

AGENDA REQUEST FORM

**Return completed form and complete agenda item to the Clerk of the Board
Yakima County Commissioners' Office, Room 232**

Prepared by:
Jack Wells

Department: Public Services

Requested Agenda Date: 06/22/2021

Presenting: Lisa Freund

Document Title:

Board of County Commissioners Record Assigned
BOCC Agreement

156 - 2021
Yakima County, WA

APPROVED FOR AGENDA:
 Consent Regular
Board of County Commissioners Determined

Personal Services Agreement for Water Conservation Public Education Program Services from Franklin Conservation District

Action Requested: *Check Applicable Box*

PASS RESOLUTION EXECUTE or AMEND AGREEMENT CONTRACT or GRANT
 ISSUE PROCLAMATION PASS ORDINANCE OTHER _____

Describe Fiscal Impact:

The cost is \$58,500 over the life of the Agreement, \$19,500 annually. Yakima County being responsible for 51% (\$9,945 annually) of the total cost of the program. Total over the life of the Agreement \$29,835.

Background Information:

The purpose of the Agreement is for the County to contract Franklin Conservation District to perform portions of the public education requirements under the Eastern Washington Phase II Municipal Stormwater Permit for portions of years 2021 thru 2024. Funding to be cost shared by Yakima County, City of Union Gap, City of Selah, and City of Sunnyside per the Intergovernmental Local Agreement for Stormwater Permit Compliance Activities, 2019.

Summary & Recommendation:

To enter into an Agreement with Franklin Conservation District to continue the Water Conservation Public Wducation Program with Yakima County.

Motion:

Department Head/ Elected Official

AGREEMENT Attached Is Approved as to Form
Corporate Counsel Initial


Signature



Late Agenda Requests Require BOCC Chairman Signature:



PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into between YAKIMA COUNTY, Washington, hereinafter "County", whose address is 128 North 2nd Street, Yakima, Washington 98901, and "Consultant", more specifically identified as:

Name: Franklin Conservation District
Street: 1724 E. Superior St
City, State Zip: Pasco, WA 99301
Federal Tax I.D. #: 91-1034990
U.B.I. #: 601 047772

RECITALS:

In consideration of the terms and conditions contained, the parties hereto agree as follows:

1. **Service and scope:** The Consultant will provide services to Yakima County for the following described work:
The Franklin County Conservation District will offer Drain Rangers and Jr. Drain Rangers water conservation and stormwater runoff pollution prevention lessons in-person and virtually to classrooms to help fulfill the Phase II Municipal Stormwater NPDES requirements through the end of the Permit cycle.
See Exhibit A.
2. **Amendments.** This Agreement contains all terms and conditions agreed upon by the parties. No change or addition to this Agreement shall be valid or binding upon either party unless such change or addition is in writing and executed by both parties.
3. **Compensation.** The maximum aggregate compensation paid to the Consultant shall not exceed: \$58,500.00 for the total of all work over the term of this Agreement, as may be extended, and shall be full compensation for all costs and expenses. The County makes no guarantee that work issued under this contract will total the maximum aggregate compensation identified above. The Consultant shall maintain a written record of all expenses and submit monthly detailed invoices to:

Yakima County Public Services
128 N 2nd Street, Fourth Floor Courthouse
Yakima, Washington 98901

The County shall pay the Consultant within 30 days of acceptable invoice receipt. All billings must be submitted by the Consultant within 60 days of the completion of the services.

4. **Independent Consultant.** For the purposes of this contract, the Consultant acknowledges they are not an officer, employee, or agent of Yakima County. The Consultant shall not hold out itself or any of its employees as, nor claim for itself if its employees any rights, privileges, or benefits, which would accrue to an employee of the County. The Consultant shall indemnify and hold harmless the County from all obligations to pay or withhold federal or state taxes or contributions on behalf of the Consultants or its employees or assigns. The Consultant is solely responsible for payment of any statutory workers compensation or employer's liability insurance as required by state law.

5. **Nondiscrimination.** The Consultant agrees that it shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, sexual orientation, veteran status, pregnancy, 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. The Consultant and any subconsultants shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability and require affirmative action by covered prime consultants and subconsultants to employ and advance in employment qualified protected veterans and individuals with disabilities.
6. **Assignment.** The Consultant shall not assign or subcontract any portion of the contracted activities without obtaining prior written approval from the County.
7. **Termination.** Either party may terminate this contract upon thirty days' written notice sent by certified mail to the addresses listed above.

