

AGENDA REQUEST FORM

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

Prepared by:
Dale Meck

Department: Public Services

Requested Agenda Date: 6/28/2020

Presenting: _____

Document Title: _____

Board of County Commissioners Record Assigned
BOCC Agreement

023 - 2020
Yakima County, WA

APPROVED FOR AGENDA:
 Consent Regular
Board of County Commissioners Determined

Execute Interlocal Agreement (ILA) with North Yakima Conservation District

Action Requested: *Check Applicable Box*

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

Describe Fiscal Impact:

This Agreement authorizes task orders up to a total maximum amount payable under this agreement of \$250,000 for all costs and expenses. No minimum amount payable is guaranteed under this Agreement.

Background Information:


This interlocal agreement (ILA) replaces a prior agreement between the Flood Control Zone District and the North Yakima Conservation District. The ILA defines the responsibilities and duties of the FCZD/NYCD for the cooperative management of properties in the floodplain under the statutory jurisdiction of the FCZD, properties owned by the FCZD or Yakima County, or lands otherwise granted through easements or other agreements.

Summary & Recommendation:

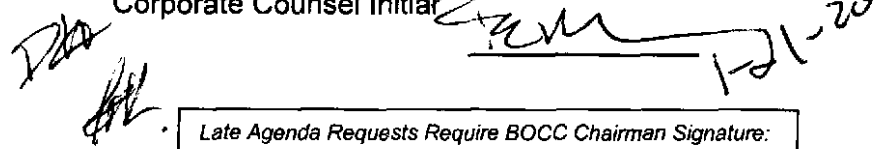
The objective is to promote administrative efficiency and economy as each agency continues their respective efforts to "protect the health, safety, and general welfare of the people."

Motion:

Department Head/ Elected Official


Signature

AGREEMENT Attached Is Approved as to Form
Corporate Counsel Initial



Late Agenda Requests Require BOCC Chairman Signature:

023 - 2020

INTERLOCAL AGREEMENT
BETWEEN
NORTH YAKIMA CONSERVATION DISTRICT
AND
YAKIMA COUNTY FLOOD CONTROL ZONE DISTRICT

Yakima County, WA

This Agreement is made and entered into between the Yakima County Flood Control Zone District, hereinafter the "FCZD," and the North Yakima Conservation District, hereinafter the "NYCD." The NYCD and the FCZD may be collectively referred to as the "Parties" and may each be referred to individually as a "Party."

Recitals

1. The FCZD is a special purpose district created in 1998 by the Board of Yakima County Commissioners through the authority provided by RCW 86.15 and formed by resolution 21-1998 on January 13, 1998. The FCZD was formed to administer such actions as needed to actively reduce flood risk within Yakima County. The board of county commissioners are the supervisors of the FCZD.
2. The NYCD is a legal subdivision of Washington State government organized under the *conservation districts law* as codified in Title 89, Chapter 8 of the Revised Code of Washington (RCW). The NYCD works with all units of government, commodity groups, and individuals in an effort to use, protect, and enhance the natural resources within the district which includes the northern half of Yakima County.
3. The FCZD has acquired property interests deemed necessary for flood hazard mitigation and prevention and conservation purposes. These properties require both routine and unplanned maintenance and upkeep, including vegetation management and other general property improvement and preservation actions necessary to protect the public from harm caused by flood, fires, noxious pests and weeds, or other circumstances.
4. Yakima County periodically enters into grant agreements with State and Federal agencies to secure funding for the FCZD to plan, implement, and maintain a variety of flood risk reduction, floodplain restoration, habitat improvement, and conservation projects on these properties. These grant agreements often have terms and conditions that apply to subcontracted entities.
5. The NYCD also enters into grant agreements with State and Federal agencies for these and related purposes on public and private land within the bounds of the district, including specific properties owned or managed by the FCZD and Yakima County. These grants often require landowner agreements that provide site access to the funding agency for inspection of the completed work and long-term effectiveness monitoring.

6. The FCZD, as a county-wide special purpose district of Yakima County, has dedicated funding through an annual ad valorem tax levy. The budget of the FCZD is annually adopted by the BOCC and generally includes overhead and administration, maintenance and operation, construction and improvements, and bond retirement and interest.
7. Yakima County and the FCZD wish to use both externally-granted funding and FCZD levy funding to avail themselves of the expertise and resources possessed by the Conservation District to manage specific public properties that are owned and/or managed by Yakima County or the FCZD.

