

**Interlocal Agreement for the
Naches-Cowiche Flood Risk Reduction and Floodplain Restoration Project**

This Agreement is made and entered into between the Washington State Department of Transportation, hereinafter “WSDOT,” the City of Yakima, hereinafter the “City,” and Yakima County, hereinafter the “County.” The City, County, and WSDOT are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

Recitals

1. The confluence of the Naches River and Cowiche Creek contains significant public infrastructure necessary for the operations of the Parties and other local governments, private entities, and residents. This includes federal and state highways; local roads, bridges, and recreational pathways; irrigation diversions, pipelines and canal systems; communications networks and powerlines; stormwater facilities; municipal water and wastewater utilities; and flood levees and flood control structures.
2. This infrastructure is located within or adjacent to the dynamic natural system of the Naches River-Cowiche Creek confluence which includes floodplains, riparian areas, fish and wildlife habitats, and wetlands. These areas are valuable and sensitive resources that provide important public benefits that also need protection, conservation, and enhancement.
3. The Parties recognize that the current configuration and combination of infrastructure increases the risk of flooding to City and County residents, and that reducing short-term and long-term flood risk to said infrastructure and residents requires a coordinated, multi-agency effort based on an improved understanding of natural floodplain processes and a continued emphasis on the need for restoration of floodplain functions and improved habitats for native threatened and endangered species.
4. Recent updates to the Flood Insurance Rate Map (FIRM) for Cowiche Creek show an expanded Special Flood Hazard Area (SFHA) that includes flood flow paths into the City of Yakima.
5. The County formed a county wide Flood Control Zone District (FCZD) as a special purpose district in 1998 to address flood management needs using a comprehensive and integrated approach. The FCZD can cooperate with other agencies and private entities to mitigate and/or address flooding problems through activities such as property acquisition, the identification of flood hazards, comprehensive planning, and the implementation of capital projects.
6. Previous cooperation agreements between the Parties have successfully implemented collaborative flood risk reduction efforts, conservation measures, land transfers, planning efforts, and construction projects on this reach of the lower River (e.g. the Lower Naches River Coordination Partnership Plan, and agreement GCA6132 between the County and WSDOT).
7. The Parties are committed to integrated floodplain management of the entire Naches-Cowiche confluence and that commitment has resulted in cooperation agreement GCB 2981 between

WSDOT and the City to address roles and responsibilities for potential future flood fighting efforts on Cowiche Creek at US 12 and the 40th Avenue/Fruitvale Boulevard interchange.

8. The City and County have entered into an ILA (BOCC346-2018) regarding the implementation of the Nelson Dam replacement project located at the upstream end of the Naches-Cowiche confluence which includes the consolidation of four separate irrigation diversions (Naches-Cowiche, Old Union, Fruitvale, and the City's General Diversion) and enables certain flood risk reduction and habitat restoration work across the confluence. The Nelson Dam project will improve sediment transport continuity on this reach of Naches River and includes the design and construction of a new conveyance pipeline that will cross Cowiche Creek just upstream of the US 12 bridge.
9. Building on the findings of the 2018 Cowiche Addendum to the Upper Yakima Comprehensive Flood Hazard Management Plan (CFHMP) prepared by the FCZD, the Parties developed a scope of work for a phased project, the Naches-Cowiche Flood Risk Reduction and Floodplain Restoration Project (hereinafter "Project"), to complete the coordinated permitting and design of a series of interrelated flood hazard reduction and floodplain and habitat restoration actions. Flood hazard reduction actions will provide passage of flood flows through the Naches-Cowiche confluence up to the 1% annual chance event (also referred to as the 100-year event) a key basis for the National Flood Insurance Program (NFIP) as administered by the Federal Emergency Management Agency (FEMA). Project actions will include significant modifications to, and complete replacement/removal of, portions of the Parties infrastructure (bridges, pipelines, canals, levees, etc.) within the Naches-Cowiche confluence.
10. The County secured grant funding for the acquisition, preliminary design, and permitting phases of the Project from the Washington State Department of Ecology through the habitat enhancement program of the Yakima Basin Integrated Plan (YBIP) (WRYBIP-2019-YaCoPS-00006). The County also secured initial construction-phase funding through a competitive grant awarded through the Floodplains by Design (FbD) program (SEAFBD-2019-YaCoPS-00050).

