

RESOLUTION 2023 501

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AN INTERAGENCY AGREEMENT WITH THE WASHINGTON DEPARTMENT OF ECOLOGY FOR THE RECEIPT OF LEASE REVENUES AND THE PROMOTION OF NUCLEAR-RELATED INDUSTRIES IN BENTON COUNTY

WHEREAS, Benton County and the Washington Department of Ecology ("Ecology") first entered into an Interagency Agreement on June 7, 1993 for the purposes of promoting "nuclear-related industries" at, around, and in connection with the Hanford Site, and for disbursements of rent proceeds to Benton County for commercial subleases upon Ecology leased property at the Hanford Site; and,

WHEREAS, the 1993 Interagency Agreement was thereafter amended 27 times over the ensuing years and most recently in 2020 in order to reflect changes to the rent payments and overall scope of work; and,

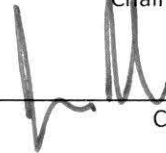
WHEREAS, the County and Ecology have determined that it is appropriate to restate and reaffirm the conditions of this relationship after thirty years since the original Interagency Agreement was executed, and have agreed to terms on a new Interagency Agreement with its associated scope of work and terms for rental disbursements; **NOW THEREFORE**,

BE IT RESOLVED, by the Board of Benton County Commissioners that the County approves the new Interagency Agreement by and between Benton County and the State of Washington (Department of Ecology) pursuant to authority granted by Chapter 39.34 Revised Code of Washington, to provide the County with disbursement of rental proceed funds and to stipulate the County's work to "solicit the interest and development of nuclear and related industries to Benton County and the Tri-City area." The period of performance for the Interagency Agreement is July 1, 2023 through June 30, 2026, and the Interagency Agreement may be amended to modify the terms of the period of performance.

Dated this Eleventh day of July, 2023.

WILL MCKAY - ABSENT

Chairman of the Board



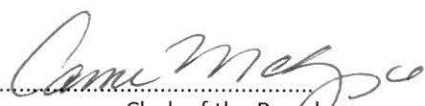
Chairman Pro-Tem



Commissioner

Constituting the Board of Commissioners of Benton County, Washington.

Attest.....
Clerk of the Board



orig: Fyall
cc: Department of Ecology

Prepared by: A.J. Fyall



INTERAGENCY AGREEMENT (IAA)

BETWEEN

THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

AND

BENTON COUNTY BOARD OF COMMISSIONERS

THIS INTERAGENCY AGREEMENT (“Agreement” or “IAA”) is made and entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “**ECOLOGY**,” and the Benton County Board of Commissioners hereinafter referred to as the “**COUNTY**” and “**CONTRACTOR**,” pursuant to the authority granted by Chapter 39.34 of the Revised Code Washington, Interlocal Cooperation Act.

THE PURPOSE OF THIS AGREEMENT is to provide the COUNTY with funds to solicit the interest and development of nuclear and related industries in Benton County and the Tri-City area through the efforts of the Benton County Board of Commissioners and comply with the May 9, 1991, "Letter of Agreement" between Ecology and the Contractor, which states that commencing on January 1, 1992, all such annual rent received by the state from US Ecology, Inc. pursuant to the sublease between the parties, less that amount due the U.S. Department of Energy as annual rent for the Prime Lease, shall be paid to the Benton County Treasurer.

WHEREAS, ECOLOGY has legal authority (RCW 70.105 Hazardous Waste Management Act) and Benton County has legal authority (RCW 36.01.085) that allows each party to undertake the actions in this agreement.

WHEREAS, The state subleases 100 acres of land on the Hanford Reservation to US Ecology, Inc. for operation of a commercial low-level radioactive waste disposal facility.

THEREFORE, IT IS MUTUALLY AGREED THAT:

1. SCOPE OF WORK

CONTRACTOR will use the funds to promote development and activities related to nuclear industry on leased land. The CONTRACTOR shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Appendix A, *Statement of Work and Budget*, attached hereto and incorporated herein.

