

RESOLUTION NO. 2020-2

**A RESOLUTION OF THE TOWN OF NACHES, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN THE “SUPPORTING INVESTMENTS
IN ECONOMIC DIVERSIFICATION” (SIED) GRANT CONTRACT FOR THE
WASTEWATER TREATMENT PLANT IMPROVEMENTS**

WHEREAS, the Town Council of the Town of Naches previously authorized Town Administrator to apply for Yakima County “Supporting Investments in Economic Diversification” (SIED) grant for funding assistance; and,

WHEREAS, the SIED grant and loan have been awarded to the Town of Naches for the wastewater treatment plant improvements; and

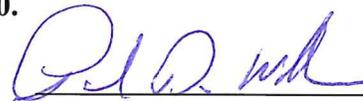
WHEREAS, the Town Council for the Town of Naches finds that it is in the best interests of the residents of the Town to upgrade the wastewater treatment plant, and that use of the SIED program for such purposes is in the best interest of the Town and its residents;

Now, therefore,

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF NACHES, WASHINGTON, AS FOLLOWS:

The Town of Naches authorizes Mayor Paul Williams to sign Contract No. YC-WTP-19 for a Yakima County SIED grant/loan for the wastewater treatment plant improvements.

**PASSED BY THE TOWN COUNCIL OF THE TOWN OF NACHES,
WASHINGTON, this 13th day of January, 2020.**

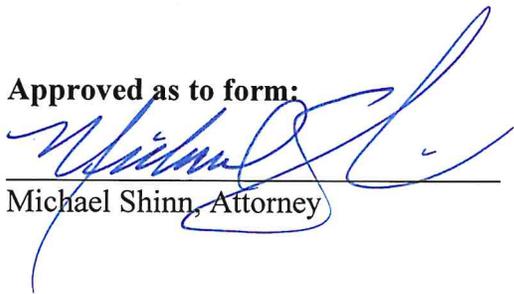


Paul D Williams, Mayor

ATTEST:


Elvira Birrueta, Clerk/Treasurer

Approved as to form:


Michael Shinn, Attorney

YAKIMA COUNTY
and
Town of Naches
(Wastewater Treatment Plant Improvements)

1. PARTIES

This Supporting Investments in Economic Diversification (hereinafter referred to as SIED) Contract is made by and between Yakima County (hereinafter referred to as **the County**) whose address is 128 North Second Street, County Courthouse, Room 232, Yakima, Washington 98901, and **the Town of Naches** (hereinafter referred to as **the Town**) whose address is P.O. Box 95, Naches, Washington 98937.. Notices between the parties shall be made where and as provided for on Page 7, Section 22, NOTICES.

2. TERM

This Contract takes effect upon execution hereof by the authorized representatives of both parties and continues in effect until all payments required under Section 5, MUTUAL CONSIDERATION, Subsection B. REPAYMENT OF COUNTY LOAN, have been made or until terminated as provided for in Section 8, SUSPENSION, TERMINATION, AND CLOSEOUT, provided, the County's right under Section 5, MUTUAL CONSIDERATION, Subsection D. OWNERSHIP AND USE, to use the Project shall continue so long as the Project remains in use.

3. PURPOSE

The purpose of this Contract is to provide for the construction of certain infrastructure improvements (hereinafter referred to as **the Project**) using certain County funds designated for such infrastructure. The Project will improve sludge handling and biosolids treatment at the Naches wastewater treatment plant. The project includes a sludge holding tank and new dewatering equipment. A second headworks screen will also be added to provide the required redundancy to protect the quality of the biosolids. Theses improvements will increase capacity to meet private development needs and expected residential population growth in the area.

4. RECITALS

- A. The Parties make this Contract based on and in recognition of certain relevant facts and circumstances including:
- B. Sales and use taxes are collected in and for the County under authority of RCW 82.14.370 and Yakima County Code 3.10.010 for the purpose of financing public facilities in the County, and the proceeds are deposited in the Yakima County Infrastructure Fund (also referred to as SIED Fund), according to YCC 3.10.040.
- C. The Town proposes to construct the Project with a combination of Town, private, and County funds, including **\$1,500,000.00 from the SIED Fund, \$750,000.00 to be in the form of a loan, and \$750,000.00 to be in the form of a grant**, and thereafter to own and

operate the Project for the benefit of the Town and the County.

