

**2019
INTERLOCAL AGREEMENT
BETWEEN THURSTON COUNTY, CITY OF TENINO & CITY OF BUCODA**

This Agreement is entered into in duplicate originals as of April ____, 2019, between the CITY OF TENINO, a municipal corporation of the State of Washington (hereinafter "Tenino"), the TOWN OF BUCODA, a municipal corporation of the State of Washington (hereinafter "Bucoda"), each referred to individually as "City" or collectively as "Cities," and THURSTON COUNTY, a municipal corporation of the State of Washington (hereinafter "County"), collectively referred to as "parties" and individually as "party" pursuant to RCW 39.34.080.

WHEREAS, it is to the mutual advantage of Thurston County, Tenino, and Bucoda to cooperate as described herein to expend the remaining funds set aside for the Cities for transportation facilities needed by the citizens residing within their respective jurisdictions; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service, activity, or undertaking that each public agency is authorized by law to perform;

NOW THEREFORE, by virtue of RCW 39.34.080 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

**I
GENERAL**

- 1.0 It is the purpose of the Agreement to permit the parties to expend Rural Community Support Program ("RCSP") funds held by the County set aside for the purposes of transportation improvements in Tenino and Bucoda.

**II
DURATION**

- 2.0 This Agreement shall become effective on the date written above and shall remain in effect until the funds are expended, but in any event shall terminate no later than December 21, 2020. Prior to commencement, this Agreement shall be filed or posted in accordance with RCW 39.34.040.

**III
SERVICES**

- 3.0 Tenino and Bucoda each have a direct funding allocation and interest in a shared allocation of RCSP funds currently held by the County. Tenino and Bucoda shall mutually agree, in a separate writing, to the distribution of funds set aside for mutual use, in accordance with Article IV, Payment. Tenino and Bucoda shall each use these funds for eligible transportation improvement projects within their respective jurisdictions.
- 3.1 Tenino and Bucoda shall individually provide all planning, design, construction, contract administration, project coordination, and all other work and resources necessary to construct transportation improvements within their respective jurisdictions, as confirmed by each City's Engineer. Tenino and Bucoda shall each have the discretion to choose the projects that are appropriate for their respective jurisdiction. Tenino and Bucoda shall individually provide all inspection, operation, maintenance, and upgrades necessary to ensure the safety, function, accessibility and intended purpose of their respective transportation improvement projects. Tenino and Bucoda shall each be solely responsible for ensuring the transportation improvements made as part of this agreement meet all existing and future applicable regulations.

**IV
PAYMENT**

- 4.0 The parties to this Agreement agree the County shall contribute RCSP funds currently held by the County to Tenino and Bucoda for transportation improvement projects within their respective jurisdictions. Such payment shall not constitute agreement or verification as to the appropriateness of any transportation improvement expenditure.
- 4.1 The amount payable to each City is as follows:
- 4.1.1 Tenino-\$24,691.
 - 4.1.2 Bucoda-\$7,918.
 - 4.1.3 Sixty-three thousand five dollars (\$63,005) remains as a shared allocation of RCSP funds. Tenino and Bucoda shall mutually agree in writing to each City's allocation of these funds and provide said written agreement to the County prior to disbursement of any funds under this Agreement. If a mutual agreement cannot be reached, the parties will seek guidance from Thurston Regional Planning Council ("TRPC") and attempt in good faith to reach agreement. If a written agreement executed by Tenino and Bucoda is not provided to the County by May 31, 2019, the funds will become available to the County for County road projects.
- 4.2 Upon completion of the services identified in Article III, Services, and the County's receipt of a Notification of Completion and written attestation of compliance with all applicable regulations from a City's Engineer, the County shall make payment for said services to that City in the amounts identified and mutually agreed to in section 4.1 of this Agreement.

**V
RECORDS RETENTION AND AUDIT**

- 5.0 During the progress of the work and for a period not less than six (6) years from the final date of payment, the records and accounts pertaining to the work and accounting therefore are to be kept available for inspection and audit by either party and/or the Federal Government and copies of all records, accounts, documents, or other data pertaining to the work will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 6-year retention period. Each party will promptly notify the other of any such litigation hold on records.

**VI
RELATIONSHIP OF THE PARTIES**

- 6.0 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. This Agreement is for the benefit of the parties, and no third-party beneficiary relationship is intended. No separate legal entity is created by this Agreement. No joint organization is created. No common budget is to be established. No personal or real property is to be jointly acquired or held.

