application without approval by the City's authorized representative.

VI. Miscellaneous Provisions

- 1) SNW is not responsible for and disclaims all liability resulting from any changes in federal administrative criteria or for agency staff discretion impacting the CCG award process or agency approval and dispersal of funds under a CCG award.
- 2) Failure of either Partner to enforce any provision of this Partnership Agreement does not constitute a waiver or the relinquishment of the right to demand future performance or of the right to enforce that or any other provision of this Partnership Agreement.
- 3) SNW and the City will maintain appropriate records, documents, and reports relative to the CCG project and to share them with each other upon request.
- 4) Each Partner will maintain an individual distribution account. Partners will keep accurate and complete books of account for all accounts related to the Partnership. Either Partner may audit contribution and distribution accounts at their own expense. Each Partner will maintain an individual contribution account. The Partners are responsible for their own tax returns.
- 5) If any provision of this Partnership Agreement is declared illegal or unenforceable, the validity of the remaining terms and provisions are to remain in effect.
- 6) This Partnership Agreement and any subsequent amendments may be signed in several counterparts, including electronic copies, all of which when taken together will constitute one agreement binding the Partners.

VII. End of the Partnership

- 1) Unless superseded by a new written agreement of the Partners, the Partnership will terminate under any of the following conditions:
 - a) When the City is replaced under the procedure listed in Section IV of this Partnership Agreement.
 - b) When the EPA determines that performance under the CCG is completed.
 - c) When the Partnership is informed that CCG application is rejected unless, the Partners agree to resubmit an amended application.

City of Rockaway Beach By: <u>Charles McNeilly</u> Its: <u>Mayor</u> Signature: 	Sustainable Northwest By: <u>Dylan Kruse</u> Its: <u>President</u> Signature: 
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