

RESOLUTION NO. 100-95

**INTERLOCAL AGREEMENT BETWEEN MASON COUNTY AND KITSAP COUNTY
CONCERNING RECONSTRUCTION OF BEAR CREEK/DEWATTO ROAD****I. PREAMBLE**

This interlocal agreement is made and entered into pursuant to the provisions of Chapter 39.34 RCW between Mason and Kitsap Counties concerning reconstruction of Bear Creek/DeWatto Road.

II. RECITALS

WHEREAS, Bear Creek/DeWatto Road is a county road of Mason County which intersects with Panther Lake and Gold Creek roads, which are county roads of Kitsap County; and

WHEREAS, Mason County has undertaken reconstruction of Bear Creek/Dewatto Road; and

WHEREAS, Mason County is willing to draft, solicit bids for, and administer a road construction contract which will include work to be performed within Kitsap County within the existing rights of way of Panther Lake Road and Gold Creek Road as part of the total project to reconstruct Bear Creek/DeWatto Road; and

WHEREAS, the people of both counties will benefit from a coordinated reconstruction of Bear Creek/DeWatto Road; and

WHEREAS, Chapter 39.34 RCW provides that local jurisdictions may enter into cooperative agreements for their mutual advantage.

NOW, THEREFORE, the parties hereto, through their respective legislative bodies, do hereby agree as follows:

III. ARTICLES OF AGREEMENT

1.1 Right to Perform Reconstruction. Kitsap County agrees to allow Mason County to perform road reconstruction as needed within Kitsap County to complete the reconstruction of Bear Creek-DeWatto Road under Mason County Road Project 1472. Both Counties agree that the work will be performed within the existing Kitsap County Right-Of-Way for Panther Lake Road and Gold Creek

**INTERLOCAL AGREEMENT BETWEEN MASON COUNTY
AND KITSAP COUNTY CONCERNING RECONSTRUCTION
OF BEAR-CREEK/DEWATTO ROAD--1**

Road as shown on the Right-Of-Way Plans approved by the Mason County Board of Commissioners on February 14, 1995.

1.2 Agreement by Kitsap County to Allow Mason County to Administer Contract. Kitsap County agrees to allow Mason County to draft, solicit bids for, award and administer a road construction contract which will include the work to be done within Kitsap County as part of the total project.

1.3 No Warranty. Kitsap County acknowledges that Mason County makes no warranty, express or implied, regarding the adequacy of the Bid Documents or whether the Public Bid Process satisfies all bid procurement requirements applicable to Kitsap County.

1.4 Agreement by Kitsap County to Reimburse Mason County. Kitsap County agrees to reimburse Mason County for all road reconstruction executed within Kitsap County in conjunction with this project. Kitsap County agrees to reimburse Mason County no later than the last day of Kitsap County's fiscal year 1996 or 60 days after the completion of the road reconstruction within Kitsap County, whichever is the later date.

1.5 Accounting Procedures. All costs incurred in road work conducted within Kitsap County will be accounted for in accordance with the Washington State Department of Transportation Construction Manual M 41-01. The Mason County Construction Engineer, the Project Inspector and the Contractor will all be instructed to carefully identify and account for all work and materials used within Kitsap County. All construction records will be made reasonably available for inspection by the Kitsap County Engineering Department both on the project site and at the Mason County Engineering Department offices. Copies of applicable construction records will be attached to the final bill sent by Mason County to Kitsap County.

1.6 Billing and Payment Procedures. Mason County will keep Kitsap County advised of the progress of the project. Should work in Kitsap County continue beyond the last day of Kitsap County's fiscal year in 1996, Mason County will give Kitsap County no less than 7 days notice of the expected work end date. Mason County will provide Kitsap County with informational monthly cost updates throughout the project which will show the month's itemized project costs and total project costs to date. Barring unusual circumstances, Mason County will prepare and present the final bill for Kitsap County no later than 10 working days after the completion of work within Kitsap County. Kitsap County will provide reimbursement no later than the dates specified in paragraph 1.4.