If the funds the County relied upon to establish this Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, the County may immediately terminate this Agreement by providing written notice to the Consultant. The termination shall be effective on the date specified in the termination notice.

8. **Indemnification and hold harmless.** The Consultant does hereby release, indemnify and provide to defend and save harmless Yakima County from and against any and all liability, loss, damage, expense, actions and claims, including costs and reasonable attorney's fees incurred by the County in defense thereof, asserted or arising directly on account of or out of acts or omissions of the Consultant and the Consultants agents, employees and consultants in the exercise of the rights herein; PROVIDED, this paragraph does not purport to indemnify the County against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of (a) County or County's agents or employees; and PROVIDED FURTHER, that if the claims or damages are caused by a result from the concurrent negligence of the County, its authorized agents, officers or employees and (b) Consultant its authorized agents, officers or employees or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Consultant or its authorized agents, consultants or employees. Nothing in this indemnification clause shall be construed to apply to any actions, proceedings, suits, or claims for inverse condemnation, or condemnation, arising under Title 8, Chapter 8.08, Sections 8.08.005 thru 8.08.130 of the Revised Code of Washington or otherwise.
9. **Liability insurance.** Commercial General Liability insurance at a limit of liability not less than \$2,000,000 Each Occurrence, and \$5,000,000 General Aggregate per project. Insurance shall be written on ISO occurrence form CG 00 01 or an alternate form providing equal or broader liability coverage. Such coverage shall not contain any endorsement(s) excluding or limiting Products Completed, Operations, or Contractual Liability Cross Liability. Yakima County, its officers, employees, agents, and volunteers shall be named as Additional Insureds under the coverage with respect to the work performed under this Agreement. Such insurance shall provide that Yakima County, its officers, employees, agents and volunteers are Primary Additional Insureds under such insurance. The coverage provided under such insurance for such Primary Additional Insureds shall be primary and not contributory to any other coverage that may be available to such Primary Additional Insureds. Business Automobile Liability insurance at a combined single limit of liability for bodily injury and property damage not less than \$2,000,000 Each Occurrence covering all Owned, Non-owned, Hired, and leased

automobiles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equal or broader liability coverage. In the event the Consultant does not own automobiles, Consultant agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. If necessary, the policy shall be endorsed to provide contractual liability coverage.

10. **Verification of coverage.** Prior to execution of this Agreement, Consultant shall furnish the County with original Certificates of Insurance and a copy of any amendatory endorsement, including without limitation, the Additional Insured endorsement, evidencing the insurance requirements.
11. **Consultants' Waiver of Employer's Immunity under Title 51 RCW:** The Consultant indents that its obligations to indemnify, defend, and hold harmless employee contributions set forth above in sections 4 and following section 9, shall operate with full effect regardless of any provision contrary tin Title 51 RCW, Washington Industrial Insurance Act. Accordingly, the Consultant specifically assumes all potential liability for defense and payment of judgement in all actions brought to employees of the Consultant against the County and its officers, employees, and volunteers, and for the purposes of enforcing the Consultant's obligations to indemnify, defend, and hold harmless set forth above in section 4, the Consultant, specifically waives any immunity granted under the state industrial insurance law, Title 51 RCW. The parties have mutually negotiated this waiver. The Consultant shall similarly require that any subconsultant it retains in connection with its performance of this Agreement shall comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all liability for actions brought by employees of the subconsultant.
12. **Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement.
13. **Severability.** If any term of this Agreement is held invalid by any court, the remainder of the Agreement remains valid and in full force and effect.
14. **Records.** The Consultant agrees to maintain records and documents which accurately reflect all direct and indirect costs related to the delivery of contracted services. The Consultant further agrees to retain all fiscal and program records and other material relevant to this Agreement for at least seven years. Fiscal records must be retained until all audits are resolved.

The Consultant shall, at no cost, provide to the County and the Office of the State Auditor reasonable access to the Consultant's records. These inspection rights are intended to allow the County and the State Auditor to monitor, audit, and evaluate the Consultant's performance and compliance with applicable laws, regulations, and these Agreement terms. These inspection rights shall survive seven years following this Agreement's termination or expiration.

