

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

RESOLUTION NO. 2012-087

**A RESOLUTION AUTHORIZING EXECUTION
OF AN INTERLOCAL AGREEMENT
WITH THE TOWN OF SOUTH CLE ELUM**

- WHEREAS, the Town of South Cle Elum has been awarded federal Surface Transportation Program (STP) funds for the Madison Avenue-South Cle Elum Way Chip Seal Improvements, (hereinafter the "Project"); and
- WHEREAS, the Town of South Cle Elum desires to utilize these federal funds to undertake the Project; and
- WHEREAS, the expenditure of federal funds requires that the project be designed and administered in accordance with the Washington State Department of Transportation Local Agency Guidelines, including certification by a certified acceptance agency (CA agency); and
- WHEREAS, the Town of South Cle Elum is not presently certified to administer federal aid projects; and
- WHEREAS, Kittitas County is presently certified to administer federal aid projects; and,
- WHEREAS, the Local Agency Guidelines provides that a noncertified local agency may enter into agreement with a CA agency to have the CA agency perform project development and/or contract administration; and
- WHEREAS, the accomplishment of the project is a benefit to the regional transportation system; and
- WHEREAS, the State Interlocal Cooperation Act, Chapter 39.34 RCW, authorizes cooperative efforts between government entities in the providing of such services.

NOW THEREFORE, BE IT RESOLVED: that an Interlocal Agreement between Kittitas County and the Town of South Cle Elum be established to provide contract administration services in compliance with the WSDOT Local Agency Guidelines Manual.

ADOPTED this 17th day of July, 2012.

**BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON**



[Signature]
Clerk of the Board

[Signature]
Chair

[Signature]
Vice-Chairman

[Signature]
Commissioner

**INTERLOCAL AGREEMENT BETWEEN TOWN OF SOUTH CLE ELUM,
WASHINGTON AND KITTITAS COUNTY, WASHINGTON, FOR CERTIFIED
ACCEPTANCE SERVICES**

THIS INTERLOCAL AGREEMENT is made and entered into on this 17th day of July, 2012 by and between Kittitas County, Washington, a Washington municipal corporation, hereinafter referred to as "County", and the Town of South Cle Elum, Washington, hereinafter referred to as "Town", each party having been duly organized and now existing under the laws of the State of Washington. Both entities may be referred to in this Agreement collectively as "Parties" or individually as "Party".

WITNESSETH:

WHEREAS, the Town has been awarded federal Surface Transportation Program (STP) funds for the Madison Avenue-South Cle Elum Way Chip Seal Improvements, (hereinafter the "Project"); and

WHEREAS, the Town desires to utilize these federal funds to undertake the Project; and

WHEREAS, the expenditure of federal funds requires that the project be designed and administered in accordance with the Washington State Department of Transportation Local Agency Guidelines, including certification by a certified acceptance agency (CA agency); and

WHEREAS, the Town is not presently certified to administer federal aid projects; and

WHEREAS, the County is presently certified to administer federal aid projects; and,

WHEREAS, The Local Agency Guidelines provides that a noncertified local agency may enter into agreement with a CA agency to have the CA agency perform project development and/or contract administration; and

WHEREAS, the accomplishment of the project is a benefit to the regional transportation system; and

WHEREAS, the State Interlocal Cooperation Act, Chapter 39.34 RCW, authorizes cooperative efforts between government entities in the providing of such services.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

**ARTICLE I.
PURPOSE OF AGREEMENT**

The purpose of this Agreement is to set forth the terms and conditions under which Kittitas County will certify that South Cle Elum's Project is designed and administered in accordance with the Washington State Department of Transportation's Local Agency Guidelines.

ARTICLE II. DEFINITIONS

The Parties hereby agree that the following terms shall have the specified meanings unless indicated otherwise herein:

2.01 CA shall mean certified acceptance as set forth in the Washington State Department of Transportation's Local Agency Guidelines.

2.02 Project shall mean the Madison Avenue-South Cle Elum Way Chip Seal Improvements project.

2.03 STP shall mean the Surface Transportation Program, a federal funding program for transportation improvement projects.

2.04 Local Agency Guidelines shall mean the most current version of the Washington State Department of Transportation's Local Agency Guidelines.

ARTICLE III. RESPONSIBILITIES OF PARTIES

3.01 The County Agrees to:

a.) Administer and certify the project for the Town in accordance with the Local Agency Guidelines.

3.02 The Town Agrees to:

- a.) Prepare all of the project plans, specifications, and estimates in accordance with the Local Agency Guidelines.
- b.) Provide construction inspection services through the Town's consultant in accordance with the Local Agency Guidelines.
- c.) Reimburse the County for services provided by the County on a time and materials basis when billed by the County.

3.03 This Interlocal Agreement shall be in full force and effect when executed by the Town and County.

ARTICLE IV ADMINISTRATION AND CONTACT INFORMATION

4.01 **ADMINISTRATOR.** The County Engineer shall administer this agreement for the County and the Town's Public Works Superintendent shall administer this agreement for the Town.

