

INTERGOVERNMENTAL COOPERATION AGREEMENT
BETWEEN KITTITAS COUNTY AND
KITTITAS COUNTY CONSERVATION DISTRICT

FOR PARTICIPATION IN THE TAYLOR BRIDGE FIRE BURN AREA
RESTORATION

THIS AGREEMENT is made and entered into this 4th day of December, 2012, between KITTITAS COUNTY, a political subdivision of the State of Washington, and the KITTITAS COUNTY CONSERVATION DISTRICT (“the District”), a political subdivision of the State of Washington.

WITNESSETH:

WHEREAS, the Interlocal Cooperation Act, as amended, and codified in chapter 39.34 of the Revised Code of Washington (“RCW”), provides for public agencies to enter into agreements for joint or cooperative action authorized under that chapter;

WHEREAS, the County and the District are public agencies within the meaning of chapter 39.34 RCW;

WHEREAS, chapter 89.08 RCW specifically provides for the District to enter into interlocal agreements;

WHEREAS, the Taylor Bridge Fire ignited on August 13, 2012 at approximately 1 PM and burned 23,500 acres of forestland, shrub-steppe, and cropland between Cle Elum and Ellensburg;

WHEREAS, the County and the District are actively working to secure and provide assistance to landowners and managers to address soil erosion, air quality, water quality and forest health in the burned areas;

WHEREAS, coordination of the multiple agencies and funding programs that offer both technical and financial assistance is necessary in order to provide efficient and effective service to landowners and to reduce duplication of effort;

WHEREAS, the District and the County have assembled a Technical Advisory Group (TAG) to participate in the Burn Area restoration efforts and to assist with coordination of multiple financial and technical resources;

WHEREAS, the County submitted a letter on August 23, 2012, requesting federal assistance under the Emergency Watershed Protection (EWP) program to the USDA Natural

Resources Conservation Service for work needed to safeguard lives and property from the imminent hazard created by the Taylor Bridge Fire.

WHEREAS, EWP requires a local sponsor agency who is responsible for acquiring land rights and permits needed to construct, and if required, to operate and maintain the proposed measures as well as a 25 percent local cost-share of the construction work.

WHEREAS, the District has the administrative expertise to enter into and manage the EWP contract with the USDA Natural Resources Conservation Service

WHEREAS, and the County and the District together have the technical expertise to implement the proposed measures and the funding to meet the local match requirement;

WHEREAS the District and the County both intend to continue to seek additional funding sources to address resource issues within the burned area;

WHEREAS, it is in the public interest and in the mutual interest of the parties for the County, to participate in the EWP projects;

NOW, THEREFORE, the parties agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to acknowledge and facilitate the parties' mutual interest in completing the project.
2. **ADMINISTRATION.** No new separate legal or administrative entity is created to administer the provisions of this Agreement.

- a. The District's point or contact for purposes of this Agreement shall be as follows:

Anna Lael, District Manager
Kittitas County District
607 E. Mountain View
Ellensburg, WA 98926
Phone: (509) 925-8585
Fax: (509) 925-8591

- b. The point of contact for the Kittitas County shall be the Director of Public Works as follows:

Kirk Holmes
Kittitas County Public Works
411 N Ruby ST, Suite 1
Ellensburg WA 98926

Phone: (509) 962-7523
Fax: (509) 962-7663

3. SCOPE. This agreement contemplates that the District will: (a) contract with the USDA Natural Resources Conservation Service for the EWP funding in an amount not to exceed \$500,000 (Attachment A); (b) facilitate the Technical Advisory Group; (c) coordinate and administer all funding for the project implementation; (d) provide technical assistance for assessment of County infrastructure impacted by the Taylor Bridge Fire, and (e) provide funding to the County for implementation of approved practices related to County infrastructure. This agreement further contemplates that the County will: (a) assist with facilitation of the Technical Advisory Group; and (b) identify potential EWP projects related specifically to County infrastructure, (c) work with the District to determine best practices, and (d) implement some or all of the recommended and eligible practices.

4. COMPENSATION BY THE DISTRICT TO THE COUNTY.
 - a. The District will reimburse the County for construction costs associated with implementing recommended EWP practices for County infrastructure (including but not limited to culvert protection or replacement, hazard tree removal, seeding and mulching) not to exceed \$50,000.

