

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Mark McCauley, County Administrator

From: Monte Reinders, P.E., Public Works Director/County Engineer 

Agenda Date: March 13, 2023

Subject: Interlocal agreement with Kitsap County

Statement of Issue: The proposed interlocal agreement for the mutual use of Jefferson County and Kitsap County as needed from time to time is desirable to establish a structure within which each entity may perform reimbursable work for and/or rent equipment to the other.

Analysis/Strategic Goals/Pro's & Con's: Particularly within their respective Public Works Departments, our adjacent counties possess specialized skills and equipment suitable for providing assistance to the other in times of need. The agreement provides a framework for specific, later cooperation as mutually agreed by representatives of the counties.

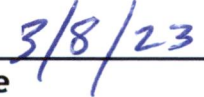
Fiscal Impact/Cost Benefit Analysis: There is no intrinsic impact of the broad agreement. The impact of any specific project undertaken under the terms of the agreement will be considered separately based on the needs of each entity.

Recommendation: Execute the attached interlocal agreement and return to Kitsap County via this Department for final signature.

Department Contact: Monte Reinders, Public Works Director, 385-9242.

Reviewed By:


Mark McCauley, County Administrator


Date 3/8/23

CONTRACT REVIEW FORM

(INSTRUCTIONS ARE ON THE NEXT PAGE)

Clear Form

CONTRACT WITH: County of Kitsap

Contract No:

PW 2023-017

Contract For: Reimbursable work performed and/or equipment rental Term: Until expressly terminated by either county

COUNTY DEPARTMENT: Public Works
Contact Person: Monte Reinders
Contact Phone: 360-385-9160
Contact email: mreinders@co.jefferson.wa.us

AMOUNT: Dependent upon requests from either county

Revenue: DUR

Expenditure: DUR

Matching Funds Required:

Sources(s) of Matching Funds

Fund #

Munis Org/Obj

PROCESS:

- ☐ Exempt from Bid Process
☐ Cooperative Purchase
☐ Competitive Sealed Bid
☐ Small Works Roster
☐ Vendor List Bid
☐ RFP or RFQ
☒ Other: Interlocal agreement

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☐

N/A: ☒

Signature

2/14/2023

Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☐

N/A: ☒

Signature

2/14/2023

Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

✓ Electronically approved by Risk Management on 3/2/2023.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

✓ Electronically approved as to form by PAO on 2/28/2023.
Thanks for adding the joint self-insurance language. Otherwise, the County could not agree to this ILA.

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

KC-XXX-23
INTERLOCAL AGREEMENT BETWEEN
KITSAP COUNTY AND JEFFERSON COUNTY FOR
REIMBURSABLE WORK PERFORMED AND/OR EQUIPMENT RENTAL

This Interlocal Agreement ("Agreement") is made and entered into pursuant to the provisions of Chapter 39.34 RCW by and between the County of Kitsap (hereinafter "Kitsap") and the County of Jefferson (hereinafter "Jefferson"), also referred to individually as "Party" and collectively as the "Parties". Either Party to the Agreement, the requesting agency (hereinafter the "Requester") and the providing agency (hereinafter the "Provider") may request work or equipment rental from the other Party as needed from time to time and deemed mutually beneficial.

I. INCORPORATION OF RECITALS

The foregoing Recitals are incorporated in full and made part of this Agreement by this reference:

WHEREAS, each Party operates a Public Works Department which specializes in certain types of Public Works projects, and each Party owns certain types of equipment utilized in Public Works projects; and

WHEREAS, each Party may from time to time find it advantageous or desirable to have certain work performed by the other Party, or its contractor, and/or to obtain the use of certain equipment from the other Party for specific Public Works projects; and

WHEREAS, from time to time, the Parties will benefit from cooperation in Public Works projects in the manner proposed herein; and

WHEREAS, 39.34.030 RCW authorizes public agencies to enter into cooperative agreements for their mutual benefit;

NOW THEREFORE, in consideration of their mutual covenants, conditions and promises, the Parties, through their respective legislative bodies, do hereby agree as follows:

II. AGREEMENT

1. PURPOSE OF AGREEMENT: The purpose of this Agreement is to provide for cooperation between the Parties whereby either Party may request certain work be performed by the other Party, or its contractors, or that either Party may rent certain pieces of equipment owned by the other Party.