15. **Ownership of Material.** Material created by the Consultant and paid for by the County as part of this Agreement shall be owned by the County and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the Consultant uses to perform the Program Agreement but is not created for or paid for by the County is owned by the Consultant and is not "work made for hire"; however, the County shall have a perpetual license to use this material for County internal purposes at no charge to

the County, provided that such license shall be limited to the extent which the Consultant has a right to grant such a license.

16. **Double Payment Prohibited.** The Consultant shall not bill the County for any services, in whole or in part, which have been reimbursed or will be reimbursed by another source. In the event payment is received from another source subsequent to receiving payment from the County, the Consultant shall deduct the amount from the next regular billing.
17. **Laws, venue, jurisdiction.** This Agreement shall be governed by the laws of the State of Washington. Any action, suit, or judicial proceeding for the enforcement of this Agreement shall be brought in the Superior Court for the State of Washington in Yakima County, Washington.
18. **Debarment Certification.** The Consultant, by signature to this Contract, certifies the Consultant, its Principles and any Subconsultants are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (debarred). The Consultant also agrees to include the above language notification requirement in any and all Subcontracts into which it enters. The Consultant shall immediately notify the County if, during the term of this Contract, the Consultant, its Principles or Subconsultants becomes debarred. The County may immediately terminate this Contract by providing the Consultant written notice if the Consultant becomes debarred during the term of this Contract.
19. **Term.** The term of this contract shall be from July 1, 2021 to June 30, 2024.

This Agreement is entered on the 22 day of June, 2021 and is executed with three original copies, of which one is to be delivered to the Consultant, one to the County Project Manager and one to the Public Services Accounting Office.

CONSULTANT:

BOARD OF YAKIMA COUNTY COMMISSIONERS:

Franklin Conservation District

Company Name

Ron Anderson, Chairman

Mark Nielson

Signature

Amanda McKinney, Commissioner

MARK Nielson

Signer's name printed or typed

LaDon Linde, Commissioner

Constituting the Board of County Commissioners for Yakima County, Washington

DATED: JUN 22 2021

Attest:

Julie Lawrence, Clerk of the Board
Linda Kay O'Hara, Deputy Clerk

BOCC Agreement

Approved as to form:

Ron Anderson
Deputy Prosecuting Attorney

156-2021

Yakima County, WA

Project:
Drain Rangers and Jr. Drain Rangers/Stormwater Public Education Program
Yakima County (Selah, Union Gap, Sunnyside)
Eastern WA Phase II Municipal Stormwater Permit Requirements

Contacts:
Yakima County
Dave Haws
128 N. 2nd St.
Yakima, WA 98901
T. 509-574-2277

Franklin Conservation District
Mark Nielson
1724 E. Superior St.
Pasco, WA 99301
T. 509-416-0440 x 101

Proposed Work

Overview

The Franklin Conservation District will offer Drain Rangers and Jr. Drain Rangers water conservation and stormwater runoff pollution prevention lessons in-person and virtually to classrooms to help fulfill the Cities and County's Phase II Municipal Stormwater Permit requirements. All lessons are aligned with Next Generation Science Standards and Common Core Standards in English/Language Arts.

Stormwater Public Outreach \$19,500 annually

- Drain Rangers Stormwater Runoff curriculum will be offered in-person and virtually to teachers grades 3-5 in a 2-hour teacher workshop format. A minimum of three workshops will be held between September 2021 and June 2022 and will repeat annually until the end of the contract or June 2024.
- Drain Rangers teacher workshops will be offered at no cost and will offer free clock hours.
- Jr. Drain Rangers lessons will be offered in-person and virtually to all K-2 classrooms within Yakima County. 3,500 students are estimated to be reached with Jr. Drain Rangers.
- Stormwater pollution materials will be distributed to students. Materials will include Yakima/Columbia River stormwater coloring book, bookmarks and Jr. Drain Ranger badges.
- Selah, Union Gap, Sunnyside, and Yakima County will be recognized as Drain Rangers and Jr. Drain Rangers sponsors on all printed materials handed out to teachers, students, and the general public.
- Yakima County will receive a full report no later than December 31st and June 30th each year stating how many teachers participated in teacher workshops, which schools lessons were taught in-person and virtually, as well as the number of students, teachers, and lessons taught.

Cost

The Franklin Conservation District will be paid twice a year (December and June) \$9,750 totaling \$19,500. The Franklin Conservation District will submit an invoice to Yakima County in December and June each year along with a detailed report.