 - b. Allowable costs shall include the following:
 - i. Materials for practice implementation
 - ii. County equipment and labor for practice implementation.

 - c. In order to receive reimbursement, installation of the described practice(s) or identifiable unit thereof, must have occurred, the installation must have met established NRCS standards and specifications or an alternative practice design approved by a professional engineer, and the practice installation and functionality must have been verified and approved in writing by the District.

 - d. The County shall maintain and operate any funded practice(s) for its design life as determined by the District.

 - e.

5. DURATION OF AGREEMENT – TERMINATION. This Agreement shall remain in force until cancelled by either party in writing. The District reserves the right to cancel this Agreement in the event of the County's nonpayment of reimbursable costs billed by the District to the County, upon thirty (30) days

written notice by the District to the County, sent certified mail, return receipt requested.

6. RELATIONSHIP OF THE PARTIES. No agent, employee or representative of the County shall be deemed to be an agent, employee or representative of the District for any purpose, and the employees of the County are not entitled to any of the benefits the District provides to District employees. No agent, employee or representative of the District shall be deemed to be an agent, employee or representative of the County for any purpose, and the employees of the District are not entitled to any of the benefits the County provides to County employees.
7. NON-DELEGATION / NON-ASSIGNMENT. Neither party may delegate the performance of its contractual obligation hereunder to a third party, unless mutually agreed in writing. Neither party may assign this Agreement without the written consent of the other party.
8. COMPLIANCE WITH LEGAL REQUIREMENTS. 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.
9. HOLD HARMLESS. Each party shall be liable and responsible for the consequences of any negligent or wrongful act or failure to act on the part of itself and its employees. Neither party assumes responsibility to the other party for the consequences of any act or admission of any person, firm or corporation not a party to this agreement.
10. INDEMNIFICATION. The County and the District shall defend, indemnify and hold each other harmless from and against any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from, or connected with, services performed or to be performed under this contract to the fullest extent permitted by law whether arising from contract liability(ies) or otherwise.

This mutual duty to indemnify shall not apply to liability from damages arising out of bodily injury to persons or damages to the property caused by, or resulting from, the sole negligence of either the County or the District, or their respective officers, agents and employees.

This mutual duty to indemnify for liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of either the County's or the District's agents or employees, subcontractors and suppliers, shall apply only to the extent of negligence of the damages caused by or resulting from the concurrent negligence of the County's or the District's agents, employees, subcontractors and suppliers.

The County and the District specifically and expressly waive any immunity that may be granted under the Washington State Industrial Act, Title 51, RCW. Further, the indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount of type of damages, compensation, benefits payable to or by any third party under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.

This mutual duty to defend, indemnify, and hold harmless shall include all related costs, reasonable attorney fees, court costs and related expenses asserted against or incurred by either party, or their officers, agents and employees.

The parties hereby certify that these indemnification provisions were mutually negotiated and agreed to by the parties.

11. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.

- a. This Agreement may be changed, modified, amended or waived only by written agreement signed by the parties and adopted by the Kittitas County Board of Commissioners and the District.
- b. 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.
- c. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

12. INTERPRETATION. This Agreement has been submitted to the review of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accord with its words, without consideration or weight given to its being drafted by any party or its counsel. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and neuter gender.

13. GOVERNING LAW AND VENUE.

- a. This Agreement shall be governed by the laws of the State of Washington, and venue shall be in Kittitas County, Washington.
- b. If any legal action or other proceeding is brought for enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party shall pay its own attorney fees incurred in that action or proceeding.

14. SEVERABILITY. Any provision of this agreement, which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or unenforceability, without affecting the validity or enforcement of the remaining provisions.
15. ENTIRE AGREEMENT. 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.
16. FILING. Executed copies of this Agreement shall be filed as required by RCW 39.34.040 prior to this Agreement becoming effective.

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

**KITTITAS COUNTY
DISTRICT**

607 East Mountain View
Ellensburg, WA 98926


By:  Dated: 12/13/2012
Chairman, Board of Supervisors


KITTITAS COUNTY BOARD OF COMMISSIONERS

205 West 5th Avenue, Room 108
Ellensburg, WA 98926


Board Chair

Dated: December 4, 2012


Vice Chair


Commissioner

ATTEST: Julie Kjorsvik
Julie Kjorsvik, Clerk of the Board



Approved as to Form:

Deputy Prosecuting Attorney