2. ADMINISTRATION OF AGREEMENT: This Agreement does not establish or create a separate or joint board. No joint property shall be acquired, held, or disposed of. Any real or personal property used as a result of this Agreement shall be considered and remain the property of the Party who purchased such real or personal property.

3. TERM: This Agreement shall take effect upon execution by the Parties and shall remain in effect until expressly terminated by either Party.

4. TERMINATION: Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party.

5. REQUEST BY PARTICIPATING PARTIES: Whenever the Party requesting services (the "Requester") desires to obtain work or equipment rental from the Party providing the service (the "Provider") pursuant to this Agreement, the Requester shall make a request for said work, or equipment, in writing upon the "Request and Agreement for Work, Equipment, and/or Materials" form which is attached and incorporated to this Agreement as Attachment "A".

6. REVIEW OF REQUEST: The requested scope of work will be reviewed by the Provider's Director of Public Works, or designee, to ensure that the requested work can be completed in a timely and efficient manner by the Provider, or that the equipment requested can be accommodated. The Provider's Director, or designee, shall have sole final decision making authority as to the manpower and equipment required to fulfill the request, and/or the availability of equipment requested.

7. FULFILLMENT OF REQUEST: If the Provider's Director, or designee, approves the request, the Provider will perform the work or provide the equipment in the time and manner convenient to the Provider providing the request will not negatively impact the Provider's business.

8. PARTY EMPLOYEES: All employees assigned to perform work for the Requester pursuant to this Agreement, remain employees of the Provider at all times, and shall perform the work requested under the sole supervision of Provider's agency. Labor, equipment, materials and procedures in performance of work pursuant to this Agreement, shall be mutually agreed to in writing.

9. FINANCIAL RESPONSIBILITY: Except as may be otherwise set forth in this Agreement, the Requester shall be solely responsible for all costs related to the requested Public Works project, including costs of equipment rental, and administration of all grant funds, when applicable.

10. RENTAL EQUIPMENT RESPONSIBILITY:

- A. Requester agrees to use equipment from Provider in a careful manner and assumes all risks arising from possession and/or use of the equipment.
- B. Requester assumes all liability and responsibility for any and all losses resulting from use or malfunction of Equipment.
- C. Requestor assumes all liability and responsibility for loss of, or damage to equipment while under its control, and assumes responsibility for repairs. Normal wear and tear is the responsibility of the Provider.
- D. Requestor agrees to keep Equipment in the same good repair and condition as when rented, and to keep the Equipment properly housed at all times.
- E. Requestor agrees that Equipment will be operated by or under the direction of competent operators.

11. REIMBURSEMENT: Requester shall reimburse the Provider for all costs of direct and indirect labor (including fringe benefits), administration, equipment rental, engineering, materials and supplies procured pursuant to this Agreement. The Provider shall submit a statement to the Requester after performance or delivery and the Requester shall refund the Provider within thirty (30) days of receipt.

12. REMEDIES: In the event either Party exercises its option to terminate this Agreement prior to completion of the work, and the non-terminating Party alleges breach, the sole and exclusive remedy available to the non-terminating Party shall be specific performance.

13. PROCEDURE FOR REMEDIES: Before exercising any available remedies, including Dispute Resolution provisions covered in other sections of this Agreement, the Party alleging breach shall follow the procedures below:

- A. Notice of Violation: In the event the Party believes that the other Party has not complied with the terms of this Agreement and is a defaulting Party, the Party shall notify the defaulting Party in writing, by certified mail, of the nature of the alleged non-compliance.
- B. The Defaulting Party's Right to Cure or Respond: The defaulting Party shall have ten (10) days from receipt of Notice of Violation to (i) respond to the non-defaulting Party, or (ii) to cure such default or in the event that the default cannot be cured within the ten (10) day period, initiate acts or action to remedy such default in a reasonable time. The duty to cure includes the duty to cure all harm caused by the acts of omissions of the defaulting Party. At the end of the ten (10) day period, the defaulting Party shall provide the non-defaulting Party timely notice, (i) of the action taken to cure the default, (ii) if the default has not been cured, an explanation for why the default has not been cured and the projected date for the cure; (iii) and if the default is disputed, a detailed explanation of the basis of the dispute.
- C. If the non-defaulting Party determines in good faith that the defaulting Party did not cure or initiate steps to cure to the non-defaulting Party's satisfaction, after the notice required herein was provided, then the Party may exercise its available remedies after complying with the Dispute Resolution provisions.