Now, Therefore, pursuant to the legal authority provided by the Interlocal Cooperation Act, codified at Title 39, Chapter 34 of the Revised Code of Washington State (RCW 39.34), and for the purpose of defining the responsibilities and duties of the Parties for the implementation of the Project, the above recitals are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and Exhibit A (map), Exhibit B (YBIP grant), and Exhibit C (FbD grant), attached hereto and made a part hereof,

It is mutually agreed as follows:

1. Purpose

The purpose of this Agreement is to coordinate the design and implementation of a series of interrelated flood risk reduction and floodplain restoration actions across the confluence of the Naches River and Cowiche Creek within the Project area as shown in Exhibit A. These actions will include longer-span bridges, levee setbacks, channel and floodplain restoration work, potable water supply pipeline modification, and the removal of irrigation diversion structures, pipelines and canals. This Agreement defines the responsibilities and duties of the Parties within the scope of the Project as defined in the two respective grant agreements (Exhibit B and Exhibit C) including the completion of grant administrative tasks and the preparation of grant deliverables. This Agreement sets expectations for coordination efforts during the Project as well as the initially anticipated future ownership and maintenance of acquired lands and constructed works. Amendments and extensions to this Agreement may be appropriate as designs are advanced or as additional funding is secured.

2. Duration

This Agreement shall be effective from the last date of signature below and shall terminate on December 31, 2023, unless modified by the Parties pursuant to this Agreement.

3. Mutual Responsibilities

- a. Each Party agrees to work in good faith with all of the other Parties towards the successful implementation of the Project for the benefit of all Parties and the general public.

4. County Responsibilities

- a. County will be the lead agency for this Project and will provide the overall administrative management, coordination, and accounting for the FbD and YBIP grants. This includes all grant invoicing, progress reports, project documentation, finalization and transmittal of grant deliverables, and grant closeout activities.
- b. County will lead the design, permitting, stakeholder coordination, and land acquisition efforts required for successful implementation of the scope of work as described in the FbD and YBIP grant agreements. The County effort includes hydraulic sizing recommendations for the Powerhouse Road bridge (City) and ongoing coordination related to the siting and sizing of the future US 12 bridge (WSDOT). County effort excludes actual site and structural design work for the Powerhouse Road bridge, the US 12 bridge, as well as any land acquisition or land transfers that may be needed for the future replacement of the bridges.

