

**CITY OF YAKIMA AND NORTH YAKIMA CONSERVATION DISTRICT
INTERLOCAL AGENCY AGREEMENT FOR WETLAND PLANT
ESTABLISHMENT SERVICES**

THIS AGREEMENT is entered into between the North Yakima Conservation District, Yakima, Washington and its contractors (hereinafter referred to as the "NYCD"), whose address is 1606 Perry Street, Yakima, Washington 98902, and the City of Yakima (hereinafter referred to as the "City"), whose address is 129 North 2nd Street, Yakima, Washington 98901, pursuant to RCW 39.34.080.

WHEREAS, the CITY will require installation, establishment, weed abatement and monitoring of required wetland plant species as part of offsite project mitigation efforts located near the Yakima Regional Wastewater Treatment Plant; and,

WHEREAS, the NYCD has an established organization that is capable of providing such services to other governmental agencies pursuant to Chapter 39.34 RCW; and,

WHEREAS, the CITY assures the NYCD that the CITY'S request for services under this AGREEMENT is not intended to exclude the use of private consultants by the CITY; and,

WHEREAS, the CITY may desire to obtain such services from the NYCD and the NYCD is willing to furnish such services to the CITY at locations throughout the City of Yakima, and both deem it in the interest of the public to enter into this AGREEMENT; and,

WHEREAS, the actual work to be performed shall be specified in a Task Assignment signed by both parties; and,

WHEREAS, the CITY shall pay for any work identified in a Task Assignment as specified by the terms of the Task Assignment and this AGREEMENT;

NOW, THEREFORE, in consideration of the stated premise and in the interest of providing assistance to the City in the above mentioned areas, the parties hereto agree as follows:

**I
GENERAL**

- A. Purpose. The purpose of this AGREEMENT is to work together to install, establish and monitor upland, riparian and wetland projects within the City of Yakima in an efficient, effective and professional manner. Both NYCD and the CITY are authorized to perform this governmental service, but NYCD has better expertise, knowledge, and capacity to do so.
- B. The NYCD shall provide the CITY with upland, riparian and wetland plant installation, establishment weed abatement and monitoring services for a term of five (5) years from the effective date of this AGREEMENT. Any such services shall conform to the Standards and Guidelines commonly established for these services. All work to be performed shall be identified in a Task Assignment signed by both parties.
- C. The normal workload of the NYCD will be evaluated prior to accepting any Task Assignment. Once a Task Assignment is accepted by the NYCD, any work performed under the Task Assignment shall be pursued with care and diligence, making every effort to meet the schedule

established by the CITY in the Task Assignment. The NYCD shall promptly notify the CITY of any hardship or other inability to meet the schedule identified in the Task Assignment.

- D. This AGREEMENT may be increased or decreased in scope or character of work to be performed if such change becomes necessary, but any such change shall be accomplished by written supplement executed by all parties to said AGREEMENT.
- E. The parties shall agree on a satisfactory completion date for work performed under any Task Assignment (“work completion date”), which shall be specified in the Task assignment. The CITY shall, upon satisfactory completion of work performed pursuant to a Task Assignment, issue a letter of acceptance that shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the work under the Task Assignment. If the NYCD does not receive a letter of acceptance within 90 days following the work completion date, the work will be considered accepted by the CITY. The CITY may withhold acceptance of work by submitting written notification to the NYCD within a 90-day period. This notification shall include the reasons for withholding acceptance.

II WORK ASSIGNMENT/REQUEST

- A. Specific assignments shall be made in the form of a written Task Assignment to the NYCD by the CITY and signed by both parties. Each Task Assignment shall contain an agreed upon budget and schedule for all services to be rendered. CITY approval is required for budget and schedule changes. The CITY shall make such assignments before any work is commenced by the NYCD.
- B. The CITY shall make available to the NYCD all information that has been compiled by or is available to the CITY concerning the project to be completed.
- C. The NYCD shall furnish all labor, materials, supplies, and incidentals necessary to complete the work assigned by the CITY and shall furnish to the CITY all information prepared by the NYCD in performance of each task.
- D. At the completion of the Task Assignment, the NYCD will turn over to the CITY all records pertinent to the work performed by the NYCD.