14. DISPUTE RESOLUTION: In the event that a dispute is not resolved after following the Procedure for Remedies outline elsewhere in this Agreement, the Parties shall attempt to resolve it in the following manner before pursuing any other remedies available to either Party: the Parties will each appoint one member to a Dispute Board and those members will jointly appoint a third member. The Dispute Board will evaluate the dispute and attempt in good faith to resolve the dispute. The Dispute Board's determination shall be non-binding.

15. CHOICE OF LAW AND VENUE: This Agreement shall be interpreted according to the laws of the State of Washington. Any judicial action to resolve disputes arising out of this Agreement shall be brought in Pierce County Superior Court.

16. NOTICES: All notices and other written communication required by this Agreement shall be in writing and, except as expressly provided elsewhere in this Agreement, shall be deemed delivered by personal delivery, or at a time of mailing, if mailed by first class, postage pre-paid

and addressed to the Party at the address provided below, or at such address as a Party may designate at any time in writing:

To: Kitsap County Public Works:

Andrew Nelson, PE
Director of Public Works
614 Division Street, MS-26
Port Orchard, WA. 98366

To: Jefferson County Public Works:

Monte Reinders, PE, Public Works Director
Jefferson County Public Works
623 Sheridan St
Port Townsend WA 98368

17. NON-DISCRIMINATION: No Party in the performance of this Agreement shall discriminate against any person on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by federal, state, or local law. The Parties shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88 354 and Americans with Disability Act of 1990.

18. SEVERABILITY: If any section, subsection, paragraph or provision of this Agreement is determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other section, subsection, paragraph or provision of this Agreement, all of which will remain in full force and effect for the term of this Agreement.

19. MODIFICATION: This Agreement represents the entire Agreement of the Parties. No change, termination, or attempted waiver of any of the provisions of this Agreement shall be binding on any of the Parties unless executed in writing by authorized representatives of each of the Parties. This Agreement shall not be modified, supplemented, or otherwise affected by the course of dealings between the Parties.

20. INSURANCE: Each Party, at its own expense, shall provide and keep in force:

- A. Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$1,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU) if applicable.
- B. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and
- C. Workers Compensation insurance as statutorily required by the Industrial Insurance Act of the State of Washington, Title 51, Revised Code of Washington and employer's liability with limits not less than \$1,000,000.

Each Party shall name the other Party as an additional insured when required by the Provider as a condition of performance of the request. If Provider so requires, it shall notify Requester and give Requester the option to withdraw its request.

The insurance requirements set forth in this Section shall be deemed to be minimum coverages and limits and shall not be construed in any way as a limitation on the other Party's duty to carry adequate insurance or on each Party's liability for losses or damages under this

Agreement. The Parties agree that coverage by a joint self-insurance program authorized by RCW 48.62.034 with the coverages above satisfies the requirements in this section.

21. INDEMNIFICATION: The Requester shall defend, indemnify and hold harmless, at the Requester's sole expense, the Provider, its elected and appointed officials, officers, employees and agents, from and against any and all claims, actions, demands, losses, damages, liabilities and costs, including, but not limited to, attorney's fees and litigation costs, arising out of the performance of Requester under this Agreement, whether the demand, loss or claim is due to the negligence of the Requester, its elected and appointed officials, officers, employees, or agents, except that in no event Requester be liable for injury or damages to the extent caused by negligence or willful misconduct of the Provider, its elected or appointed officials, officers, employees or agents.