Timeline

Program work will begin July 1, 2021 and will conclude June 30, 2024 (end of Phase II permit) or if terminated by either party.

Enduris
EVIDENCE OF COVERAGE

INSURED/PARTICIPANT:
Franklin Conservation District
1724 E Superior
Pasco, WA 99301

MEMORANDUM#: 2021-00-223

EFFECTIVE: September 1, 2020 through August 31, 2021
This is to certify that the Memorandum of Coverage has been issued to the Insured/Participant for the period indicated.

CERTIFICATE HOLDER:
Yakima County
Fourth Floor Courthouse
128 E. Superior Street
Pasco, WA 99301

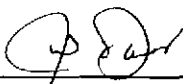
The Evidence of Coverage does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

COVERAGE:	PER OCCURRENCE LIMIT	AGGREGATE LIMIT
COMPREHENSIVE GENERAL LIABILITY	\$2,000,000	\$5,000,000
<i>Professional Liability</i>	\$2,000,000	\$5,000,000
<i>Personal Liability</i>	\$2,000,000	\$5,000,000
<i>Products – Complete Operation</i>	\$2,000,000	\$5,000,000
AUTO LIABILITY	\$2,000,000	\$5,000,000
<i>Combined Single Limit; Hired and Non-Owned; Temporary Substitute</i>	\$2,000,000	\$5,000,000
CRIME BLANKET COVERAGE WITH FAITHFUL PERFORMANCE OF DUTY	N/A	N/A
<i>Per Occurrence Aggregate</i>	N/A	N/A
PROPERTY/MOBILE EQUIPMENT/BOILER AND MACHINERY		
<i>Property</i>	N/A	N/A
<i>Mobile Equipment</i>		
AUTOMOBILE PHYSICAL DAMAGE	N/A	N/A
OTHER COVERAGE: N/A	N/A	N/A

CANCELLATION:
Should any of the above described coverage be cancelled before the expiration date of thereof. Notice will be delivered in accordance with the provisions of the MOC.

MEMO:

Evidence of Member Coverage to contracted party
Reference: Personal Services Agreement



Authorized Representative
June 7, 2021



Contracted Party Notice

Enduris Washington is a joint self-insurance program for public entities authorized by RCW 48.62.

Under RCW 48.62.061, the state risk manager shall adopt rules governing the management and operation of both individual and joint local government self-insurance programs covering property or liability risks. The rules are contained in the Washington Administrative Code (WAC) 200-100 and summarized as follows:

- Only members who sign the interlocal agreement binding them to contributions and assessments may participate in a local government risk pool (WAC 200-100-020).
- Only members may participate in the self-insured retention layer, and only members may participate in the joint purchase of insurance or reinsurance (WAC 200-100-02005).
- Nonmembers shall not participate in any coverages of the joint self-insurance program including the self-insured retention layer and the excess insurance or reinsurance layer (WAC 200-100-02007).

The state risk manager and the Washington Administrative Code prohibit Enduris of Washington from granting additional insured status to nonmembers.

However, Enduris can cover the contractual liability undertaken by its members in most cases. As long as the contract between an Enduris member and a third party qualifies as a “member contract” and the claims against the indemnitee third party are otherwise covered by the terms of the Memorandum of Coverage, the member district’s indemnity obligation should also be covered.

Enduris Washington’s memorandum of coverage (MOC) contains the definition of a “member contract” as follows:

SECTION IV – DEFINITIONS

[...]

M. Member Contract means a written contract that satisfies all of the following:

1. The agreement pertains to the Named Member's routine governmental operations, including professional services and mutual aid agreements, and by the contract terms the Named Member assumes the Tort liability of another to pay damages because of Bodily Injury or Property Damage to a third person or organization, or with respect to Professional Services to pay damages because of Public Officials Errors and Omissions to a third person or organization, and;
2. The agreement was entered into prior to the damage for which a claim is made.

Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

A Member Contract does not include any part of any contract or agreement that indemnifies any person or organization for any claim and/or suit that is excluded by the terms of this Memorandum, or that indemnifies an architect, engineer, or surveyor arising out of preparing, approving, or failing to approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or giving or failing to give directions or instructions, unless the architect, engineer or surveyor is an employee of the Named Member and the services are part of the Named Member's routine governmental operations. A Member Contract also does not include the indemnification of any person or organization for damages by fire, explosion, or water damages to premises rented or loaned to the Named Member.

Reliability in a Risky World