

RESOLUTION

2021 847

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN ENERGY NORTHWEST AND BENTON COUNTY FOR GENERAL EQUIPMENT AND/OR SERVICES

WHEREAS, Chapters 36.01 and 36.32 RCW allows the Board to enter into agreements on behalf of Benton County; and

WHEREAS, Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment; and

WHEREAS, Energy Northwest has expressed interest in entering into an agreement with Benton County for the sharing of services and equipment; and

WHEREAS, a proposed Interlocal, reviewed and approved as to form by the Benton County Prosecuting Attorney's Office, was signed by Energy Northwest staff, under the authority of the Board of Directors, on November 16, 2021; and

WHEREAS, the County Engineer recommends that the Board approve of and sign the proposed Agreement with Energy Northwest, finding such to be beneficial to Benton County; **NOW THEREFORE**,

BE IT RESOLVED that the Board of County Commissioners concurs with the recommendation of the County Engineer and hereby approves of the proposed Interlocal Cooperative Agreement Between Energy Northwest and Benton County for General Equipment and/or Services; and

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby authorizes the Chairman to sign said Agreement with Energy Northwest on behalf of Benton County; and

BE IT FURTHER RESOLVED the Interlocal shall be effective on January 1, 2022 and shall continue through December 31, 2026.

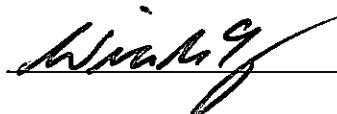
Dated this 30th day of November 2021.

JEROME DELVIN - ABSENT

Chairman of the Board



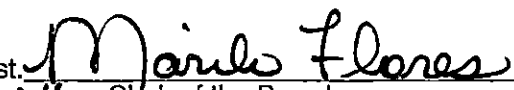
Chairman ProTem



Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest.


A.H. Clerk of the Board

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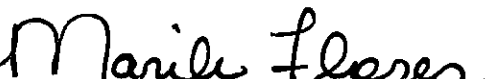
Chairman ProTem



Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest:


Clerk of the Board

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN ENERGY NORTHWEST AND BENTON COUNTY
FOR GENERAL EQUIPMENT AND/OR SERVICES
THROUGH THE PUBLIC WORKS DEPARTMENT**

This agreement is made and entered into by and between Energy Northwest and Benton County, pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**ARTICLE I
PURPOSE**

- 1.01 **PURPOSE.** The purpose of this Agreement is to set forth the terms and conditions under which Benton County, through its Public Works Department, and Energy Northwest will temporarily provide equipment and/or services to the other party. Neither Benton County nor Energy Northwest are required under this Agreement to provide equipment or services to the other party in the event that the party from whom the equipment or services are sought does not have the equipment or services available, or determines, in its sole discretion, that providing the requested equipment or services would not be in its best interest. No new or separate legal or administrative entity is created by this Agreement.

**ARTICLE II
ADMINISTRATION**

- 2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.
- 2.02 Energy Northwest's representative shall be the Procurement Lead, or designee.
- 2.03 Benton County's representative shall be the County Engineer, or designee.
- 2.04 Requests for rental of equipment or performance of work shall be submitted by the requesting agency to the agency providing the equipment or work in writing in the form of a Task Letter. Written requests shall be submitted prior to rental of equipment or performance of work. In the event that circumstances do not permit a written request to be submitted, the representative for the agency providing equipment or work may waive this requirement, providing that a written request, along with an explanation of the circumstances for the waiver, be provided as soon as is practical.

**ARTICLE III
DURATION AND RENEWAL OF AGREEMENT**

- 3.01 **DURATION AND RENEWAL.** This Agreement shall be effective January 1, 2022 and shall continue through December 31, 2026. The obligation to provide compensation for the use of equipment or service provided during the term of this Agreement shall survive this Agreement's termination or expiration.

ARTICLE IV COMPENSATION

- 4.01 **COMPENSATION.** Both parties hereby agree to reimburse the other for the costs of the work performed or equipment rented, as requested by one agency herein to the other agency herein and shall be based on the actual cost of labor, equipment, plus all costs for fringe benefits to labor, including but not limited to, Social Security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. Also, an additional five percent (5%) of the total costs shall be added for overhead expenses for accounting, billing, and administrative services, after a certified statement of the costs is provided within thirty (30) days of the service or equipment rental. The amount shall be paid within thirty (30) days after billing.