- c. County will conduct a variety of site investigations (surveying, wetland delineations, historic and cultural resource assessments, hydraulic modeling, etc.) needed to inform the preliminary design and environmental permitting efforts for the Project. When these investigations relate to property or infrastructure managed by the City or WSDOT, the County will provide a draft of the consultant scope of work to either the City and/or WSDOT for review and comment prior to contract execution. County will also provide City and/or WSDOT, as appropriate, with a draft copy of consultant reports for comment before the reports are finalized.
- d. County will prepare a basis of design report to accompany preliminary design plans and to support environmental permitting applications. County will act as the lead agency for SEPA and other local permits where applicable. The County will work with the City and WSDOT to determine and coordinate with the appropriate Federal lead(s) as applicable for specific portions of the work.
- e. County will prepare final construction-ready design plans for setback levee on the south side of Cowiche Creek between US 12 and Powerhouse Road. The levee will be designed to meet the design standards and freeboard requirements for future certification by a professional engineer and Federal Emergency Management Agency (FEMA) accreditation within the flood mapping of the National Flood Insurance Program (NFIP). The certification and accreditation process are contingent on the construction of a new US 12 bridge over Cowiche creek and implementation of the other downstream Project efforts across the Naches-Cowiche confluence. County will provide design/as-built information to support City efforts to certify the levee for FEMA accreditation.
- f. County will coordinate with the City and the United States Army Corps of Engineers (Corps) during levee design to check that the design will maintain the continued enrollment eligibility of the levee within the Corps PL84-99 levee rehabilitation program.
- g. County will enter into a contract with a qualified general construction contractor for the construction of the levee setback.
- h. County will use YBIP grant funds to negotiate and complete a lot line adjustment between Assessor's Parcel Number (APN) 181309-41003 (City) and 181309-42010 (Private, Lloyd-Garretson Co.) increasing the size of the City lot by approximately 3.48 acres. County will similarly effectuate a lot line adjustment between 181309-41003 (City) and 181309-41013 (Yakima Valley Commercial LLC) increasing the size of the City lot by an additional 0.4 acres. These boundary line changes will provide sufficient space for the initial construction of the setback levee (County) as well as the area needed for maintenance of the levee in perpetuity (by the City). Access to the levee from Powerhouse Road will be through an easement across the unacquired upland remainder of parcel 181309-42010. Yakima County will pay costs associated with the acquisition of the access easement and the lot line adjustments, including, but not limited to, the preparation of the documents, appraisal costs (where applicable), sale prices, excise tax, recordation fees, and survey costs. The easement and the deeds transferring the properties will include provisions allowing for the construction of the setback levee by the Parties (as required by this ILA) and a restriction dedicating the resulting property in perpetuity to the purposes of flood risk reduction and habitat restoration, while allowing for recreational uses compatible with those purposes. The deeds will ensure that the County will retain sufficient real property interest in the enlarged City property allowing the County to, in consultation with the City, implement floodplain restoration and planting actions across the resulting City

property in association with the Project and afterwards as future funding allows. The form of all easements and deeds will be acceptable to the City and the County prior to transfer.

- i. Pursuant to the Deed between Squire Ingham, Homer and Sadie Lee, and the City of Yakima, which conveyed parcel number 181310-32003 to the City, the City will revert that parcel back to Grantors, or their successors in interest for \$1.00. The County will acquire the Grantors right to this parcel. The County will record a deed restriction dedicating the property in perpetuity to the purposes of flood risk reduction and habitat restoration while allowing for recreational uses compatible with those purposes. The County will be solely responsible for the costs associated with purchasing the parcel and recording the deed.
- j. County will enter into a contract with a qualified consultant, to be paid for under the terms of the Grant Agreements, to prepare preliminary and final designs for ensuring the safety and integrity of the City's 48-inch diameter potable water supply line where it crosses Cowiche Creek just downstream of the Yakima Greenway Path. Preliminary designs will support permitting efforts and will be based off design criteria provided by the City and County. The FbD and YBIP grants obtained by the County do not include construction funding for the actions necessary to protect the City's potable water supply line.
- k. County will prepare draft outreach materials and press releases that highlight Project objectives, anticipated benefits, recent progress, and the Parties collaborative approach. All outreach and press release materials will be provided to the City and WSDOT for comment, review, and approval at least 10 business days before distribution or publication by the Parties. The intent is consistent messaging between Project partners that tells the story of flood risk reduction, floodplain restoration, and salmon recovery through cooperative community action.
- l. County will develop and implement an interim riparian vegetation maintenance plan for Project properties within the Naches-Cowiche confluence to support existing native plant vitality and to discourage the establishment of noxious or invasive weeds. Implementation efforts will be conducted through stewardship agreements with the North Yakima Conservation District (NYCD) or local contractors and may include mowing, weed removal, and herbicide applications. It is anticipated that these activities could occur on City or County property within the confluence depending on site vegetation conditions, restoration priorities, and the available funding.
- m. All construction work inside WSDOT right of way or attached to WSDOT infrastructure performed by Parties or any of its contractors pursuant to this Agreement will be performed in accordance with all of the terms and conditions of WSDOT's most current Standard Specifications for Road, Bridge and Municipal Construction M41-10, together with any applicable general special provisions.