III PAYMENT

The NYCD shall be paid by the CITY for completed work and for services rendered under this AGREEMENT and associated Task Assignments, upon acceptance by the CITY, as provided hereinafter. Payments shall not exceed Two Hundred Thousand Dollars (\$212,000.00) over the term of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and accepted by the CITY and for all labor, materials, supplies, and incidentals necessary to complete the work. The NYCD acknowledges and agrees that only those costs actually allocable to a project shall be charged to such project.

- A. The NYCD shall be reimbursed in full by the CITY for its direct and related indirect costs accumulated in accordance with its current accounting procedures.

- B. Partial payments will be made by the CITY within 30 days of receipt of the invoices from the NYCD and be paid on a reimbursement basis. Invoices will not be more frequent than one per month. It is agreed that payment of any particular claim will not constitute agreement as to the appropriateness of any item and that at the time of final invoice all required adjustments will be made.
- C. Upon termination of this AGREEMENT as provided in Section VI, the NYCD shall be paid by the CITY for services rendered to the effective date of termination less all payments previously made. No payment shall be made by the CITY for any expense incurred or work done following the effective date of termination unless authorized, in writing, by the CITY.
- D. Final payment of any balance due the NYCD of the ultimate gross reimbursable amount, prior to the effective date of termination, will be made upon ascertainment of such balance by the NYCD and certification thereof to the CITY.

IV LEGAL RELATIONS

A. LIABILITY AND INDEMNIFICATION:

1. Each of the parties to this AGREEMENT shall protect, defend, indemnify and save harmless the other party, their elected and appointed officials, officers, employees, agents and volunteers, from and against all liabilities, penalties, costs, losses, damage, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorney's fees, arising out of or related to the terms, covenants or conditions of this AGREEMENT and such parties' performance or failure to perform any aspect of this AGREEMENT; provided, however, that if the claims or suits are caused by or result from the concurrent negligence of (a) the CITY, its agents or employees, and (b) the NYCD, its agents or employees, including those actions covered by RCW 4.24.115, the obligations shall be valid and enforceable only to the extent of the parties' negligence; and provided further, that nothing herein shall require either party to hold harmless or defend the other party from any claim arising from the sole negligence of the other party.
2. NYCD specifically and expressly waives its immunity under industrial insurance, Title 51 RCW, or immunity under any other provision of law to the extent of the obligations assumed by the parties protected hereinunder. NYCD and the CITY acknowledge and agree that this waiver was mutually negotiated.
3. Nothing contained in this section or this AGREEMENT shall be construed to create a liability or a right of indemnification in any third party.

B. NOTICE, ADMINISTRATION AND DISPUTE RESOLUTION:

1. The CITY and the NYCD shall confer to resolve disputes that arise under this AGREEMENT as requested by either party.
2. The following individuals are the Designated Representatives responsible for administering this AGREEMENT, as well as for the purpose of resolving disputes that arise under this

agreement and are the persons to whom notice shall be provided when required under this AGREEMENT:

City Engineer, City of Yakima
Yakima City Hall
129 North Second Street
Yakima, WA 98901
Telephone:
Email:

Brian Schmidt
Natural Resource Specialist, North Yakima Conservation District
1606 Perry Street
Suite C
Yakima WA 98902
Telephone: 509-454-5743 ext 5
Email: brian-schmidt@conserveva.net

3. In the event the Designated Representatives are unable to resolve the dispute, the following individuals shall confer and resolve the dispute.

City Manager, City of Yakima

Michael Tobin
District Manager, North Yakima Conservation District
1606 Perry Street
Suite C
Yakima WA 98902
Telephone: 509-454-5743 ext 5
Email: mike-tobin@conserveva.net

The CITY and the North Yakima Conservation District agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

D. GOVERNING LAW AND 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 hereto agree that any such action or proceeding shall be brought in a court of competent jurisdiction situated in Yakima County, Washington. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Washington.

E. INSURANCE. At all times during performance of the services in this AGREEMENT, NYCD shall secure and maintain in effect insurance to protect the CITY and NYCD from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of this AGREEMENT. NYCD shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The CITY reserves the right to require higher limits should it deem necessary and/or in the best interest of the CITY and/or the public.