ARTICLE V PERFORMANCE OF AGREEMENT

- 5.01 **COMPLIANCE WITH ALL LAWS.** Each party 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.
- 5.02 **MAINTENANCE AND AUDIT OF RECORDS.** Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records documents, and other material for the applicable retention period under federal and Washington law.
- 5.03 **ON-SITE INSPECTIONS.** Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement and in compliance with federal, state, and local laws, rules, regulations, and ordinances.
- 5.04 **TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
- 5.05 **IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 5.06 **CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

- 5.07 **ASSIGNMENT AND SUBCONTRACTING.** No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties authorized representatives.
- 5.08 **NOTICE.** Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to Benton County shall be to the County Engineer, P.O. Box 1001, Prosser, Washington 99350; and to the Benton County Commissioners, P.O. Box 190, Prosser, Washington 99350. Notice to Energy Northwest for all purposes under this Agreement shall be to Sherri Schwartz, Procurement Lead, PO Box 968, Richland, Washington 99352.

ARTICLE VI INDEMNIFICATION

- 6.01 **MUTUAL INDEMNITY.** To the extent of its comparative liability, each party agrees to indemnify, defend and hold the other party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the parties, negligent or otherwise, each party shall pay its proportionate share of any damages awarded based upon comparative liability. The parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration.

In any and all claims against Energy Northwest or its officers, officials, employees, or agents by any employee of Benton County, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Benton County or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Benton County expressly waives any immunity Benton County might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

In any and all claims against Benton County or its officers, officials, employees, or agents by any employee of Energy Northwest, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Section 6.01 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Energy Northwest or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that Energy Northwest expressly waives any immunity Energy Northwest might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington.

- 6.02 **SURVIVAL OF INDEMNITY OBLIGATIONS.** The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

ARTICLE VII DISPUTES

- 7.01 **DISPUTE RESOLUTION; GOVERNING LAW; VENUE.** In the event of a dispute regarding the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. Any judicial proceeding arising out of this contract shall be governed by the laws of the State of Washington, and suit may be instituted and maintained only in the courts of competent jurisdiction in Benton County, Washington.

ARTICLE VIII TERMINATION

- 8.01 **TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

ARTICLE IX GENERAL PROVISIONS

- 9.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- 9.02 **ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

- 9.03 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or application of this Agreement which can be given effect without the invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.
- 9.04 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. 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.
- 9.05 **INTERLOCAL COOPERATION ACT PROVISIONS.** All vehicles, equipment, inventory and any improvement thereon or fixtures purchased by Energy Northwest, shall remain the sole property of Energy Northwest. All vehicles, equipment, inventory and any improvements thereon or fixtures purchased by Benton County, shall remain the sole property of Benton County.

No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement.

A copy of this Agreement shall be filed with the Benton County Auditor's office or posted on Energy Northwest's or Benton County's website as required by RCW 39.34.040.

- 9.06 **EVIDENCE OF AUTHORITY.** Upon execution of this Agreement, Energy Northwest shall provide Benton County and Benton County shall provide Energy Northwest with a copy of the resolution, ordinance, or other authority to execute this Agreement pursuant to RCW 39.34.030(2), and said documents shall be attached hereto and incorporated herein as Exhibit A (Energy Northwest) and Exhibit B (Benton County).

This section intentionally left blank.

IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

ENERGY NORTHWEST

DocuSigned by:
Sherri Schwartz
By: 4DB4209FC7224E6...
Sherri L. Schwartz
Procurement Lead
Date: 11/16/2021

BENTON COUNTY, WASHINGTON

By: [Signature]
Jerome Delvin, Chairman
Board of County Commissioners

Attest:
Marile Flores
Clerk of the Board

Date: 11-30-21

Approved, as to form:

[Signature]
Reid Hay, Benton County Prosecuting Attorney

Date: 11/2/21



ENERGY NORTHWEST

INTEROFFICE MEMO

DATE: August 24, 2021
TO: Distribution A, B, C
FROM: R.E. Schuetz, Chief Executive Officer (1023) 
SUBJECT: DELEGATION OF AUTHORITY – FINANCIAL MATTERS CHIEF EXECUTIVE OFFICER RE-DELEGATION
REFERENCE: Executive Board Resolution No. 1903

Pursuant to Executive Board Resolution No. 1903, the attached Delegation of Authority roster identifies further re-delegations by the Chief Executive Officer (CEO). The identified positions are hereby delegated authority to take actions on behalf of the Energy Northwest CEO as set forth herein.