- D. RCW 82.14.370 was adopted to serve the goals of promoting business in rural distressed areas, providing family wage jobs and the development of communities of excellence in such areas, and the parties expect the Project to further these goals.
- E. RCW 43.160 and 43.160.020 adopted and amended for related purposes with those of RCW 82.14.370, define public facilities to include various buildings, structures and works, such as the Project.
- F. The County, under authority of RCW 36.01.085, and by agreement of February 19, 1999, has engaged the Yakima County Development Association, also known as Choose Yakima, to provide administrative and technical assistance in furtherance of the County's economic development.
- G. The County has also created the SIED Board to review applications for grants from the SIED Fund and make recommendations for SIED Fund investments based on commitment of other funds, potential for resulting job creation, and other factors.
- H. Choose Yakima has investigated the Project and assisted in preparing the pending application for SIED funds, and the SIED Board has reviewed the application for SIED funds and has recommended approval.
- I. The SIED Fund balance is sufficient to make the requested contribution to the Project.
- J. RCW 39.34 authorizes interlocal agreements whereby municipal governments may jointly exercise the powers granted to each.

5. MUTUAL CONSIDERATION

- A. **COUNTY LOAN**—The County shall *loan Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00)* for the Project described herein. **This loan amount shall be drawn on the SIED Fund by County warrant, payable to the Town, upon the next available Yakima County Auditor's warrant issue.**
- B. **REPAYMENT OF COUNTY LOAN**—The Town shall *repay* the County's loan of **Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) with interest on unpaid principal, at an annual per annum rate of 3.56%**, which is the Yakima County Interfund Loan Rate for the equivalent term of the loan. In the event the contract is fully executed after January 31, 2020, the parties agree to use the current Yakima County Interfund Loan Rate on the date this contract is fully executed by both parties. Interest shall accrue from the date this contract is approved by the County.

Repayment of principal and interest shall be made in ten annual installments. The first payment shall be due on June 1, 2020, and annual payments thereafter shall be due on June 1 of each year with the final payment nevertheless due on June 1, 2029; Provided however, that the final installment may be in such greater or lesser amount as shall be required for full amortization of the repayment amount.

Payment shall be by check *payable to Yakima County Infrastructure Fund and delivered to Yakima County Treasurer, Yakima County Courthouse, Room 115, 128 North 2nd Street, Yakima, WA 98901*. The Town obligation hereunder shall be a limited general obligation of the Town, payable from any legally available source of funds. Exhibit A attached hereto and incorporated herein reflects the Debt Service Schedule as noted.

In the event of payment by the Town of any one or more installments, or of the entire loan balance, before the date prescribed in Exhibit A, interest shall accrue on such installment(s) or balance until, but not beyond, the June 1 next succeeding the date of such payment(s). If more than one installment is paid during any repayment year, then the repayment period recited above shall be correspondingly shortened and the scheduled of payments reflected in Exhibit A shall be correspondingly advanced.

- C. **COUNTY GRANT**—The County shall *grant Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00)* to the Town for the Project described herein. **This grant shall be by County warrant drawn on the SIED Fund and payable to the Town within 30 days of the County’s receipt of a signed copy of the Project engineer’s certificate that 50 percent of the work on the Project has been completed and the Town’s invoice for said grant.**

The Project must be at least 50 percent completed three years from the date this contract is approved by the County. If the project is not at least 50 percent complete by this date, the grant portion of this agreement will be terminated and the Town will not receive the grant in the amount of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00).

The above contract provision is specifically bargained for by the County and the Town agrees to it. The County shall have the unilateral power to determine if the project is fifty (50) percent complete by the three (3) year period from execution. The parties agree that in the event that this contract term is invoked by the County that it will hold the County harmless and release the County from any and all claimed actual and/or consequential damages that may result from the County’s decision to withhold the Grant funds if the Town does not meet the fifty percent building requirement.

