

RESOLUTION 2023 427

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE BENTON COUNTY WEED DISTRICT #1 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, the Benton County Weed District #1 and Benton County desire to enter into an agreement 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 the Benton County Weed District #1; and


WHEREAS, the County Engineer recommends that the Board approve of and sign the proposed Agreement with the Benton County Weed District#1, 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 Benton County Weed District #1 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 the Benton County Weed District #1 on behalf of Benton County; and

BE IT FURTHER RESOLVED the Interlocal shall be effective on the last date signed and shall continue until terminated in writing by either party in accordance with Article VIII of the Interlocal Cooperative Agreement.

Dated this 6th day of June 2023.



Chairman of the Board



Chairman ProTem



Commissioner

Constituting the Board of Commissioners
of Benton County, Washington

Attest. 

Clerk of the Board

**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN BENTON
AND BENTON COUNTY WEED DISTRICT NO. 1
FOR GENERAL EQUIPMENT AND/OR SERVICES THROUGH
DEPARTMENT OF PUBLIC WORKS**

THIS AGREEMENT is made and entered into by and between Benton County (Hereinafter "Benton") with its principal offices located at 620 Market Street, Prosser, Washington 99350, by and for the Benton County Public Works Department and the Benton County Weed District No. 1 (Hereinafter "Weed District No. 1"), with its principal offices located at 1121 Dudley Avenue, Prosser, Washington 99350, 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 Benton County Weed District No. 1 and Benton County may provide equipment 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 Weed District No. 1's representative shall be the Coordinator 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. 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.

A copy of this Interlocal Agreement shall be filed with the Benton County Auditor or posted on the Benton County Weed District No. 1's website as provided by RCW 39.34.

**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 unless terminated in writing by either party.
- 3.02 **SCOPE OF WORK.** This Agreement shall provide for the use of labor, equipment and materials of one agency to perform work 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.

**ARTICLE IV
COMPENSATION**

- 4.01 **COMPENSATION.** The Weed District No. 1 hereby agrees to reimburse Benton for the costs of the work performed by Benton, based on the actual cost of labor; equipment rental; engineering; and/or materials used in the maintenance 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, 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 Weed District No. 1 for the costs of the work performed by the Weed District No. 1, based on the actual cost of labor; equipment rental; engineering; and/or materials used in the maintenance 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, indirect costs shall be added for overhead expenses for accounting, billing, and administrative services at the Weed District No. 1'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 Weed District No. 1 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. 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.
- 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 to the Weed District No. 1 shall be to the Benton County Weed District No. 1's Coordinator, 1121 Dudley Avenue, Prosser, Washington 99350.

Notice to Benton for all purposes under this Agreement shall be to: Benton County Public Works Manager, 102206 Wiser Parkway, Kennewick, Washington 99338, and the Benton County Commissioners, 620 Market Street, Prosser, Washington 99350.

ARTICLE VI INDEMNIFICATION

- 6.01 **INDEMNIFICATION.** Benton agrees to and shall defend, indemnify, and hold harmless the Weed District No. 1, 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 Weed District No. 1, 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 Benton, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the Weed District No. 1, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the Weed District No. 1 by reason of entering into this Agreement, except as expressly provided herein.

The Weed District No. 1 agrees to and shall defend, indemnify, and hold harmless Benton, 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 Benton, 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 Weed District No. 1, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of Benton, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to Benton by reason of entering into this Agreement, except as expressly provided herein.

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, the Weed District No. 1's Coordinator 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.

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

IN WITNESS WHEREOF, the parties have executed this Agreement this 4 day of June, 2023.

APPROVED:

BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON


Chair


Chair Pro Tem


Commissioner

APPROVED:

BENTON COUNTY WEED BOARD NO.1
BOARD OF DIRECTORS


Chair


Vice Chair

Absent
Member

ATTEST:

By: 
Clerk of the Board

APPROVED AS TO FORM:

DocuSigned by:
By: 
Deputy Prosecuting Attorney