1. Commercial Liability Insurance. Before this AGREEMENT is fully executed by the parties, NYCD shall provide the CITY with a certificate of insurance as proof of commercial liability insurance with a total minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect during the duration of this AGREEMENT. The policy shall name the CITY, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the CITY thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

2. Commercial Automobile Liability Insurance. Before this AGREEMENT is fully executed by the parties, NYCD shall provide the CITY with a certificate of insurance as proof of commercial automobile liability insurance with a total minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate per occurrence combined single limit bodily injury and property damage. Automobile liability will apply to "Any Auto" and include, but not be limited to, owned, non-owned and hired vehicles, and be shown on the certificate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this AGREEMENT. The policy shall name the CITY, its elected and appointed officials, officers, agents, employees, and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the CITY thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

3. Workers' Compensation. NYCD agrees to pay all premiums provided for by the Workman's Compensation Act of the State of Washington. Evidence of NYCD's workers' compensation coverage will be furnished to the CITY. NYCD holds the CITY harmless for any injury or death to NYCD's employees while performing this AGREEMENT.

4. Insurance Provided by Subcontractors. NYCD shall ensure that all subcontractors it utilizes for work and/or services rendered under this AGREEMENT shall comply with all of the above insurance requirements.

5. CITY Does Not Provide Insurance for NYCD. It is understood that the CITY does not maintain any form of insurance for NYCD, its officers, employees, agents, volunteers and/or subcontractors.

F. RECORDS MAINTENANCE AND RETENTION

1. NYCD shall maintain (in accordance with generally accepted accounting practices) books, accounts, records, documents and other materials related directly or indirectly to the services provided to the CITY by NYCD under this AGREEMENT. All such books, accounts, records, documents and other materials shall be subject to inspection and audit at reasonable times by representatives of the CITY. NYCD shall make such books, accounts, records, documents and other materials available and afford the proper facilities for such inspection and/or audit within forty-eight (48) hours of

- inspection/audit notification from the CITY. Such books, accounts, records, documents and other materials may be copied by representatives of the CITY as part of such inspection/audit. However, the making of (or failure or delay in making) such inspection or approval shall not relieve NYCD of responsibility for performance of this AGREEMENT, notwithstanding the CITY'S knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. NYCD shall preserve and make available all such books, accounts, records, documents and other materials for a period of at least six (6) years after termination of this AGREEMENT.
2. NYCD shall promptly furnish the CITY with such information related to services and/or work performed pursuant to this AGREEMENT as may be requested. Until the expiration of six (6) years after termination of this AGREEMENT, or for a longer period if required by law or by the Washington State Secretary of State's record retention schedule, NYCD shall provide the CITY access to (and the CITY shall have the right to examine, audit and copy) all of NYCD's books, documents, papers and records which are related to the services and work performed under this AGREEMENT.
 3. The CITY is required by law to comply with the Washington State Public Records Act (PRA), Chapter 42.56 RCW. All records relating to NYCD's services under this AGREEMENT must be made available to the CITY, and also produced to third parties, if required, pursuant to the PRA or by law. All determinations of records subject to release under the PRA, or otherwise required by law, shall be at the sole discretion of the CITY. This AGREEMENT and all public documents associated with this AGREEMENT shall be available to the CITY for inspection and copying by the public where required by the PRA or other law, to the extent that public records in the custody of NYCD are needed for the CITY to respond to a request under the PRA, as determined by the CITY. If NYCD considers any portion of any records provided to the CITY under this AGREEMENT, whether in electronic or hard copy form, to be protected from disclosure under law, NYCD shall clearly identify any specific information that it claims to be confidential or proprietary. If the CITY receives a request under the PRA to inspect or copy the information so identified, and determines that the release of the information is required or otherwise appropriate, the CITY'S sole obligation shall be to notify NYCD of the request and the date such information will be released to the requestor unless NYCD obtains a court order to enjoin the release, pursuant to RCW 42.56.450. If NYCD fails to timely obtain a court order enjoining disclosure, the CITY will release the requested information on the date specified. The CITY has, and by this section assumes, no obligation on behalf of NYCD to claim any exemption for disclosure under the PRA. The CITY shall not be liable to NYCD for releasing records not clearly identified by NYCD as confidential or proprietary. The CITY shall not be liable to NYCD for any records that the CITY releases in compliance with the PRA, this section, or in compliance with an order of a court of competent jurisdiction.