Individual names are included for internal tracking purposes only and will be modified as required without CEO approval.

The following documents are effective in accordance with this memo. This delegation supersedes all previous Delegation of Authority documents issued and will remain in effect until terminated or modified.

- Attachment 1** - Budget Authority
- Attachment 2** - Procurement Authority for Purchase Orders & Contracts
- Attachment 3** - Specific Procurement Authorities
- Attachment 4** - Revenue Contracts (Services Provided to Others)
- Attachment 5** - Payment Authority
- Attachment 6** - Institute and Dispose of Litigation Authorities

The foregoing authorities are to be executed consistent with applicable statutes and Energy Northwest policies and procedures and are subject to the rights of the Bonneville Power Administration and the Participants' Review Board.

As stated in GBP-FIN-02, "Energy Northwest Delegation of Authority Rosters," deviation requests from the attached delegations shall be submitted via Form 26391, Delegation of Authority Deviation Request and forwarded to the Finance Department via e-mail to FinDOA or via company mail to PE-60.

Any further re-delegations are to be in accordance with GBP-HR-12, "Delegations of Authority."

JMI/jmd

Attachments (as stated)

**PROCUREMENT AUTHORITY FOR
PURCHASE ORDERS & CONTRACTS****

DEFINITION: Executive Board Resolution No. 1903 delegates \$2,500,000 to the CEO for procurement actions, with an additional level of procurement limit of \$750,000 to the CEO for any development by the Energy Services & Development (ES&D) business unit of Energy Northwest not meeting the definition of a Project as defined in the Rules of the Board of Directors. The following authority levels reflect further re-delegations allowed for purchase orders and contracts which, when executed, constitutes an external obligation to EN; with the limit for the Vice President, Corporate Governance and General Counsel capped at \$750,000 for ES&D. Amounts over \$750,000 for ES&D require Executive Board approval.

<u>Name</u>	<u>Title</u>	<u>Current Authority</u>
S.A. Vance	Vice President, Corporate Governance and General Counsel	\$1,000,000
G.V. Cullen	Vice President, Energy Services and Development	\$1,000,000
D.R. Jordan	Manager, Supply Chain Services	\$500,000*
R.A. Shaff, Jr.	Manager, ES&D Business Support	\$500,000*
E.J. Lysher	Supervisor, Purchasing	\$350,000*
J.D. Taylor	Supervisor, Contracts	\$350,000*
C.L. La Plante	Lead Procurement Specialist	\$250,000
S.L. Schwartz	Lead Procurement Specialist	\$250,000
L.A. Wagner	Lead Procurement Specialist, Purchasing	\$250,000
J.C. Ayres	Procurement Specialist III	\$150,000
Z.D. Evosevich	Procurement Specialist III	\$150,000
T.N. Johnson	Procurement Specialist III	\$150,000
M.L. Roberts	Procurement Specialist III	\$150,000
Z.D. Evosevich	Procurement Specialist III	\$150,000
A.J. Bailes	Procurement Specialist II	\$100,000
L.C. Olds	Procurement Specialist II	\$100,000
C.S. Otto	Procurement Specialist II	\$100,000
D.K. Barnes	Procurement Specialist I	\$ 50,000
Z.M. Brown	Procurement Specialist I	\$ 50,000

MISCELLANEOUS PURCHASE ORDER & CONTRACT AUTHORITY

<u>Name</u>	<u>Title</u>	<u>Current Authority</u>
OPEN	Leader, Warehouse	\$20,000 Transportation only
S.E. Fillafer	Board Relations Lead	\$20,000 Board Support ⁽¹⁾
C.J. Martinez	Manager, Public Affairs/CCO	\$50,000 Board Support ⁽¹⁾

* Contact these individuals for the names and levels of further re-delegations.

** Procurement staff has authority to make purchases for \$500.00 or less without further management approval.

⁽¹⁾ Excludes Professional Services.