4.02 **CONTACT INFORMATION.** The following shall be the Parties' contact persons for administration of this agreement:

TITLE: Co. Engr., Douglas D'Hondt
DEPT.: Public Works
ADDRESS: 411 N. Ruby St., Ste. 1
Ellensburg, WA 98926
PHONE: 509-962-7523

TITLE: Superintendent, Scott Mackenzie
DEPT.: Public Works
ADDRESS: 523 Lincoln Ave.
South Cle Elum, WA 98943
PHONE: 509-674-4322

ARTICLE V COMPENSATION

The Town shall reimburse for services provided by the County on a time and materials basis when billed by the County.

ARTICLE VI TERM

This Agreement shall enter into full force and effect for two (2) years from August 1, 2012 and end August 1, 2014, subject to earlier termination as provided by Article VII herein.

ARTICLE VII TERMINATION

- 7.01 **TERMINATION** This Agreement may be terminated by a writing executed by both Parties and adopted by resolution of each Party's legislative body. Either Party may terminate this Agreement upon thirty (30) days written notice, either personally-delivered or mailed postage-prepaid by certified mail, return receipt requested, to the other Party's contact at the address in Article IV and to its legislative body. 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 VIII DISPUTES

- 8.01 **TIME.** Time is of the essence of this Agreement.
- 8.02 **DISPUTE RESOLUTION.** In the event that a dispute arises regarding any matter addressed in or related to this Agreement, the Parties agree first to attempt to resolve such dispute by a telephone call between the contact persons as provided by Article IV herein of each Party, or authorized designee(s). If the matter is not resolved by consultation in a telephone call, the Parties agree that before taking any other action or seeking any remedy, the Parties' contact persons as provided by Article IV herein of each party, or authorized designee(s), will participate in a good faith in-person negotiation to resolve any such dispute.

- 8.03 **GOVERNING LAW AND VENUE.** This Agreement shall be governed exclusively by the laws of the State of Washington. Venue of any action brought to interpret or enforce the terms of this Agreement shall be in the Superior Court of Kittitas County, Washington.
- 8.04 **ATTORNEY'S FEES.** If any legal action or other proceeding is brought for the 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's fees incurred in that action, arbitration or proceeding.

ARTICLE IX INDEMNIFICATION

Each Party shall defend, indemnify and hold harmless the other, as well as its officers, agents and employees, 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 Agreement to the fullest extent permitted by law, whether arising from Agreement liability(ies) or otherwise.

This 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 the County, the Town, or their respective officers, agents and employees.

This 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 the County's, and the Town's agents or employees shall apply only to the extent of negligence of the County's, and the Town's agents, employees, subcontractors and suppliers.

Both Parties 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 Agreement shall not be limited in any way by any limitation on the amount or 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 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 the County, the Town, or their respective officers, agents and employees.

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

ARTICLE X PERFORMANCE OF AGREEMENT

- 10.01 **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.

- 10.02 **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.
- 10.03 **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.
- 10.04 **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.
- 10.05 **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.
- 10.06 **CONFLICT OF INTEREST.** The elected and appointed officials and employees of the Parties shall not have any personal interest, direct or indirect, in this Agreement which gives rise to a conflict of interest.
- 10.07 **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.
- 10.08 **NOTICE:** Subject to the requirements of any applicable statute, any notices required or permitted by law or under this Agreement shall be in writing and shall be (i) personally delivered, or (ii) sent by first class certified or registered mail, return receipt requested, with postage prepaid, or (iii) dispatched by facsimile transmission (accompanied with reasonable evidence of receipt of transmission and with a confirmation copy mailed no later than the day after transmission) to the Parties' addresses set forth in Article IV.

ARTICLE XI GENERAL PROVISIONS

- 11.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.**
The Agreement may be changed, modified, amended or waived only by written agreement signed by the Parties 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 of breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

- 11.02 **ASSIGNMENT**. Neither Party may assign its rights or delegate its duties under this Agreement, whether by assignment, further, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.
- 11.03 **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.
- 11.04 **ENTIRE AGREEMENT**. This Agreement contains all the terms and conditions agreed upon by the Parties. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The recitals to this Agreement are incorporate by reference and are part of the Agreement. All items incorporated herein by reference are 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.
- 11.05 **FILING**. Pursuant to RCW 39.34.040, this Agreement shall be posted on the County's website.
- 11.06 **HEADINGS**. The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.
- 11.07 **SAVINGS CLAUSE**. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Agreement and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Agreement affected shall be curtailed and limited only the extent necessary to bring it within legal requirements.
- 11.08 **INTERPRETATION**. This Agreement has been submitted to the scrutiny of all Parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration or weight given to its being drafted by any Party or its counsel. No stricter construction or interpretation of the terms hereof shall be applied against any Party as the drafter hereof. 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.

ADOPTED THIS 10 DAY OF July, 2012

TOWN OF SOUTH CLE ELUM

James L. Squire
Mayor

ATTEST:

Loe Amster
Town Clerk

ADOPTED THIS 17th DAY OF July, 2012

KITTITAS COUNTY

Al Clark
Commissioner, Chair

Chris Anderson
Vice-Chairman

Commissioner
Commissioner



Mike Kjosvik
Clerk of the Board