- D. **OWNERSHIP AND USE**—The Town shall construct, own, maintain, and operate the Project as a part of its public infrastructure for economic development, available for use by manufacturing and industrial concerns proximate to the Project. The Town shall also permit the use of the Project by the County and its departments on like terms with other users, at such time as the Board of Yakima County Commissioners may deem expedient. For purposes of this paragraph, ownership, maintenance, and operation of the Project or any portion thereof by another municipality, under any conveyance or dedication, which is subject to and preserves the County’s right of use, shall be deemed ownership, maintenance, and operation by the Town.

6. RECORDS, REPORTS AND AUDITS

The Town agrees to maintain such records, make such reports, and follow such procedures as may be required by the County, pertaining to this Contract. All records pertaining to this Contract and

work undertaken hereunder shall be retained by the Town for a period of seven years after final audit unless a longer period is required to resolve audit findings or litigation. The County and other authorized representatives of the State and Federal government shall have access to any books, documents, papers, and records of the Town, which pertain to this Contract or work undertaken hereunder for the purpose of making audit, examination, excerpts, and transcriptions.

7. RELATIONSHIP OF PARTIES AND AGENTS

- A. The relationship of the Town to the County, with regard to construction of the Project, shall be that of an independent contractor rendering professional services. The Town shall have no authority to execute contracts or to make commitments on behalf of the County and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the County and the Town.
- B. The Town represents that it has or will secure at its own expense all personnel, contractors, and/or subcontractors required in order to perform work under this Contract. Such personnel shall not be employees of the County. All such personnel, contractors, and/or subcontractors shall be fully qualified and authorized/permitted under State and/or local law to perform such services.
- C. All services required hereunder will be performed by the Town or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State or local law to perform such services.

8. SUSPENSION, TERMINATION, AND CLOSEOUT

- A. If the Town fails to comply with the terms and conditions of this Contract, the County may pursue such remedies as are legally available, including, but not limited to, the suspension or termination of this Contract in the manner specified herein:
- B. **SUSPENSION**—If the Town fails to comply with terms and conditions of this Contract, or whenever the Town is unable to substantiate full compliance with provisions of this Contract, the County may suspend this Contract pending corrective action or investigation, effective not less than seven days following written notification to the Town or its authorized representative. The suspension will remain in full force and effect until the Town has taken corrective action to the satisfaction of the County and is able to substantiate its full compliance with the terms and conditions of this Contract. No obligations incurred by the Town or its authorized representative during the period of suspension will be allowable under this Contract, except:
 - I. Reasonable, proper, and otherwise allowable costs which the Town could not avoid during the period of suspension;
 - II. Otherwise, allowable costs incurred during the period of suspension, if upon investigation, the County is satisfied of the Town's compliance with the terms and conditions of this Contract to the extent of the compensation claimed by the Town.

- C. **TERMINATION FOR CAUSE**—If the Town fails to comply with the terms and conditions of this Contract and any of the following conditions exist:
- I. The lack of compliance with the provisions of this Contract were of such scope and nature that the County deems continuation of this Contract to be substantially detrimental to the interests of the County;
 - II. The Town has failed to take satisfactory action as directed by the County or its authorized representative within the time period specified by same;
 - III. The Town has failed within the time specified by the County or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this Contract; then,
 - IV. The County may terminate this Contract in whole or in part, and thereupon shall notify the Town of termination, the reasons therefore, and the effective date, provided such effective date shall not be prior to notification of the Town. After this effective date, no charges incurred under any terminated portions outlined in the application for funding are allowable.
 - V. The County may terminate the contract as to the Grant portion of the Contract to the Town as stated above in this contract if the Town has not completed at least fifty (50) percent construction of the project within three (3) years of execution of this agreement.
- D. **TERMINATION FOR OTHER GROUNDS**—This Contract may also be terminated in whole or in part by mutual consent and written agreement setting forth the conditions of termination, including effective date and, in case of termination in part, that portion to be terminated.

9. COPYRIGHT RESTRICTION

No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Town.