2. PERIOD OF PERFORMANCE

The period of performance of this IAA will commence on July 1, 2023, (or the date of final signature, whichever comes later,) and be completed by June 30, 2026, unless the Agreement is terminated sooner as provided herein. Amendments extending the period of performance, if any, shall be at the sole discretion of ECOLOGY.

3. COMPENSATION

Compensation for the work provided in accordance with this IAA has been established under the terms of RCW 39.34.130 and RCW 39.26.180(3). This is a performance-based agreement, under which payment is based on the successful completion of expected deliverables.

The source of funds for this IAA is US Ecology, Inc. lease payments. All such annual rent received by the state from US Ecology, Inc., less that amount due the U.S. Department of Energy as annual rent for the Prime Lease, shall be paid to the Benton County Treasurer. Both parties agree to comply with all applicable rules and regulations associated with these funds.

The terms of the sublease call for the annual sublease payment to be adjusted every three years based on the change in the Consumer Price Index (Consumer Price Index, West, Size-Class B/C).

The parties have determined that the cost of accomplishing the work identified herein will not exceed two hundred eight six thousand nine hundred twenty three dollars (\$286,923), including any indirect charges. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree via an amendment to a higher amount. Compensation for services shall be based on the terms and tasks set forth in Appendix A, *Statement of Work and Budget*. ECOLOGY will not make payment until it has reviewed and accepted the work.

ECOLOGY may, at its sole discretion, terminate or suspend this Contract, or withhold payments claimed by the CONTRACTOR for services rendered, if the CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

4. BILLING AND PAYMENT PROCEDURE

Payment requests shall be submitted on state form, Invoice Voucher A19-1A. Invoice voucher shall reference the Agreement (IAA) number and clearly identify those items that relate to performance under this Agreement. Invoices shall describe and document to ECOLOGY's satisfaction a description of the work performed, the progress of the work, and related costs. Attach supporting documentation to the invoice.

State of Washington, Department of Ecology
IAA No. C2400008
Entity Name: Benton County Board of Commissioners

Send invoices to:

State of Washington
Department of Ecology
Nuclear Waste Program
Attn: Theresa Howell
3100 Port of Benton Blvd.
Richland, WA 99354
teho461@ecy.wa.gov

Payment requests may be submitted on the schedule below or at the completion of the work. Upon expiration of this Agreement, any claim for payment not already made shall be submitted to ECOLOGY within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

Payment requests may be submitted as follows: These monies will be distributed in six payments to the Benton County Treasurer.

1. The first payment is \$47,820 and covers the period of 7/1/23 through 12/31/23. The county may submit an invoice for payment of this amount after 7/1/23.
2. The second payment is \$47,821 and covers the period of 1/1/24 through 6/30/24. The county may submit an invoice for payment of this amount after 1/1/24.
3. The third payment is \$47,820 and covers the period of 7/1/24 through 12/31/24. The county may submit an invoice for payment of this amount after 7/1/24.
4. The forth payment is \$47,821 and covers the period of 1/1/25 through 6/30/25. The county may submit an invoice for payment of this amount after 1/1/25.
5. The fifth payment is \$47,820 and covers the period of 7/1/25 through 12/31/25. The county may submit an invoice for payment of this amount after 7/1/25.
6. The sixth payment is \$47,821 and covers the period of 1/1/26 through 6/30/26. The county may submit an invoice for payment of this amount after 1/1/26.

Payment will be made within thirty (30) days of submission of a properly completed invoice (form A19-1A) with supportive documentation. All expenses invoiced shall be supported with copies of invoices paid.

Payment will be issued through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment, CONTRACTOR must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. For questions about the vendor registration process, contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.

5. ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

6. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

7. ASSURANCES

Parties to this Agreement agree that all activity pursuant to this agreement will be in accordance with all the applicable current federal, state, and local laws, rules, and regulations.

