

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF YAKIMA AND YAKIMA COUNTY**

RAMBLERS PARK FLOOD CONTROL – NELSON DAM REPLACEMENT PROJECT

THIS AGREEMENT is made and entered between Yakima County and the City of Yakima, pursuant to RCW Chapter 38.34-The Interlocal Cooperation Act, and is for the following purpose and on the following terms:

The parties agree as follows:

1. **PURPOSE.** The purpose of this agreement is to define the responsibilities and duties of the City and County for the management of the design and construction of the Nelson Dam replacement projects defined in Floodplain by Design Ecology Grant G1600008 (tasks 4a) and SEAFBD-2017-YaCoOPS-00029 (tasks 7 through 9), and in the 2017 NHC Nelson Bypass Channel Design Project, Physical Modelling and the 2017 HDR Preliminary Design Report” (Preliminary Design Report), developed for the dam and by-pass structures to allow fish screens, and associated piping comprised as follows:
 - a. Demolition of existing site floodplain and channel structures such as old abandoned Powerhouse Road approach and bridge abutment.
 - b. Demolition of a portion of the existing Nelson Dam necessary for completion of the new dam and boulder by-pass.
 - c. Construction of the new 2 acre Nelson Dam boulder by-pass structure and upstream weir.
 - d. Excavation of 2,500 feet of floodplain dam approach channel to allow activation of the floodplain as part of the dam.
 - e. A road protection structure just upstream of the new Powerhouse Bridge. The design of these will follow the 2017 NHC Nelson Bypass Channel Design Project, Physical Modelling and the 2017 HDR Preliminary Design Report” (Preliminary Design Report), developed for the dam and by-pass structures to allow fish screens, and associated piping. Design, demolition and construction will be in concert with the above studies and the 2018 Yakima County “Environmental Memo” (Draft Memo attached)] developed during the design phase under Floodplain by Design Ecology Grant G1600008, to meet needs of the City and basin partners related to structure performance. Funding for this project is provided by a State of Washington Floodplain by Design Grants G1600008 and SEAFBD-2017-YaCoOPS-00029 (tasks 7 through 9), City of Yakima funds and other sources that are secured. The project includes necessary fish screening structure and associated piping, funded separately.
2. **YAKIMA COUNTY RESPONSIBILITIES**
 - a. Provide the overall management, coordination, and accounting for the Floodplains by Design grants, designated as G1600008 and SEAFBD-2017-YaCoOPS-00029.
 - b. Provide the balance of task funds from the Floodplains by Design grants G1600008, task 4a and SEAFBD-2017-YaCoOPS-00029, tasks 7 through 9, of \$4,734,723, as of December 1, 2018, for work defined in Paragraph 1

above to be allocated to City and County staff and contractors for the design and construction of the Ramblers Park Flood Control and Nelson Dam replacement project. Reimburse the CITY through monthly invoicing and reporting that will draw from the above tasks Floodplains by Design grants G1600008 and SEAFBD-2017-YaCoOPS-00029 until such funds are exhausted or the grant defined work is complete.

- c. The County will process and submit grant draws from Floodplains by Design grants G1600008 and SEAFBD-2017-YaCoOPS-00029 upon receipt of invoice from the City of Yakima.
- d. County receives payment from Floodplains by Design grants G1600008 and SEAFBD-2017-YaCoOPS-00029 upon submittal of City invoice and a progress report.
- e. All Reimbursements to the City will be processed in the next available warrant issue from the date of receipt of Ecology's reimbursement to the County of City invoices.
- f. Provide design, engineering and project management review for the construction of the dam by-pass structure design and elements in paragraph 1 a. through 1 e. above to meet the Preliminary Design Report and Environmental Memo goals and requirements for the dam approach channels, flood bypass and roughened channel Nelson Dam replacement.
- g. Act as lead agency for SEPA:
- h. Provide necessary information required to obtain project permits and obtain all necessary permits for items in paragraph 1 a. through 1 e. above.
- i. Provide necessary permission for the revised aerial coverage of the enlarged Nelson bypass and dam structure on county land.
- j. The County will relinquish all claims of ownership of and responsibility for the Nelson Dam, diversion and intake once constructed, and it is complete and functioning.
- k. The COUNTY will retain ownership of the Nelson Dam by-pass structure and approach channels from the current fish ladder to Powerhouse Road and Powerhouse Road protection structures.
- l. Yakima County will be responsible for the closeout of the Floodplains by Design grant G1600008 and SEAFBD-2017-YaCoOPS-00029.

