

RESOLUTION 2022 039

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE EXECUTION OF AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN BENTON COUNTY AND THE CITY OF KENNEWICK FOR INSPECTION, OPERATION AND MAINTENANCE OF COUNTY ROADS WITHIN HIGHLAND VINEYARDS PHASE 1 AND PHASE 2 SUBDIVISION IN THE KENNEWICK URBAN GROWTH AREA

WHEREAS, pursuant to RCW 39.34, local government units are permitted to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, The City of Kennewick, anticipating annexation of particular areas into its incorporated limits, may request that certain urban roadway improvements be constructed as a condition of development of urban growth areas with properties adjoining the City. The parties recognize that the County lacks the resources to maintain certain improvements that are above and beyond its own design standards; and

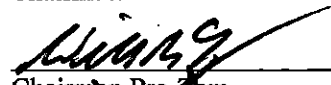
WHEREAS, Benton County and the City of Kennewick desire to enter into an agreement that sets forth the terms and conditions under which the County and City will be jointly responsible for the construction inspection, operation and maintenance of the roadway and roadway appurtenances in the Highland Vineyards Phase 1 and Phase 2 subdivision county roads within the Urban Growth Area (UGA) of the City of Kennewick where the roads are developed to urban standards as requested by the City; **NOW, THEREFORE;**

BE IT RESOLVED, The Benton County Board of Commissioners hereby approves the attached Interlocal Cooperative Agreement between Benton County and the City of Kennewick and the Chairman of the Board of County Commissioners is hereby authorized and directed to execute said agreement, a copy of which is attached.

Dated this 11th day of January 2022.

Attest: 
Clerk of the Board


Chairman


Chairman Pro Tem


Member

Constituting the Board of County
Commissioners of Benton County,
Washington

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN BENTON COUNTY AND THE CITY OF KENNEWICK
FOR INSPECTION, OPERATION AND MAINTENANCE OF COUNTY ROADS WITHIN
HIGHLAND VINEYARDS PHASE 1 AND PHASE 2 SUBDIVISION IN THE KENNEWICK
URBAN GROWTH AREA**

THIS AGREEMENT is made and entered into by and between Benton County (Hereinafter "the County") with its principal offices located at 620 Market Street, Prosser, Washington, 99350, by and for the Benton County Public Works Department, and the City of Kennewick (hereinafter "the City"), with its principal offices located at 210 W. 6th Avenue, Kennewick, Washington, 99336, by and for the City of Kennewick Public Works Department, pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**ARTICLE I
PURPOSE**

1.01 **PURPOSE.** The City, anticipating annexation of particular areas into its incorporated limits, may request that certain urban roadway improvements be done as a condition of development of adjoining properties. In instances where the developing land owner has been required to make these improvements by request of the City, the County may promote the City's request in accordance with Section 2 of the Memorandum of Understanding dated October 6, 1998. The parties recognize that the County lacks the resources to maintain certain improvements that are above and beyond its own design standards. This agreement sets forth the terms and conditions under which the County and City will be jointly responsible for the construction inspection, operation and maintenance of the roadway and roadway appurtenances in the Highland Vineyards phase 1 and phase 2 subdivision county roads within the Urban Growth Area (UGA) of the City of Kennewick where the roads are developed to urban standards requested by the City.

**ARTICLE II
ADMINISTRATION AND ORGANIZATION**

- 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 The County's representative shall be the Public Works Director/County Engineer or their authorized designee.
- 2.03 The City's representative shall be the Public Works Director or their authorized designee.
- 2.04 This Agreement is entered into pursuant to Chapter 39.34 RCW as an interlocal agreement between the parties. Each party shall be solely responsible for all costs,

materials, supplies, and services necessary for their performance under the terms of this Agreement. All property and materials secured by each party in the performance of this Agreement shall remain the sole property of that party. All funding incidental to the fulfillment of this Interlocal Agreement shall be borne by each party necessary for the fulfillment of their responsibilities under the terms of this Agreement. No special budgets or funds are anticipated, nor shall be created incidental to, this Interlocal Cooperation Agreement. It is not the intention that a separate legal entity be established to conduct the cooperative undertakings, nor is the acquisition, holding, or disposing of any real or personal property anticipated under the terms of this Agreement.

A copy of this Interlocal Agreement shall be filed with the Benton County Auditor, or posted on the County's or City's website, as provided by Chapter 39.34 RCW.

**ARTICLE III
DURATION AND RENEWAL OF AGREEMENT**

- 3.01 **DURATION AND RENEWAL.** This Agreement shall be effective when executed by both parties' authorized representatives and shall continue until annexation occurs, unless terminated in writing by either party, consistent with the termination provisions of this Agreement.