10. COMPLIANCE WITH LAWS

The County and the Town shall comply with all applicable laws, ordinances, and codes of the Federal, State, and local governments with regard to the performance of this Contract.

11. NONDISCRIMINATION & TITLE VI OF THE CIVIL RIGHT ACT OF 1964

The Contractor 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 Contractor and subcontractor 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 contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, creed, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

12. SECTION 109—HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

No person in the United States shall on the grounds of race, color, creed, religion, sex, or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

13. AGE DISCRIMINATION ACT OF 1975 (As Amended)

No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving Federal funding assistance (42 U.S.C. 610 et. seq.)

14. SECTION 504 OF THE REHABILITATION ACT OF 1973 (As Amended)

No otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funds (29 U.S.C. 794).

15. INTEREST OF AGENTS AND OFFICERS OF THE COUNTY AND THE TOWN

No member of the governing body of either party and no other officer, employee, or agent of either party who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in this Contract.

16. HOLD HARMLESS AND INDEMNITY

The Town shall indemnify and hold harmless the County, its officers, agents, and employees, from all liability, loss or damage, including costs of defense they may suffer as a result of claims, demands, actions costs, or judgments which result from the activities to be performed by the Town, its agents, employees, or subcontractors pursuant to this Contract.

17. PUBLIC LIABILITY

The Town or its contractor(s) shall maintain for the duration of work under this Contract, issued on an occurrence basis, comprehensive liability insurance with a combined single limit of not less than five million dollars (\$5,000,000.00) from a company authorized to provide insurance in the

State of Washington. Said policies shall provide that the policy shall not be canceled or altered by any party without written notice to Yakima County, delivered not less than 30 days prior to such cancellation or alteration. Applicant certifies that comprehensive liability insurance with a combined single limit of not less than \$5,000,000.00 is in effect.

18. ASSIGNABILITY

The Town shall not assign any interest in this Contract and shall not transfer any interest in this Contract (whether by assignment or novation) without prior written consent of the County thereto, provided, however, that claims for money by the Town from the County under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County by the Town.

19. NON-WAIVER

The failure of either party to insist upon strict performance of any provision of this Contract or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Contract.

20. CONTRACT MODIFICATIONS

It is mutually agreed and understood that no modification or waiver of any clause or condition of this Contract is binding upon either party unless such modification or waiver is in writing and executed by the County and the Town.

21. SEVERABILITY

If any portion of this Contract is changed per mutual contract or any portion is held invalid, the remainder of this Contract shall remain in full force and effect.

22. NOTICES

A. Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties to their addresses as follows:

TO TOWN: Jeff Ranger, Administrator
P.O. Box 95
Naches, WA 98937

TO COUNTY: Craig Warner
Financial Services Director
128 North Second Street, Room 232
Yakima, WA 98901

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

23. INTEGRATION

This Contract contains all terms and conditions agreed to by the County and the Town. There are no other oral or written agreements between the Town and County as to the subjects contained herein. No changes or additions to this Contract shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

24. GOVERNING LAW AND VENUE

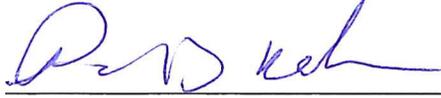
All questions of the validity, construction, and application of this Contract shall be governed by the laws of the State of Washington. Venue for any suit between the parties arising out of this Contract shall be the Superior Court of Yakima County, Washington.

25. FILING

Upon execution by the authorized representatives of the parties, a copy of this Contract shall be promptly filed with the Yakima County Auditor pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the County and the Town have executed this Contract as of the date and year last written below.

TOWN OF NACHES



Paul Williams, Mayor

Approved as to Form:



Michael Shinn, Town Attorney

Attest:



Elvira Birrueta, Town Clerk/Treasurer

Date

BOARD OF COUNTY COMMISSIONERS

Michael D. Leita, Chairman

Norm Childress, Commissioner

Ron Anderson, Commissioner

Approved as to Form:



Dan Clark, Deputy Prosecuting Attorney

WSB A #35921

CONTRACT AUTHORIZATION

Attest:

Melissa Paul, Clerk of the Board

Date