**VII
HOLD HARMLESS AND INDEMNIFICATION**

- 7.0 Each party to this Agreement shall be accountable for its own negligent acts or omissions, and for those of its officers, agents or employees, and shall indemnify, defend, and hold the other parties harmless from any third party claims relating to bodily injury or death, including costs and attorney's fees in defense thereof, caused by or arising out of a party's negligence in the performance of this Agreement. In the case of negligence of more than one party, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party and each party shall have the right to seek contribution from each of the other parties in proportion to the percentage of negligence attributable to each of the other parties.
- 7.1 Each party agrees to be responsible for the claims management, resolution, and payment of claims, arising out of their own work resulting in real or personal property damage or destruction. "Claim" means any financial loss, claim suit, action, damage, or expense, including but not limited to attorney's fees, attributable to damage or destruction of real property, including loss of use, resulting therefrom.
- 7.2 The provisions of this Hold Harmless and Indemnification section shall survive the expiration or termination of this Agreement and completion of the request for services.

VIII INSURANCE

- 8.0 All parties shall maintain Commercial General Liability or equivalent for bodily injury, personal injury and property damage, subject to limits of not less than \$1,000,000 per loss. The general aggregate limit shall apply separately to this Agreement and be no less than \$2,000,000. Participation in a governmental self-insured risk pool shall fulfill the above stated coverage requirements. An Evidence of Coverage acknowledgement letter from the jurisdictions' risk pools will be provided to each party upon request.
- 8.1 All parties shall maintain Automobile Liability insurance subject to limits of not less than \$1,000,000 per accident. Participation in a governmental self-insured risk pool shall fulfill the above stated coverage requirements. An Evidence of Coverage acknowledgement letter from the jurisdictions' risk pools will be provided to each party upon request.
- 8.2 All parties shall maintain workers' compensation insurance as required by Title 51 RCW, and shall provide evidence of Coverage to each party's Risk Manager or Risk Management Division upon request.
- 8.3 All parties shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies and endorsements expiring before completion of services shall be promptly replaced with written notice mailed to the other party upon request.

IX TERMINATION

- 9.0 Any party may terminate this Agreement upon ninety (90) calendar days prior written notice to the other parties. 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. If this Agreement is terminated by either Tenino or Bucoda, any remaining RCSP funds payable to that City will become available to the remaining City, but must be used as outlined in this Agreement. Otherwise the County may use the funds for County road projects after the termination of this Agreement pursuant to Article II, Duration.

X LEGAL RELATIONS

10.0 No liability shall attach to the parties by reason of entering into this Agreement except as expressly provided herein.

**XI
FORCE MAJEURE**

11.0 Nor party will be liable to the others or deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure will include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, epidemics, civil or public disturbances, or other similar occurrences. If any party is unable to perform under this Agreement due to a force majeure event, upon giving notice and reasonably full particulars to the other party, such obligation or condition will be suspended only for the time and to the extent commercially practicable to restore normal operations.

**XII
ADMINISTRATION**

12.0 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. Wherever written notice is required under this Agreement, such notice shall be provided to the representatives designated below. In the event such representatives are changed, the party making the change shall notify the other parties.

The County's representative shall be the Public Works Director (9605 Tilley Rd SW, Olympia WA 98512, 360-867-2300).

The City of Tenino's representative shall be the Public Works Director (PO Box 4019, Tenino WA 98589, 360-264-2368).

The Town of Bucoda's representative shall be the Mayor (PO Box 10, Bucoda, WA 98530, 360-278-3525).

**XIII
CHANGES, MODIFICATIONS, AND AMENDMENTS**

13.0 This Agreement may be changed, modified, amended or waived only by written agreement executed by each party's authorized governing authority as provided in chapter 39.34 RCW.

**XIV
GOVERNING LAW AND VENUE**

14.0 This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington both as to its interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in a court of competent jurisdiction in Thurston County, Washington.

**XV
WAIVER**

15.0 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 writing signed by an authorized representative of the party and attached to the original Agreement.

**XVI
SEVERABILITY**

16.0 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Board of County Commissioners
Thurston County, Washington

City of Tenino, Washington

John Hutchings

Mayor

Gary Edwards

ATTEST:

Tye Menser

Clerk/Treasurer

ATTEST:

Clerk of the Board

Town of Bucoda, Washington:

Approved as to form:

JON TUNHEIM

Mayor

PROSECUTING ATTORNEY

ATTEST:

By:

Deputy Prosecuting Attorney

Clerk/Treasurer