

RESOLUTION 2023 0719

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN BENTON COUNTY AND COLUMBIA IRRIGATION DISTRICT FOR GENERAL EQUIPMENT, MATERIALS AND/OR SERVICES AND TERMINATING RESOLUTION 2022-647

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, Benton County and the Columbia Irrigation District desire to enter into an Interlocal Agreement to allow both parties to share equipment, services and materials; and

WHEREAS, pursuant to RCW 36.01.010 and RCW 36.32.120, the legislative authority of each county is authorized to enter into contracts on behalf of the County and have the care of County property and management of County funds and business; and

WHEREAS, the Board of Benton County Commissioners constitutes the legislative authority of Benton County and desires to enter into the attached agreement, finding such as being in the best interest of Benton County, **NOW, THEREFORE,**

BE IT RESOLVED, the Benton County Board of Commissioners hereby approves the attached Interlocal Cooperative Agreement between Benton County and the Columbia Irrigation District; and

BE IT FURTHER RESOLVED upon execution of this agreement Resolution 2022-647 shall terminate.

Dated this 24th day of October 2023.


Chairman

JEROME DELVIN - ABSENT
Chairman Pro-Tem


Commissioner

Attest: 
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN BENTON COUNTY AND COLUMBIA IRRIGATION DISTRICT
FOR GENERAL EQUIPMENT, MATERIALS AND/OR SERVICES THROUGH
DEPARTMENT OF PUBLIC WORKS**

THIS AGREEMENT is made and entered into by and between Benton County ("Benton") with its principal offices located at 620 Market Street, Prosser, Washington 99350, by and for the Benton County Public Works Department, and the Columbia Irrigation District, ("CID") with its principal offices located at 10 E. Kennewick Avenue, Kennewick, WA, 99336, 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 the CID and Benton County may provide labor, equipment, materials, and/or services to the other party; services rendered shall be with the coordination of both governing parties.

**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 Benton's representative shall be the Public Works Manager, or his/her authorized designee. The Public Works Manager shall be the signing authority for Benton for all task assignments pursuant to this Agreement.
- 2.03 The CID's representative shall be the District Manager or his/her authorized designee.
- 2.04 This Agreement is entered into pursuant to RCW 39.34 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, unless otherwise expressly stated in this Agreement. All funding incident 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 incident 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, except as specifically set forth herein.

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

ARTICLE III DURATION AND SCOPE OF AGREEMENT

- 3.01 **DURATION.** This Agreement shall be effective when executed by both parties' authorized representatives and shall continue unless terminated in writing by either party.
- 3.02 **SCOPE OF WORK.** This Agreement shall provide for the use of labor, equipment, materials, and/or services of one agency to provide labor, equipment, materials, and/or services for the other agency. The exact scope of each task shall be defined through individual written task orders approved by both agencies as a supplement attached hereto and incorporated herein to this Agreement by reference. Unless otherwise agreed to by Benton, CID shall perform the extraction of any earthen materials obtained from Benton. CID will provide Benton one (1) weeks' advanced notice of the desired extraction date. CID shall also notify Benton of completion within one (1) day of the completion date and report the total cubic yards of any extracted materials within one (1) week of completion.

Neither party are required under this Agreement to provide labor, materials, equipment and/or services to the other party in the event that the party from whom the labor, materials, equipment and/or services are sought does not have the labor, materials, equipment and/or services available, or if it said party determines, in its sole discretion, that providing the requested labor, materials, equipment and/or services would not be in its best interest. No new or separate legal or administrative entity is created by this Agreement.

ARTICLE IV COMPENSATION

- 4.01 **COMPENSATION.** The CID agrees to reimburse Benton for the costs of the work performed by Benton, based on the actual cost of labor; equipment rental; engineering; materials; and/or services provided or the individual quarry rate of all earthen materials extracted calculated per loose yard which shall be disclosed to CID prior to extraction; 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, indirect costs shall be added for overhead expenses for accounting, billing, and administrative services at the county's indirect rate used to bill administration. A certified statement of the costs shall be provided within thirty (30) days of service or equipment rental. The amount invoiced shall be paid to the Benton County Public Works Department within thirty (30) days of billing.