3. CITY OF YAKIMA RESPONSIBILITIES

- a. Provide to the COUNTY, through contracting of their design CONSULTANT, the ability to perform task No. 2 above in conformance with the grant and stakeholder directions as provided in the 2017 NHC Nelson Bypass Channel Design Project, Physical Modelling and the 2017 HDR Preliminary Design Report. Such services will be reimbursed by the county monthly invoicing and reporting and will draw from Floodplains by Design grants G1600008 and SEAFBD-2017-YaCoOPS-00029.
- b. Provide final drawings, cost estimate, permitting and bid ready documents
- c. Contract and construct the dam bypass and related elements, so that the Ecology grant G1600008 and SEAFBD-2017-YaCoOPS-00029 deliverables are met.
- d. Submit to the County for reimbursement by monthly invoicing and reporting that will draw from Floodplains by Design grants G1600008 and SEAFBD-2017-YaCoOPS-00029 until such funds are exhausted or the grant defined work is complete.

- e. Take ownership of the bypass dam from the current fish ladder south to the intake diversion, the diversions, screen structures and associated piping.
 - f. Relinquish all claims of ownership of the approach channels to the new Nelson Dam by-pass structure and any Powerhouse Road protection.
4. **PERIOD OF PERFORMANCE.** The period of performance of this Agreement will commence with Floodplains by Design Ecology award of the grant and funding becomes available to the County through the end of the grant including any extensions granted. Financial performance will not continue past grant expiration. County will provide assistance should grant be cancelled.
5. **GRANT MATCH REQUIREMENT.** The Ecology grant does not require match funding.
6. **BILLING PROCEDURE.** The CITY shall submit monthly bills on the project elements in 1 above to the County to reimburse work until Floodplains by Design grants G1600008 and SEAFBD-2017-YaCoOPS-00029 funds are exhausted or the grant defined work is complete.
7. **AMENDMENTS.** This Agreement contains all the terms and conditions agreed upon by the parties. No change or addition to this Agreement is valid or binding upon either party unless such change or addition is in writing and agreed to by both parties.
8. **INDEPENDENT CONTRACTOR.** The parties agree that, for the purposes of this agreement, the City is acting as an independent contractor and neither the City nor any of its employees is entitled to any benefits that the County provides its employees. The City hereby waives its immunity under workmen's compensation laws, Title 51 RCW, for claims or lawsuits where the City or its employees or subcontractors brings a legal action against County and/or its elected officials, employees, agents or volunteers regarding injuries or damages that resulted from the City or its employees and subcontractor's employees negligence pertaining to this Agreement.
9. **TERMINATION.** Neither party shall terminate this agreement unless agreed to in writing by the other party; and only following negotiations and agreement for the completion or removal of any portion of the construction or the project that has already commenced. The City and County acknowledge that each will be benefited in the completion of the entire project and early termination will result in consequential damages to the non-terminating party and the respective communities that are to be benefited by the project. Such damages or claims will be the responsibility of the terminating party.
10. **DISPUTE RESOLUTION.** In the event of a dispute between the Parties regarding their respective rights and obligations pursuant to this Agreement, the disputing Parties shall first attempt to resolve the dispute by negotiation. If a dispute is not resolved by negotiation, the issues in dispute may be resolved through mediation or arbitration, the cost to be shared equally.

11. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Washington. Venue for any action or proceeding shall be in the Superior Court of Yakima County.
12. **ASSIGNMENT.** The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonable withheld.
13. **INSURANCE.** Each Party shall obtain and maintain in full force and effect for the term of this Agreement, at its own expense, comprehensive general liability and automobile insurance policies for bodily injury, to include death and property damage including coverage for owned, hired or non-owned vehicles, as applicable, for the protection of the Party, its elected and appointed officials, officers, agents, employees and volunteers. The policies shall be primary policies, issued by a company authorized to do business in the State of Washington, or in City or County Risk Pool and providing single limit general liability coverage of \$2,000,000 Each Occurrence, \$5,000,000 General aggregate and separate automobile coverage of \$2,000,000 Each Occurrence or the limit of liability contained in State law, whichever is greater. If either party is unable to obtain insurance as required by this paragraph, the Parties shall cooperate on amending this Section to require types and levels of insurance that are available. The certificates shall provide that the other Parties will receive thirty (30) days written notice of cancellation or material modification of the insurance contract at the address listed below. Each Party shall provide certificates of insurance to the other Parties prior to the performance of any obligation under this agreement. If requested, complete copies of insurance policies shall be provided to other Parties. Each party shall be financially responsible for their own deductibles, self-insurance retentions, self-insurance, or uninsured risks.
14. **INDEMNIFICATION/HOLD HARMLESS.** Each Party shall defend, indemnify and hold the other party, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the other party in performance of this Agreement, except for injuries and damages caused by the sole negligence of the other party. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the other party, its officers, officials, employees, and volunteers, the County liability, including the duty and cost to defend, hereunder shall be only to the extent of the County negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the County's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.
15. **ATTORNEY'S FEES.** If any legal action or proceeding is commenced relating to this Agreement, each party will be responsible for its own attorneys' fees.

16. **INTEGRATION.** This Agreement contains all of the terms and conditions agreed on by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement, are deemed to exist or to bind either of the parties.

17. **SEVERABILITY.** If a court of competent jurisdiction holds any part, term or provision of this Agreement illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held invalid.

If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may be in conflict shall be deemed inoperative and null and void insofar as it is in statutory conflict, and shall be deemed modified to conform to the law.

18. **WAIVER.** The waiver by either party of any term or condition of this Agreement shall not operate in any way as a waiver of any other condition, obligation or term or prevent either party from enforcing such provision.

19. **SURVIVAL.** The provisions of this Agreement shall survive its termination and completion of Services where appropriate.

20. **NONDISCRIMINATION.** The County and the City acknowledge that they will not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, sexual orientation, age, marital status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) or any other applicable state, federal or local law, rule or regulation.

21. **ASSIGNMENT.** The duties and obligations of the County and City under this agreement are not subject to assignment without obtaining prior written approval.

22. **CONTRACT ADMINISTRATION.** Unless otherwise stated herein, all notices and demands are required in written form and sent to the parties at their addresses as follows:

TO

CITY OF YAKIMA:

Scott Schafer, Public Works Director
City of Yakima
2301 Fruitvale Blvd.
Yakima, WA 98902

COPY TO: CITY OF YAKIMA
Cliff Moore, City Manager
129 North Second Street
Yakima, WA 98901

TO YAKIMA COUNTY:

Matt Pietrusiewicz
County Engineer
128 North Second Street, 4th Floor
Yakima, WA 98901
(509) 574-2300

CITY OF YAKIMA

Signature

Printed Name: Cliff Moore

Title: City Manager

Date: _____

Attest _____

Sonya Claar Tee, City Clerk

City Contract No. 2018-_____

Resolution No. R-2018-_____

DONE this ____ day of _____, 2018

BOARD OF YAKIMA COUNTY COMMISSIONERS

Ron Anderson, Chairman

Michael D. Leita, Commissioner

Attest: Rachel Michael
Clerk of the Board

J. Rand Elliott, Commissioner
*Constituting the Board of County Commissioners
for Yakima County, Washington*

Approved as to form:

Deputy Prosecuting Attorney

DONE this ____ day of _____, 2018