8. CONFORMANCE

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

9. DISPUTES

Parties to this Agreement shall employ every effort to resolve a dispute themselves without resorting to litigation. In the event that a dispute arises under this Agreement that cannot be resolved among the parties, it shall be determined by a Dispute Board in the following manner. Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement terms, and applicable statutes and rules, and then make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto, unless restricted by law. The cost of resolution will be borne by each party paying its own cost. As an alternative to this process, if state agencies, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control. The parties may mutually agree to a different dispute resolution process.

10. FUNDING AVAILABILITY

ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, for convenience or to renegotiate the Agreement subject to new funding limitations and conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the CONTRACTOR through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the CONTRACTOR. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

11. GOVERNING LAW AND VENUE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. This Agreement shall be construed and interpreted in accordance with the laws of

the state of Washington, and the venue of any action brought hereunder shall be the Superior Court for Thurston County.

12. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

13. ORDER OF PRECEDENCE

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable federal and state of Washington statutes, regulations, and rules.
- b. Mutually agreed upon written amendments to this Agreement.
- c. This Agreement, number C2400008.
- d. Appendix A, *Statement of Work and Budget*.
- e. Appendix B, *Special Terms and Conditions*.
- f. Any other provisions or term of this Agreement, including materials incorporated by reference or otherwise incorporated.

14. RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These materials shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other materials relevant to this Agreement must be retained for six years after expiration of this Agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period. Each party will utilize reasonable security procedures and protections for all materials related to this Agreement. All materials are subject to state public disclosure laws.

15. RESPONSIBILITIES OF THE PARTIES

Each party of this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party will be considered the agent of the other party to this Agreement.

16. RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "work made for hire" as defined by the United States Copyright Act, Title 17 U.S.C. section 101 and shall be owned by state of Washington, ECOLOGY. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, and register these items, and the ability to transfer these rights.

17. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

18. SUBCONTRACTORS

CONTRACTOR agrees to take complete responsibility for all actions of any Subcontractor used under this Agreement for the performance. When federal funding is involved there will be additional CONTRACTOR and subcontractor requirements and reporting.

Prior to performance, all subcontractors who will be performing services under this Agreement must be identified, including their name, the nature of services to be performed, address, telephone, WA State Department of Revenue Registration Tax number (UBI), federal tax identification number (TIN), and anticipated dollar value of each subcontract. Identify whether subcontractor is certified with OMWBE, WA Veterans, or is a WA small business. Provide such information to ECOLOGY's Agreement manager.

19. SUSPENSION FOR CONVENIENCE

ECOLOGY may suspend this Agreement or any portion thereof for a temporary period by providing written notice to the CONTRACTOR a minimum of seven (7) calendar days before the suspension date. CONTRACTOR shall resume performance on the first business day following the suspension period unless another day is specified in writing by ECOLOGY prior to the expiration of the suspension period.

20. TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) business days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

21. TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement without cause upon thirty (30) calendar day prior written notification to the other party. 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.

22. WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a written amendment to this Agreement signed by an authorized representative of the parties.

23. AGREEMENT MANAGEMENT

The representative for each of the parties shall be responsible for and shall be the contact person for all communications, notifications, and billings questions regarding the performance of this Agreement. The

parties agree that if there is a change in representatives, they will promptly notify the other party in writing of such change, such changes do not need an amendment.

The ECOLOGY Representative is:

Name: Theresa Howell
Address: 3100 Port of Benton Blvd.
Richland, WA 99354
Phone: 509-578-9718
Email: teho461@ecy.wa.gov

The Benton County Representative is:

Name: Adam J. Fyall
Sustainable Development Manager
Address: Benton County Commissioners'
Office
7122 West Okanogan Place
Kennewick, WA 99336
Phone: 509-736-3053
Email: Adam.Fyall@co.benton.wa.us

24. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. 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.

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

IN WITNESS WHEREOF, the parties below, having read this Agreement in its entirety, including all attachments, do agree in each and every particular as indicated by their signatures below.