Benton hereby agrees to reimburse the CID for the costs of the work performed by the CID, based on the actual cost of labor; equipment rental; engineering; materials; and/or services provided; 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, indirect costs shall be added for overhead expenses for accounting, billing, and administrative services at the CID indirect rate used to bill administration. A certified statement of the costs shall be provided within thirty (30) days of service or equipment rental. The amount invoiced shall be paid to the CID within thirty (30) days of 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 **COMPLIANCE WITH STANDARDS AND SPECIFICATIONS.** All work shall be completed per the standards and specifications of the party owning the respective property. Where applicable, 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 to its own property, and at minimum, to local industry standards.
- 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 is in compliance with the standards set forth in this Agreement, and in compliance with federal, state, and local laws, rules, regulations, and ordinances.
- 5.05 **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 shall in writing and shall be given as follows:

To CID:

District Manager
10 E. Kennewick Avenue
Kennewick, WA 99336

and

CID Board of Directors
10 E. Kennewick Avenue
Kennewick, WA 99336

To Benton County:

Public Works Manager
102206 Wiser Parkway
Kennewick, WA 99338

and

Benton County Commissioners
620 Market Street
Prosser, WA 99350

**ARTICLE VI
INDEMNIFICATION**

6.01 **INDEMNIFICATION.** Each party agrees to and shall defend, indemnify, and hold harmless the other party, 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 party to be indemnified, 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 indemnifying party, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the party seeking indemnity, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to a party by reason of entering into this Agreement, except as expressly provided herein.

CID expressly waives the immunity under Title 51 RCW (Industrial Insurance statutes) and acknowledges that its waiver of immunity was mutually and expressly negotiated by the parties, and expressly agrees that its promise to indemnify and hold harmless applies to all claims filed by and/or injuries to its own employees.

- 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 **GOVERNING LAW AND VENUE.** In the event of a dispute regarding the enforcement, breach, or interpretation of this Agreement, the CID's District Manager and the Benton 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.

ARTICLE VIII TERMINATION

- 8.01 **TERMINATION.** The parties agree that upon full execution of this Agreement and approval thereof, the Interlocal Cooperative Agreement between the parties for the purchase of raw materials from Owen's Quarry, Resolution 2022-647 shall be terminated. 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 **TIME.** Time is of the essence of this Agreement.
- 9.02 **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.

Task assignments, insofar as they are considered changes, modifications, or amendments, shall be exempt from adoption by resolution of Benton's legislative authority,

instead being adopted by signature of Benton County's Public Works Manager, per Item 2.02.

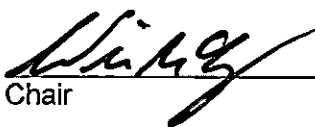
- 9.03 **ASSIGNMENT**. Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, subcontract, or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.
- 9.04 **SEVERABILITY**. In the 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.
- 9.05 **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.
- 9.06 **SIGNATURES**. By signing below, the parties consent to conduct this transaction by electronic means, and expressly agree that this Agreement can be signed in counterpart via original or electronic signature. The parties further agree that a copy of the fully executed Agreement shall have the same force and effect as the original.

9.07 **FILING**. This Agreement shall be filed pursuant to RCW 39.34.040.


IN WITNESS WHEREOF, the parties have executed this Agreement this 24th day of October, 2023.

APPROVED:

BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON


Chair

JEROME DELVIN - ABSENT
Chair Pro Tem


Commissioner

APPROVED:

COLUMBIA IRRIGATION DISTRICT


Chair


Vice Chair


Member

ATTEST:

By: 
Clerk of the Board

APPROVED AS TO FORM:

By: 
LeeAnn M. Holt, Deputy Prosecuting Attorney