5. City Responsibilities

- a. City will work diligently towards securing construction phase funding for City portions of the Project as applicable (e.g. a new Powerhouse Road Bridge). When appropriate, the City will work in good faith to provide formal letters of support to corresponding County and WSDOT efforts to secure construction funding.
- b. City will provide WSDOT and County staff, consultants, and contractors with reasonable access to City properties and facilities related to the Project. City will provide landowner consent and acknowledgement forms as needed to support Project permitting.

- c. City will provide the appropriate technical and operational staff for participation in planning, design, and permitting meetings for the Project to ensure concepts, designs, and permitting efforts are consistent with City infrastructure needs and other City requirements, programs, and plans. This includes the preparation of technical performance data for City infrastructure and facilities, input into contractor/consultant evaluations, and coordination meetings with regulatory agencies.
- d. City will provide technical design criteria and the appropriate staff time as necessary to allow for the preliminary and final design for the protection of a section of the City's potable water supply pipeline where it crosses Cowiche Creek just north of the Yakima Greenway Path.
- e. City will provide existing conditions information, operational requirements, technical design criteria, and the appropriate staff time as necessary to allow the Parties to develop a coordinated plan for sequencing the construction of future infrastructure (new bridges, setback levees, etc.) in the vicinity of the City's sedimentation reservoir where it is immediately adjacent to the existing US 12 bridge over Cowiche Creek.
- f. City will provide relevant design and permitting information prepared for the companion Nelson Dam project to County and WSDOT staff as appropriate so that the Parties overlapping future infrastructure elements across the confluence are compatible and to facilitate cost-effective planning, design, and permitting efforts.
- g. City will provide for timely review and comment on the draft Project documents prepared by the County, WSDOT, or consultants working on the Project.
- h. City will continue to maintain the existing right bank levee on Cowiche Creek until the setback levee is complete and accepted by the Corps in the PL 84-99 program. City will assume all levee management and maintenance responsibilities for the setback levee when the County accepts the contract for the construction of the setback as complete.

6. WSDOT Responsibilities

- a. When appropriate, WSDOT will, in its sole discretion, provide formal letters of support to corresponding County and City efforts, provided that such letters do not conflict with WSDOT statewide asset management prioritization and programming.
- b. WSDOT will provide, where it deems appropriate, consent and acknowledgement of the Project on forms including but not limited to JARPA, and other environmental permit applications that require WSDOT's acknowledgment as the landowner.
- c. WSDOT will provide the appropriate technical and operational staff for participation in planning, design, and permitting meetings for the Project to ensure concepts, designs, and permitting efforts are consistent with WSDOT infrastructure needs and other WSDOT requirements, programs, and plans.
- d. WSDOT will provide the appropriate real estate specialists to work with the County to develop appropriate interim access provisions for design and permitting and construction, as well as perpetual easement agreements where the setback levee will connect to the south side of the US 12 roadway. Easement agreements will be compliant with FEMA levee accreditation requirements.
- e. WSDOT agrees that the intent is to design the setback levee with a turnaround and a primary access route via Powerhouse Road for monitoring and levee maintenance actions, but the

easement will need to include provisions for a right turn out onto Highway 12 eastbound during flood fight emergencies.

7. Financing

Financing of the joint undertakings is outlined in Exhibits B & C, and the implementation of those grants as outlined above.

8. Right of Entry

The Parties hereby grant and convey to each other the right of entry upon all land which the Parties have interest, for the purpose of performing the preliminary and final engineering design and environmental permitting for this Agreement. Parties will cooperate in good faith and agree to take further action and execute those access documents, whether jointly or within their respective powers and authority, as may be reasonably necessary to implement construction actions under this Agreement.

9. Legal Relations

No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein.

10. Amendment

This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

11. Termination

Unless otherwise provided herein, any Party may terminate its participation in this Agreement, with or without cause, upon thirty (30) calendar days' written notice to other Parties.