Now, therefore, and 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), the intergovernmental cooperation authority provided by the *conservation districts law* as codified at RCW 89.08.341, and the powers granted to the FCZD by RCW 86.15, it is mutually agreed as follows:

1. **Purpose:** The purpose of this master Agreement is to define the responsibilities and duties of the Parties for the cooperative stewardship and management of real properties in the floodplain under the statutory jurisdiction of the FCZD, properties owned by the FCZD or Yakima County, or lands otherwise granted to a Party through flood or conservations easements or other agreements. The objective is to promote administrative efficiency and economy as each Party continues their respective efforts to “protect the health, safety, and general welfare of the people.”
2. **Administration:** No new separate legal or administrative entity is created to administer the provisions of this Agreement. This Agreement is not a Watershed Management Partnership as contemplated by RCW 39.34.200. For the administration of this agreement and the cooperative undertaking, the contact and representative for each Party shall be as follows:
 - Yakima County – Water Resources Division Manager
128 N. 2nd Street
Fourth Floor Courthouse
Yakima, WA 98901
Phone: 509-574-2300
 - North Yakima Conservation District – District Manager
USDA Service Center
1606 Perry St.
Yakima, WA 98902
Phone: 509-454-5743

Unless otherwise specifically agreed to by the Parties in writing, this Agreement shall not be used to jointly acquire, hold, or dispose of real or personal property. All property, personal or

real, utilized by the Parties hereto in the execution of this Agreement or any tasks shall remain the property of that Party initially owning it.

3. **Budget:** Funding for this cooperative undertaking is limited to state or federal grant funding secured by one of the Parties, or dedicated FCZD funding. Budget shall be determined per task and allocated only through a written task order document signed by the designated representative for each Party. This Agreement authorizes task orders up to a total maximum amount payable under this contract of \$250,000 for all costs and expenses. No minimum amount payable is guaranteed under this Agreement.
4. **Term:** The term of this Agreement shall be from January 1, 2020 to December 31st, 2025. Either Party may terminate this contract upon thirty days' written notice sent by certified mail to the addresses listed above. If the funds the FCZD relied upon to establish this Agreement or any task order are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, the FCZD may immediately terminate this Agreement by providing written notice to the NYCD. The termination shall be effective on the date specified in the termination notice.

5. Duties and Responsibilities:

FCZD:

- Depending on available funding, site conditions, staff availability, the nature of the work needed, and district priorities, the FCZD will, through coordination with the NYCD, develop written task order documents that include a detailed task-specific scope of work, a budget amount, and start and end dates for the implementation of the task. Each task order will use the form provided in Attachment A. These task orders will be individually negotiated with the NYCD to the satisfaction of both Parties. Depending on the source of funds, these task orders may include additional flow-down contract provisions or reporting requirements. Tasks may include, but are not limited to the following: site preparation, scarification, planting, herbicide application, tree cutting and removal, plant sourcing/acquisition, garbage and debris removal, mowing, photographic documentation of efforts, preparation of planting or maintenance plans (written reports), landowner outreach, etc.
- The FCZD reserves the right to contract independently for the acquisition of similar floodplain property maintenance and management services without notice to the NYCD.
- Upon receipt of an acceptable invoice reflecting work satisfactorily completed in accordance with an executed task order, the FCZD will reimburse the NYCD within 30 days.
- FCZD will provide timely review and comment on any landowner agreements provided by the NYCD for any grant funding that requires such an agreement (e.g. Ecology's water quality grant program). FCZD will work in good faith to execute these agreements promptly.
- FCZD will post a copy of this agreement and each executed task order on the website of the FCZD pursuant to the provisions of RCW 39.34.040.

NYCD:

- The NYCD will work collaboratively with the FCZD to develop the scope of work, budget, and implementation schedule for each task order so that the terms are appropriate for the work and consistent with the availability of equipment, materials, and crews.
- The NYCD will provide and direct Washington Conservation Corps crews and supervisors or other resources as needed for the safe and timely completion of each task.
- The NYCD will invoice monthly for completed work on a reimbursement basis. Invoices will be specific to each task order and will include sufficient detail including the number of NYCD staff hours, the size of the WCC crew (or other crew) and how long they worked, the specific location of the work completed (parcel numbers and/or site and project names as appropriate for each task), the type and quantity of any materials purchased, and a description of the work accomplished. Invoices will be submitted to:

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

All billings must be submitted by the NYCD within 60 days of completion of the work.