The Provider shall defend, indemnify and hold harmless, at the Provider's sole expense, the Requester, its elected and appointed officials, officers, employees and agents, from and against any and all claims, actions, demands, losses, damages, liabilities and costs, including, but not limited to, attorney's fees and litigation costs, arising out of the performance of Provider under this Agreement, whether the demand, loss or claim is due to the negligence of the Provider, its elected and appointed officials, officers, employees, or agents, except that in no event Provider be liable for injury or damages to the extent caused by negligence or willful misconduct of the Requester, its elected or appointed officials, officers, employees or agents.

This Section shall survive termination of this Agreement.

22. WAIVER: Neither the waiver by any of the Parties hereto of a breach of, or a default under any of the provisions of this Agreement, nor the failure of either of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement, or to exercise any right or privilege hereunder will thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights or privileges hereunder.

23. FORCE MAJEURE: Nonperformance by a Party, other than payment of any amounts due hereunder by the Parties, shall not operate as a default under or breach of the terms of this Agreement to the extent and for so long any such nonperformance is due to: strikes or other labor disputes; prevention or prohibition by law; the loss or injury to products in transit; an Act of God; Pandemic, or war or other cause beyond the control of such Party.

24. ASSIGNMENT AND SUCCESSORS IN INTEREST: Except as otherwise provided herein, no Party may assign, subcontract, or delegate any right or obligation under this Agreement, in whole or in part, without the express prior written consent of the other Party. This Agreement shall inure to the benefit of and be binding upon each Party's successors and assigns.

25. COUNTERPARTS: This Agreement may be executed in any number of counterparts or, if mutually agreeable to the undersigned authorized signatories for the Parties, through the exchange by facsimile or other electronic means of duly-signed duplicates hereof, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

26. SECTIONS AND HEADINGS: The division of this Agreement into sections and subsections and the insertion of headings are for convenience or reference only, and do not affect the interpretation of this Agreement. Unless otherwise indicated, references in this Agreement to an article, section, subsection or schedule are to the specified article, section or subsection of or schedule to this Agreement.

27. FILING: Kitsap County will, pursuant to 39.34.040 RCW, cause this Agreement to be filed with the Kitsap County Auditor upon full execution by the Parties.

28. WARRANTY OF AUTHORITY: Each person or Party subscribing to this Agreement expressly warrants that it has full authority to do so.

Dated this ____ day of _____, 2023.

Dated this ____ day of _____, 2023.

**BOARD OF COMMISSIONERS
JEFFERSON COUNTY, WASHINGTON**

**BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON**

HEIDI EISENHOUR, District 2

CHARLOTTE GARRIDO, Chair

KATE DEAN, District 1

ROBERT GELDER, Commissioner

GREG BROTHERTON, District 3

KATHERINE T. WALTERS, Commissioner

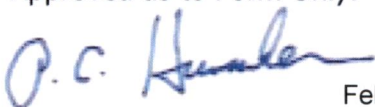
Attest:

Attest:

Carolyn Gallaway, Clerk of the Board

Dana Daniels, Clerk of the Board

Approved as to Form Only:



February 28, 2023

Philip C. Hunsucker, Date
Chief Civil Deputy Prosecuting Attorney

ATTACHMENT "A"

REQUEST AND AGREEMENT FOR WORK, EQUIPMENT, AND/OR MATERIALS

The undersigned hereby requests that the following described work, and/or service, and/or equipment rental be performed or provided by:

_____ for _____.
(Provider) (Requester)

It is understood that this work, and or equipment rental is at the convenience of the Provider and that the undersigned agency will reimburse all costs, unless otherwise indicated.

DESCRIPTION OF WORK, SERVICES, OR EQUIPMENT RENTAL REQUESTED:

LOCATION OF WORK OR SERVICE REQUESTED:

Estimate Attached Yes No

Project Completion Date: _____

Total Cost Not to Exceed: \$_____

The undersigned certifies that sufficient budgeted funds are available to cover the cost of the requested work and/or services, and that payment to the Provider will be made promptly unless otherwise indicated in this Agreement.

REQUESTING AGENCY: _____

Address: _____

Phone: _____ Fax: _____

Requested by: _____
Name/Print Title/Print

Signature: _____ Date: _____

ACTION OF THE PROVIDER: ☐ **Approved** ☐ **Denied**

BY: _____ Date: _____
Provider