**State of Washington
Department of Ecology**

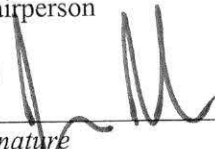
By:


Signature *Date*
Heather Bartlett
Deputy Director


Benton County Board of Commissioners

By: **WILL MCKAY - ABSENT**

Signature *Date*
Will McKay, District 3
Chairperson

By:  7-11-2023
Signature *Date*
Jerome Delvin, District 1
Commissioner

By:  7-11-2023
Signature *Date*
Michael Alvarez, District 2
Commissioner

 7/3/23
Signature *Date*
7 Approved as to Form
Chief Civil Deputy Prosecutor

APPENDIX A
STATEMENT OF WORK AND BUDGET

OVERVIEW

ECOLOGY and the COUNTY initiated work under Contract C9300237 in 1993. Contracts have been continued every three years.

The United States Department of Energy entered into a lease with the State of Washington on September 10, 1964. The lease, which covers 1,000 acres within the Hanford Site near Richland, Washington, has a term of ninety-nine years (September 10, 1964 through September 9, 2063.) The purpose of the lease is to make the land available, in whole or in part, by sublease or other suitable arrangement, to state or private organizations for the establishment of nuclear-related industry in the area.

The State has continuously subleased, since July 29, 1965, approximately 100 acres of the 1,000-acre tract to a private corporation for the purpose of developing and operating a low-level radioactive waste disposal facility. The remaining 900 acres are not developed.

A fourth amendment to that Sublease between the State of Washington, represented by the Department of Ecology, and U.S. Ecology, Inc. (date May 3, 1991), provides that US Ecology shall pay as an annual rent to the State of Washington a sum of \$6,000 for calendar year 1992, and \$50,000 adjusted, per year, thereafter.

This agreement is to insure that all such annual rent received by the State from US Ecology, less \$600.00, that amount due the US Department of Energy as annual rent for the Prime Lease, shall be paid to the Benton County Treasurer, within 60 days of receipt.

SCOPE OF WORK

The Contractor shall execute its best effort to use monies received under this agreement for activities related to the development of the 900 acres of leased land and nuclear related industries in Benton County and the Tri-Cities.

DELIVERABLES

The Contractor shall submit with each invoice, a report of the project activities that were accomplished within that invoice period.

The Contractor shall submit a final report of the project activities that were accomplished between July 1, 2023 and June 30, 2026, and recommendations for further public awareness and/or development of the availability of land at the Hanford Site for the development of nuclear related industry. This final report will be submitted to Ecology no later than July 31, 2026.

State of Washington, Department of Ecology
IAA No. C2400008
Entity Name: Benton County Board of Commissioners

Budget:

Item	Description	Amount
1	Lease (7/1/23-6/30/26)	\$286,923.00
	Total Project Cost	\$286,923.00

See Billing and Payment Procedure, section 4, for schedule of payments.

APPENDIX B
SPECIAL TERMS AND CONDITIONS

1. Semi-annual status reports and a final status report are required to document status and completion of planned work as described in Appendix A.
2. Archaeological And Cultural Resources

CONTRACTOR shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources.

CONTRACTOR agree to hold harmless, to the extent permitted by law, ECOLOGY in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the CONTRACTOR's negligence.

If the CONTRACTOR enters into a subcontract(s) with a non-state entity to perform some or all of the Agreement's work, the CONTRACTOR must include the following language in the subcontractor's agreement, "The subcontractor agrees to hold harmless ECOLOGY in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the subcontractor's negligence."

CONTRACTOR shall:

- a) Contact ECOLOGY to discuss any Cultural Resources requirements for the project:
 - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
 - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
 - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by ECOLOGY, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

CONTRACTOR shall:

- Keep the IDP at the project site.
 - Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff and contractors working at the project site.
 - Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historical resources are found while conducting work under this Agreement:
 - Immediately stop work and notify ECOLOGY, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.

- d) If any human remains are found while conducting work under this Agreement:
 - Immediately stop work and notify the local law enforcement agency or Medical Examiner/Coroner's Office, and then ECOLOGY.
 - e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.
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