G. NONDISCRIMINATION

The NYCD shall comply with Chapter 49.60 RCW and with Title VI of the Civil Rights Act of 1964, 42 USC -2000d et seq. With respect to the work to be performed by the NYCD during the contract, the NYCD shall not discriminate on the grounds of race, color, sex, sexual orientation, national origin, marital status, age, or the presence of any sensory, mental, or physical handicap in the selection and retention of employees, agents, subcontractors or in the procurement of services or materials, leases, or equipment.

VI COMMENCEMENT, TERM, AND TERMINATION OF AGREEMENT

- A. Commencement. The work is of a continuing nature and will be in force as of the date of this AGREEMENT.
- B. Term. The term of this AGREEMENT shall be five (5) years from the date of execution.
- C. Termination. NYCD may terminate this AGREEMENT at any time upon not less than sixty (60) days written notice to the CITY with or without cause. The CITY may terminate this AGREEMENT, or any Task Assignment arising from this AGREEMENT, upon thirty (30) days written notice to the NYCD with or without cause. Upon receipt of any such notice of termination, NYCD shall, except as otherwise directed by the CITY, immediately stop performance of the services to the extent specified in the notice. The CITY agrees to reimburse the NYCD for all direct and indirect costs incurred for work performed and accepted by the CITY up to the date of notice of termination. NYCD should immediately Upon termination of this AGREEMENT, the NYCD will turn over to the CITY all Project records.

If the CITY purports to terminate or cancel all or any part of this AGREEMENT for NYCD's breach or default when NYCD is not in breach or default which would permit such termination or cancellation, such termination or cancellation shall be deemed to have been a termination by the CITY pursuant to the above-paragraph, and the rights of the parties shall be determined accordingly.

This AGREEMENT may also be terminated in whole or in part by mutual agreement of the parties.

Upon termination, any property jointly acquired shall be disposed of through a right of first refusal to the CITY to purchase at fair market value the property. If the CITY chooses not to purchase the property it may be disposed of in any commercially acceptable manner. It is not anticipated that any property will be jointly acquired pursuant to this AGREEMENT.

VII. MISCELLANEOUS PROVISIONS

- A. Conflict of Interest. NYCD covenants that neither it, nor its officers, have any interest and shall not hereafter acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this AGREEMENT. NYCD further covenants that it will not recruit anyone or any entity having such a conflict of interest during the performance of this AGREEMENT.

B. Compliance with Applicable Law. NYCD shall operate in accordance with all applicable statutes, laws, regulations and ordinances. NYCD shall obtain all necessary permits required by law.

C. Assignment. This AGREEMENT, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by NYCD to any other person or entity without the prior written consent of the CITY, which may be withheld for any reason or no reason at all. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of NYCD stated in this AGREEMENT.

D. Modification. Either party may request changes in this AGREEMENT, however, no change, modification, or alteration to this AGREEMENT shall be valid or binding upon either party unless such change or addition be in writing, and executed by both parties.

E. Severability. If a court of competent jurisdiction holds that any part, term, or provision of this AGREEMENT is 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 to be invalid. Further, if any provision of this AGREEMENT is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict and the AGREEMENT shall be deemed modified to conform to such statutory provision. Should the CITY determine that the severed portions substantially alter this AGREEMENT so that the original intent and purpose of it no longer exists, the CITY may, in its sole discretion, terminate this AGREEMENT, effective immediately upon notice.

F. Non-Waiver of Breach. A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this AGREEMENT shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this AGREEMENT, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

G. Survival. Any provision of this AGREEMENT which imposes an obligation after termination or expiration of this AGREEMENT shall survive the term or expiration of this AGREEMENT and shall be binding on the parties to this AGREEMENT.

H. Acquisition of Property and Assets. The parties do not intend to jointly acquire or manage any property. Acquisition of property by either party shall be in accordance with the laws and procedures applicable to each party.

I. No Separate Legal Entity. No separate legal or administrative entity will be created pursuant to this AGREEMENT.

J. This AGREEMENT shall be filed with the Yakima County Auditor's Office prior to becoming effective, and posted on the CITY's website.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the date executed by both parties.

CITY OF YAKIMA

NORTH YAKIMA CONSERVATION
DISTRICT

Robert Harrison, City Manager
Approved by Resolution No.:

Mike Tobin, District Manager
Approved by Board Motion

ATTEST: Sonya Claar Tee
City Clerk

ATTEST:

Approved as to Form:

City Attorney