- 3.02 **SCOPE OF WORK.** The following shall be a division of responsibilities for the inspection, operation and maintenance of the road and its roadway appurtenances in the Highland Vineyards phase 1 and phase 2 subdivision. Costs for necessary labor, equipment and materials for each task shall be borne by the responsible party

TASK	RESPONSIBLE PARTY	
	COUNTY	CITY
Plans review	X	X
Inspection	X	X
Setting speed limits	X	
Pavement maintenance	X	
Road signage maintenance	X	
Road striping & pavement marking maintenance	X	
Snow and ice control	X	
Vegetation maintenance	X	
Street sweeping		X
Curb & gutter maintenance		X
Storm drain system maintenance		X
Street light system maintenance		X

Electrical service charges for street lights		X
Note: Maintenance of sidewalks, landscaping, irrigation and stormwater ponds are the responsibility of the individual property owners or the homeowners association.		

Construction plans shall be jointly approved by the City Public Works Director and the County Engineer.

**ARTICLE IV
COMPENSATION**

4.01 **COMPENSATION**. Each party is responsible for all cost, materials and services necessary to perform their portion of the above scope of work. In the event one party performs all or a portion of the other parties responsibility, with prior written approval or notification, the responsible party shall reimburse the other party based on the actual cost of labor, equipment rental, engineering, and/or materials used in the prosecution of the work involved; 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. In addition, thereto, a reasonable percent of the total costs may be added for overhead costs for accounting and billing and administrative services. A detailed calculation used to determine any overhead percentage claimed shall be provided on request by either party. Either party shall submit a certificate statement of the costs to the other or within thirty (30) days thereafter the other party shall pay the amount of said statement.

When the City requests that its urban standards be applied to a private development project pursuant to Section 3.02 the City will collect from the project developer any and all fees it would normally collect in accordance with fee schedules published at the time of development. When the project is a County Road Project no such fees will be applied.

**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 **COMPLIANCE WITH STANDARDS AND SPECIFICATIONS**. All work shall be completed in accordance with the latest version of the City of Kennewick Standards and Specifications. If there is no local standard or specification for the work to be

performed, the acting party shall comply with WSDOT standards and specifications. If there is no WSDOT standard or specification, the acting party may complete the work as it would its own property.

- 5.03 **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 subjected 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 materials for the applicable retention period under federal and Washington law.
- 5.04 **ON-SITE INSPECTIONS**. Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance complies with the standards set forth in this Agreement, and in compliance with federal, state, and local laws, rules, regulations, and ordinances.
- 5.05 **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.
- 5.06 **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.
- 5.07 **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.
- 5.08 **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.
- 5.09 **NOTICE**. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to the City shall be to:
City of Kennewick, Public Works Director PO Box 6108 Kennewick, WA 99336-0108.
Notice to the County, for all purposes under this Agreement, shall be to: Benton County Public Works Director and the Benton County Commissioners, 620 Market Street, Prosser, Washington, 99350.

**ARTICLE VI
INDEMNIFICATION**

6.01 **INDEMNIFICATION.** The County agrees to and shall defend, indemnify, and hold harmless the City, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the City, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the County, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the City, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein.

The City agrees to and shall defend, indemnify, and hold harmless the County, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the County, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the City, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the County, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the County by reason of entering into this Agreement, except as expressly provided herein.

**ARTICLE VII
DISPUTES**

7.01 **TIME.** Time is of the essence for this Agreement.

7.02 **GOVERNING LAW AND VENUE.** This Agreement shall be governed exclusively by the laws of the State of Washington.

In the event of a dispute regarding the enforcement, breach, or interpretation of this Agreement, the City Manager and the County Administrator shall first meet in a good faith attempt to resolve such dispute. In the event they are unable to resolve such dispute, either individually or with the assistance of a mediator, the dispute shall be resolved by arbitration pursuant to RCW 7.04A; with venue being placed in Benton

County, Washington; with all parties waiving the right of a jury trial upon *de novo* appeal, if any; and the substantially prevailing party being awarded its attorney fees and costs as additional award and judgment against the other.

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, 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 applications 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 will be 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 **FILING.** This Agreement shall be filed pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the parties have executed this Agreement this 10th day of January, 2022.

APPROVED:
BOARD OF COUNTY COMMISSIONERS,
BENTON COUNTY, WASHINGTON

[Signature]
Chair

[Signature]
Chair Pro-Tem

[Signature]
Member

ATTEST:
By: [Signature]
Clerk of the Board

APPROVED AS TO FORM:
By: [Signature]
Prosecuting Attorney

APPROVED:
CITY OF KENNEWICK

[Signature]
City Manager (Marie E. Mosley)

APPROVED AS TO FORM:

By: [Signature]
City Attorney

ATTEST:
[Signature]
City Clerk