12. Independent Contractor

Each Party shall be deemed an independent contractor for all purposes, and the employees of each Party or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the any other Party.

13. Indemnification

- a. Each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party or Parties, their officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs (including attorneys' fees), claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. No Party will be required to indemnify, defend, or save harmless another Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole

negligence of that Party. Where such claims, suits, or actions result from the concurrent negligence of Parties, their agents, officials or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of each Party, its agents, officials or employees.

- b. The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees or agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

14. Survivability

Section 11 shall survive the termination of this Agreement.

15. Disputes

The Parties shall attempt to settle any disputes regarding this Agreement first through mediation or other agreed-upon alternative dispute resolution. An attempt at such alternative dispute resolution shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the costs of the alternative dispute resolution process, but shall be responsible for their own attorneys' fees and costs.

16. Venue

In the event that any Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in the Yakima County Superior Court unless filing in another county is required under any provision of the Revised Code of Washington. Further, the Parties agree that each will be responsible for its own attorney's fees, witness fees, and costs.

17. Audits/Records

During the progress of the Work and for a period of not less than six (6) years from the date of final payment, both Parties shall maintain the records and accounts pertaining to the Work and shall make them available during normal business hours and as often as necessary, for inspection and audit by the other Party, Washington State, and/or Federal Government. Copies of all records, accounts, documents or other data pertaining to the Work will be furnished upon request. The requesting Party shall pay the cost of copies produced. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until any litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six-year retention period.

The records relating to this Agreement shall, at all times, be subject to inspection by and with the approval of any Party, but the making of (or failure or delay in making) such inspection or approval shall not relieve a Party of responsibility for performance of the terms of this Agreement, notwithstanding the Party's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Parties shall provide any other Party sufficient, safe, and

proper facilities, and/or send copies of the requested documents to the requesting Party. Records relating to this Agreement will be provided to any requesting Party.

Parties shall promptly furnish a requesting Party with such information and records which are related to this Agreement. Until the expiration of six (6) years after the termination of this Agreement, or for a longer period if required by law or by the Washington Secretary of State's record retention schedule, Parties shall retain and provide any requesting Party access to all records which are related to this Agreement.

All records relating to this Agreement must be made available to any requesting Party. They must be produced to third parties, if required pursuant to the Washington State Public Records Act, Chapter 42.56 RCW, or by law. All records relating to this Agreement must be retained by the Parties for the minimum period of time required pursuant to the Washington Secretary of State's records retention schedule.

The terms of this section shall survive any expiration or termination of this Agreement.

18. Term of Agreement

Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed and shall remain in effect in perpetuity, unless otherwise terminated or amended.

19. Administration of Agreement

This Agreement shall be jointly administered, with each Party to the Agreement represented in the administration hereof. The Parties will jointly administer the acquiring, holding and disposing of real property used in the cooperative undertaking as outlined herein, but the Parties, jointly, shall not acquire, hold or dispose of real or personal property as part of this Agreement. This Agreement shall be either filed with the Yakima County Auditor or placed on each Party's website pursuant to RCW 39.34.040.

20. Assignment

No Party to this Agreement shall transfer or assign any right or obligation hereunder without the prior written consent of all the Parties.

21. No Legal Entities Created

No separate legal entity or entities are contemplated to be created as part of this Agreement.

BOARD OF COUNTY COMMISSIONERS

CITY OF YAKIMA

Norm Childress, Chairman

City Manager

Ron Anderson, Commissioner

DATED: _____

Vicki Baker, Commissioner

Approved as to Form:

DATED: _____

City Attorney

Attest:

Melissa Paul, Clerk of the Board

Linda Kay O'Hara, Deputy Clerk

Approved as to Form:

Deputy Prosecuting Attorney

**WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION**

Todd V. Trepanier, P.E. SCR Regional
Administrator

Dated: _____

Approved as to Form Only:

Assistant Attorney General

DATED: _____