

CONTRACT NO. _____

**WASHINGTON STATE CONSERVATION COMMISSION
AND
XYZ CONSERVATION DISTRICT**

PARTIES TO THE CONTRACT

This contract is by and between the Washington State Conservation Commission, called the Commission, and XYZ Conservation District referred to as the District.

PURPOSE

The District routinely designs and applies on-the-ground solutions for “renewable natural resources including land, air, water, vegetation, fish, wildlife, wild rivers, wilderness, natural beauty, scenery and open space” (RCW 89.08.020) on privately owned natural resource lands.

The Commission and the District have a mutual interest in ensuring that renewable natural resource conservation occurs within the district boundaries. The District will provide the services needed to carry out the delivery of current conservation programs using necessary personnel and equipment.

PERIOD OF PERFORMANCE

This Master Contract shall become effective July 1, 2007 and will expire June 30, 2009, unless terminated sooner or extended as provided herein.

BILLING PROCEDURES

The District shall submit invoices for payment at least quarterly, but no more than once monthly. Monthly invoices are preferred. Invoices will follow procedures outlined in the most current **Conservation Commission Grants Administrative Procedures Manual**. Upon expiration of this contract, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier. Final payments will not be issued until all required documents are received. Requests for payment after the 30 days are considered belated claims and subject to review and approval by the Office of Financial Management.

DEFINITIONS

1. "**Commission**" shall mean the Washington State Conservation Commission, any division, section, office, unit, or other entity of the Commission or any of the officers or other officials lawfully representing the Commission.
2. "**District**" shall mean the conservation district named in Item #1 on the contract Face Sheet and any individual or official lawfully employed by the district, or

- elected or appointed to represent the district in carrying out the Scope of Work and other terms and conditions of this contract.
3. **"Interagency Agreement"** shall mean a written contract between the District and one or more other districts; or between the District and one or more government agencies to perform all or part of the services under this contract.
 4. **"Project Officer"** shall mean the Commission designated staff person who has primary responsibility for overseeing the performance of this contract by the District and represents the Commission in matters concerning this contract.
 5. **"Subcontractor"** shall mean an individual, an entity or an organization, not in the employment of the District that is performing all or part of the services under this contract under a subcontract with the District. The term "Subcontractor" and "Subcontractors" means subcontractor(s) in any tier and may include other governmental entities.

DISTRICT PERFORMANCE

All activities for which grant funds are to be used shall be accomplished by the District and the District's employees. The District shall not assign or subcontract performance to others without obtaining prior written authorization of the Commission. The request to subcontract may be made in the grant application and its inclusion in the Addendum constitutes the Commission's written authorization.

CONFIDENTIALITY

To the extent consistent with RCW 42.17, the Commission shall maintain the confidentiality of all such information related to this contract and marked confidential or proprietary. If a request is made to view the District's information, the Agency will notify the District of the request and the date that such records will be released to the requester unless the District obtains a court order enjoining that disclosure. If the District fails to obtain a court order enjoining disclosure, the Commission will release the requested information on the date specified.

INDEPENDENT RELATIONSHIP

District employees or agents performing under this contract are not employees or agents of the Commission. District employees or agents shall not hold themselves out as nor claim to be an officer or employee of the Commission or of the State of Washington by reason hereof, nor will District employees or agents make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work outlined in the scope of work shall be solely with the District.

TECHNICAL STANDARDS

Technical assistance provided under the terms and conditions of the contract shall be consistent with the current Natural Resources Conservation Service (NRCS) Field Office Technical Guide, "Practice Standards and Specifications." Where authorized, alternative practices not consistent with the NRCS "Practice Standards and Specifications" may be used if deemed suitable by a licensed professional engineer. If the alternative practices used are from other organizations' technical publications, the professional engineer shall

reference this in the conservation plan or planning document in which they are used. The District shall include this requirement in all subcontracts.

SUBCONTRACTOR COMPLIANCE

The District must ensure that all subcontractors comply with the terms and conditions of this contract.

THIRD PARTY BENEFICIARY

The District shall ensure that in all subcontracts entered into by the District pursuant to this contract, the State of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

CONTRACTING FOR SERVICES

Contracts for personal services, purchased services/goods, and public works shall be awarded through a competitive process, if required by State law. The District shall retain copies of all bids received and contracts awarded, for inspection and use by the Commission. Retention of copies shall be consistent with time periods established in the "Grants Administrative Procedures" manual.

AMENDMENTS

The Commission's current "Grants Administrative Procedures" manual, shall control alteration or modification.

ASSIGNMENTS

No right or claim of the District arising under this contract shall be transferred or assigned by the District.

INELIGIBILITY

If federal funds are the basis for this contract, the District certifies that neither it nor its agents are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions by any federal department agency.