- 6. Filing:** Executed copies of this Agreement shall be posted online on the website of the FCZD as required by RCW 39.34.040 prior to this Agreement becoming effective. Individual task orders will be posted to the website as they are issued.
- 7. 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. No other understandings, oral or otherwise, regarding the subject matter of this Agreement, are deemed to exist or to bind either of the Parties.
- 8. Relationship of the Parties:** No agent, employee, or representative of Yakima County or the FCZD shall be deemed to be an agent, employee, or representative of the NYCD for any purpose. The employees of Yakima County are not entitled to any of the benefits the NYCD provides to NYCD employees. No agent, employee, or representative of the NYCD shall be deemed to be an agent, employee, or representative of the FCZD or Yakima County for any purpose. The employees of the NYCD are not entitled to any of the benefits Yakima County provides to employees.

- 9. Compliance with Legal Requirements:** Each Party agrees shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.
- 10. Insurance & Verification of coverage:** 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 by the Washington Counties Risk Pool and providing single limit general liability coverage of \$5,000,000 and separate automobile coverage of \$2,000,000 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 the other Parties. Each Party shall be financially responsible for their own deductibles, self-insurance retentions, self-insurance, or uninsured risks.
- 11. Indemnification and 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, liability, including the duty and cost to defend, hereunder shall be only to the extent of the Parties individual negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.
- 12. 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 costs to be shared equally. If any legal action or proceeding is commenced relating to this agreement, the prevailing Party is entitled to recover its reasonable attorneys' fees and costs.

- 13. 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.
- 14. Severability and Waiver:** 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. 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.
- 15. Notice:** Unless otherwise stated herein, all notices and demands are required in written form and sent to the Parties at their respective addresses.
- 16. Records:** Each Party agrees to maintain records and documents which accurately reflect all direct and indirect costs related to the Agreement. The Parties agree 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 Parties shall, at no cost to the other, provide reasonable access to these records. These inspection rights are intended to allow the Parties and the State Auditor to monitor, audit, and evaluate 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.

This Agreement is entered on the _____ day of _____, 20__ and is executed with three original copies, of which one is to be delivered to the NYCD, one to the Water Resources Manager, and one to the Public Services Accounting Office.

**BOARD OF SUPERVISORS
NORTH YAKIMA
CONSERVATION DISTRICT:**

**BOARD OF YAKIMA COUNTY
COMMISSIONERS:**


Board Chair Name

Norm Childress, Chairman


Board Chair Signature

Vicki Baker, Commissioner

Ron Anderson, Commissioner

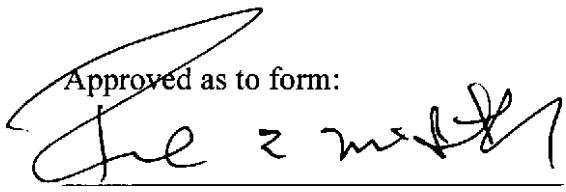
*Constituting the Board of County Commissioners
for Yakima County, Washington*

Attest: Melissa Paul
Clerk of the Board

BOCC Agreement

023 - 2020

Yakima County, WA

Approved as to form:

Deputy Prosecuting Attorney

Attachment A

TASK ORDER FORM					
Project Manager	County Project #	Date Task Issued	Task Order #	Administration Use ONLY	
					Admin Staff
				Date	
Not-to-Exceed Amount	Task Order Amount	Total Contracted	Total Contract Remaining	Budget Verified	
\$ 250,000.00	\$ -	\$ -	\$ -	Contract Terms Verified	

Task Order Name:

Scope of Work:

Task Start Date:

Task End Date:

TASK ORDER SUMMARY		Contracted Amount	Actual Amount	Completed (Y/N)
Task #	Task Order Name			
1		\$ -	\$ -	
2		\$ -	\$ -	
3		\$ -	\$ -	
4		\$ -	\$ -	
5		\$ -	\$ -	
6		\$ -	\$ -	
7		\$ -	\$ -	
8		\$ -	\$ -	
9		\$ -	\$ -	
10		\$ -	\$ -	
Total contracted to date:		\$ -	\$ -	

Yakima County Signatures:

NYCD Signature:

Water Resources Manager DATE

NYCD Chair DATE

Project Manager DATE

NOTES:

- Task Orders must be compliant with the provisions of the ILA between Yakima County and the NYCD and the provisions of the funding agreement for each task which will be included in each task as appropriate.
- Where the scope of work of the Task Order cannot be accommodated on the form; use as a cover (noting "See Attached" in the appropriate spaces above) to provide accounting codes, Admin authorization, and signatures. Any substitute format must include all elements of this form for each item of work.