

# RESOLUTION 2023 0855

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN BENTON COUNTY AND KITTITAS COUNTY FOR GENERAL LABOR, EQUIPMENT, MATERIALS AND/OR SERVICES**

**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 Kittitas County desire to enter into an Interlocal Agreement to allow both parties joint use of general labor, equipment, materials and/or services; and

**WHEREAS**, a proposed Interlocal agreement, reviewed and approved as to form by the Benton County Prosecuting Attorney's Office, was signed by the Chairman of the Board of Commissioners of Kittitas County on October 17, 2023; 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 Kittitas County; and

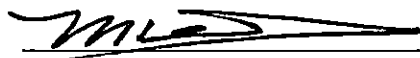
**BE IT FURTHER RESOLVED** that the Board of County Commissioners hereby authorizes the Chairman or Chairman Pro-Tem to sign said Agreement with Kittitas County on behalf of Benton County; and

**BE IT FURTHER RESOLVED** the Interlocal shall be effective on the last date signed.

Dated this 12<sup>th</sup> day of December 2023.

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
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 KITTITAS COUNTY  
FOR GENERAL LABOR, 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 Kittitas County ("Kittitas") with its principal offices located at 411 North Ruby Street, Suite 1, Ellensburg, WA, 98926, by and for the Kittitas Public Works Department, 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 Kittitas and Benton County may provide labor, equipment, materials, and/or services to the other party, as requested by either party in manner convenient to the party providing the labor, equipment, materials, and/or services. Either party to this Agreement shall make a reasonable effort to assure the availability of labor, equipment, materials, and/or services to the other party. The exact scope of each item or task shall be defined through individual written task orders approved by both agencies.

**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 their authorized designee. The Public Works Manager shall be the signing authority for Benton for all task assignments pursuant to this Agreement.
- 2.03 Kittitas's representative shall be the Public Works Director or their 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. 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.

### **ARTICLE III DURATION OF AGREEMENT**

- 3.01 **DURATION.** This Agreement shall be effective when executed by both parties' authorized representatives and the duration shall be ongoing unless terminated in writing by either party pursuant to Article VIII.

### **ARTICLE IV COMPENSATION**

- 4.01 **COMPENSATION.** Kittitas 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; 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, reasonable 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 Kittitas for the costs of the work performed by Kittitas, 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, reasonable indirect costs shall be added for overhead expenses for accounting, billing, and administrative services at the Kittitas 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 Kittitas 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 be in writing and shall be given as follows:

To Kittitas County:

Public Works Director  
411 North Ruby Street, Suite 1  
Ellensburg, WA 98926

To Benton County:

Public Works Manager  
102206 Wiser Parkway  
Kennewick, WA 99338

## 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. Kittitas 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 **TIME**. Time is of the essence of this Agreement.
- 7.02 **GOVERNING LAW AND VENUE**. In the event of a dispute regarding the enforcement, breach, or interpretation of this Agreement, Kittitas's Public Works Director 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.
- 7.03 **ATTORNEY'S FEES**. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall pay its own attorney's fees incurred in that action, arbitration, or proceeding.

## 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.

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.

- 9.02 **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 **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.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 17<sup>th</sup> day of October, 2023.

**APPROVED:**

BOARD OF COUNTY COMMISSIONERS  
BENTON COUNTY, WASHINGTON

[Signature]  
Chair

[Signature]  
Chair Pro Tem

[Signature]  
Commissioner

**APPROVED:**

BOARD OF COUNTY COMMISSIONERS  
KITITAS COUNTY, WASHINGTON

[Signature]  
Chairman

[Signature]  
Vice Chairman

[Signature]  
Commissioner

**ATTEST:**

By: [Signature]  
Clerk of the Board

**ATTEST:**

By: [Signature]  
Clerk of the Board

**APPROVED AS TO FORM:**

By: [Signature]  
Deputy Prosecuting Attorney