COMPLIANCE WITH ALL LAWS

1. The District shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.
2. Prior to commencement of any construction, the District shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, and make copies available to the Commission upon request.
3. Discrimination. The Commission and the District agree to be bound by all Federal and State laws, regulations, and policies against discrimination.
4. Wages and Job Safety. The District agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

5. Industrial Insurance. The District shall fully comply with all applicable state industrial insurance requirements. If the District fails to comply with such laws, the Commission shall have the right to immediately terminate this contract as described below.
6. Public Records Disclosure. The District shall comply with the state Public Records Act (RCW 42.17).
7. Grants Administrative Procedures. The District shall comply with the current Conservation Commission Grants Administrative Procedures manual.

KICKBACKS

The District and its employees and authorized representatives are prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

AUDITS AND INSPECTIONS

1. The District shall maintain all books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and performance of this contract. Such records shall clearly indicate total receipts and expenditures by fund source and budget object. All grant records shall be kept in a manner which provides an audit trail for all expenditures. All grant records shall be kept in a common file to simplify audits.
2. All grant records shall be open for audit or inspection by the Commission or by any duly authorized state or federal audit representative for a period of at least six years after the final grant payment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the District shall provide clarification and/or make adjustments accordingly.
3. All work performed under this contract and any equipment purchased, shall be made available to the Commission and to any authorized state, federal or local representative for inspection at any time during the course of this contract and for at least six years following grant termination or dispute resolution hereunder.
4. The District shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the District expends \$500,000 or more in a year in Federal funds. The \$500,000 threshold for each year is a cumulative total of all federal funding from all sources.

PERFORMANCE REPORTING - The District shall submit annual reports to the Commission using the Commission's reporting format. A report summarizing all project activities is due 30 days after the end date of the grant contract or July 30. Final payments will not be made if reports are not up to received.

The District shall also report in writing to the Commission any events with significant impact on the project. This disclosure shall be accompanied by a statement of the action

taken or proposed and any requests for assistance from the Commission to resolve the situation.

COMPENSATION

1. Method of Compensation. Payment shall be made on a reimbursable basis for costs or obligations incurred at least quarterly and no more than once per month. Approved eligible costs or obligations incurred by the District will be considered to have been paid by the District under this contract at the time the District seeks reimbursement from the Commission.
2. Each request for payment will be submitted by the District on forms provided by the Commission. Payments shall be made for the objects set out in the grant contract budget. Instructions for submitting the payment requests are found in Commission "Grants Administrative Procedures."
3. Budget Deviation. Deviations in the grant budget are not allowed without written authorization from the Commission. Payment requests may be disallowed when the District's request for reimbursement exceeds the budget object as described in the grant budget.
4. Period of Compensation. Payments shall only be made for grant activities pursuant to the grant contract and performed after the effective date and prior to the expiration date of this contract, unless those dates are specifically modified in writing as provided herein.
5. Final Request for Payment. The District must submit final requests for compensation within thirty (30) days after the expiration date of this contract and the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.
6. Unauthorized Expenditures. All payments to the District shall be subject to final audit by the Commission or a designee of the Commission and any unauthorized expenditure(s) charged to this grant shall be refunded to the Commission by the District.
7. Mileage and Per Diem. If mileage and per diem are paid to the District, it shall not exceed the amount allowed under state law.
8. Overhead. No reimbursement for overhead costs shall be allowed unless included in the original grant budget.

TERMINATION

1. For Cause. The obligation of the Commission to the District is contingent upon satisfactory performance by the District of all of its obligations under this contract. In the event the District unjustifiably fails, in the opinion of the Commission, to perform any obligation required of it by this contract, the Commission may refuse to pay any further funds thereunder and/or terminate this contract by giving written notice of termination.

2. For District Bankruptcy. The obligation of the Commission to the District will terminate upon filing of bankruptcy by the District. In the event the District files bankruptcy, the Commission will terminate this contract by giving written notice of termination.
3. Termination Process. A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the District under this contract, at the option of the Commission, shall become Commission property and the District shall be entitled to receive just and equitable compensation for any work completed on such documents and other materials.
4. Despite the above, the District shall not be relieved of any liability to the Commission for damages sustained by the Commission and/or the State of Washington because of any breach of contract by the District. The Commission may withhold payments for the purpose of setoff until such time as the exact amount of damages due to the Commission from the District is determined.
5. Insufficient Funds. The obligation of the Commission to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this contract crosses over state fiscal years the obligation of the Commission is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this contract as provided in paragraph 1 above.
6. Failure to Commence Work. In the event the District fails to commence work on the project funded herein within four months after the effective date of this contract, or by any date mutually agreed upon in writing for commencement of work, the Commission reserves the right to terminate this contract.
7. If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

WAIVER

Waiver of any District default is not a waiver of any subsequent default. Waiver of a breach of any provision of this contract is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this contract unless stated as such in writing by the authorized representative of the Commission.

PROPERTY RIGHTS

1. Copyrights and Patents. When the District creates any copyrightable materials or invents any patentable property, the District may copyright or patent the same but the Commission retains a royalty-free, nonexclusive and irrevocable license to reproduce,

publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. The District warrants and represents it has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Commission.

2. Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions developed by the District as provided in 35 U.S.C. 200-212.
3. Publications. When the District or persons employed by the District use or publish information from the Commission; present papers, lectures, or seminars involving information supplied by the Commission; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the Commission.
4. Property Management. The Commission's "Grants Administrative Procedures" and any updates thereto, shall control the use and disposition of all real and personal property purchases wholly or in part with funds furnished by the Commission in the absence of state or federal statute(s), regulations(s), or policy(s) to the contrary or of specific instructions with respect thereto in the Scope of Work to the contrary.

RECOVERY OF PAYMENTS TO DISTRICT

- a. The right of the District to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this entire contract including the satisfactory completion of the project described in the Scope of Work. In the event the District fails, for any reason, to perform obligations required of it by this contract, the District may, at the Commission's sole discretion, be required to repay to the Commission all grant funds disbursed to the District for those parts of the project that are rendered worthless in the opinion of the Commission by such failure to perform.
- b. In the event that the District fails to expend funds under this contract in accordance with state laws and/or the provisions of this contract, the Commission reserves the right to recapture state funds in an amount equivalent to the extent of the noncompliance in addition to any other remedies available at law or in equity.
- c. Such rights of recapture shall exist for a period not to exceed six years following contract termination. Repayment by the District of funds under this recapture provision shall occur within 30 days of demand. In the event that the Commission is required to institute legal proceedings to enforce the recapture provision, the Commission shall be entitled to its costs thereof, including attorneys' fees.
- d. Interest shall accrue at the rate of twelve percent (12%) per annum from the time the Commission demands repayment of funds. If payments have been discontinued by the Commission due to insufficient funds as described in (b.) above, the District shall not be obligated to repay monies which had been paid to the District prior to such termination. Any property acquired under this contract, at the option of the Commission, may become the Commission's property and the

District's liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

PROJECT APPROVAL

The extent and character of all work and services to be performed under this contract by the District shall be subject to the review and approval of the Commission through the Project Officer or other official designated in writing to whom the District shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Commission's Project Officer or other designated official as to the extent and character of the work to be done shall govern. The District shall have the right to appeal decisions as provided for below.

DISPUTES

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of in writing shall be decided in the following manner:

1. By the Project Officer or other designated official who shall provide a written statement of decision to the District. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of such statement, the District mails or the Executive Director of the Commission receives a written appeal.
2. An appeal of the Project Officer's decision shall be addressed by the Executive Director. The District shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Executive Director for the determination of such appeals shall be final and conclusive unless, within thirty days from the date of such statement the District files a cause of action in Superior Court of Thurston County.
3. Any dispute remaining after the Executive Director's determination shall be brought in the Superior Court of Thurston County. Pending final decision of dispute hereunder, the District shall proceed diligently with the performance of this contract and in accordance with the decision rendered by the Executive Director.

CONFLICT OF INTEREST

No officer, member, agent, or employee of either party to this contract who exercises any function or responsibility in the review, approval, or carrying out of this contract, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this contract or the proceeds thereof, except as provided in RCW 89.08.220(4).

INDEMNIFICATION

1. The Commission shall in no way be held responsible for payment of salaries, consultant fees, and other costs related to the project described herein, except as provided in the Scope of Work.

2. To the fullest extent permitted by law, the District shall indemnify, defend and hold harmless the State of Washington, agencies of the State and all officials, agents and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. The District's obligation to indemnify, defend, and hold harmless includes any claim by the District's agents, employees, representatives, or any subcontractor or a subcontractor's employees. The District expressly agrees to indemnify, defend, and hold harmless the State of Washington and the Commission for any claim arising out of or incident to the District's or any subcontractor's performance or failure to perform the contract. The District's obligation to indemnify, defend, and hold harmless the State of Washington and the Commission shall not be eliminated or reduced by any actual or alleged concurrent negligence of the State or its agents, agencies, employees and officials. The District waives its immunity under Title 51 RCW (Industrial Insurance) to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

GOVERNANCE

This contract shall be governed by the laws of the State of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

SEVERABILITY

If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

PRECEDENCE

In the event of inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) any terms incorporated herein by reference including the Conservation Commission "Grants Administrative Procedures."

ENTIRE AGREEMENT CONTAINED IN CONTRACT

This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto.

ALL WRITINGS CONTAINED HEREIN

The Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

CONTRACT MANAGEMENT

District Contract Manager:

John Doe
XYZ Conservation District
123 Butler Avenue
Olympia, WA 98502

Commission Contract Manager:
Debbie Becker, Financial Services Manager
PO Box 47721
Olympia, WA 98504-7721
(360) 407-6211

EXECUTION

We, the undersigned, agree to the terms of the foregoing Contract.

Washington State
Conservation Commission

XYZ COUNTY Conservation District

Debbie Becker
Financial Services Manager

ABCD HIJKL
District Manager

Date: _____

Date: _____