**INTERLOCAL AGREEMENT BETWEEN MASON COUNTY
AND KITSAP COUNTY CONCERNING RECONSTRUCTION
OF BEAR-CREEK/DEWATTO ROAD--2**

ARTICLE II

2.1 Mason County shall administer this agreement.

2.2 Adequate Records. Mason County shall keep records adequate to verify the amount of work and materials billed to Kitsap County for this project. Kitsap County will submit in writing all questions to Mason County concerning the conduct of the project and amounts charged to Kitsap County which may be cause for an adjustment to the final bill. Mason County will maintain the project records for a period of three years after project completion. Kitsap County shall be given reasonable access to review and inspect said records.

2.3 Dispute Resolution. Mason County and Kitsap County shall attempt to resolve any and all disputes arising out of this Agreement by good faith negotiations. If any dispute is not resolved by negotiations within 20 days after either party notifies the other in writing of a dispute, either Mason County or Kitsap County shall have the option to submit the dispute for resolution pursuant to the Judicial Arbitration & Mediation Services, Inc. (JAMS) mediation/arbitration procedures set out in Form 2, a copy of which is attached hereto as Exhibit A and by this reference incorporated herein as if set forth in full. Mason County and Kitsap County also agree to follow the arbitration procedures set out in the JAMS Future Disputes Submission Agreement, a copy of which is attached hereto as Exhibit B and by this reference incorporated herein as if set forth in full. The dispute resolution procedures set forth in this paragraph shall be mandatory and exclusive, unless otherwise agreed in writing by all parties to this Agreement.

2.4 Duration/Termination. This Agreement shall remain in full force and effect as long as the project is in progress and until the final charge to Kitsap County is deemed proper by Kitsap County and paid in full to Mason County. If the project is terminated for any reason, then this Agreement shall also be deemed terminated, provided that any amounts due and owing hereunder by Kitsap County to Mason County at the time this Agreement is terminated shall remain due and owing and shall be subject to collection, and provided, further, that the provisions of paragraph 2.3 shall continue to govern dispute resolution for all disputes arising out of this Agreement

2.5 Costs. Mason County and Kitsap County shall be solely responsible for their own costs incurred in implementing, administering and enforcing this Agreement, unless otherwise stated herein.

**INTERLOCAL AGREEMENT BETWEEN MASON COUNTY
AND KITSAP COUNTY CONCERNING RECONSTRUCTION
OF BEAR-CREEK/DEWATTO ROAD--3**

2.6 Third Party Beneficiary. This Agreement is entered into for the sole benefit of Mason and Kitsap Counties and is not intended to nor does it create any third party beneficiary or rights in any other person or entity.

2.7 Assignment of Agreement. No rights, benefits or obligations under or arising from this Agreement shall be assigned by either Mason County or Kitsap County without the written consent of Mason County and Kitsap County.

2.8 Notices. All notices, requests, billings, payments and other communications required or permitted to be given hereunder shall be given at the addresses set forth below. For purposes of this agreement such notices, requests, billings, payments or other communications delivered by means of the U.S. Mail shall be deemed to have been delivered as of the fifth business day next following the date of the postmark thereof.

If to Mason County:

Mason County Department of Public Works
P.O. Box 1850
Shelton, Washington 98584
Attention: Public Works Construction Engineer

If to Kitsap County:

Kitsap County Public Works
614 Division, Mail Stop 26
Port Orchard, WA 98366

2.9 Property. Any real or personal property acquired by Mason County in furtherance of this Agreement shall remain the property of Mason County. Any real or personal property acquired by Kitsap County in furtherance of this Agreement shall remain the property of Kitsap County.

2.10 Invalidity. If any provision of this Agreement is determined to be invalid, the remaining provisions shall remain in full force and effect.

DATE: September 26, 1995.

BOARD OF COMMISSIONERS
MASON COUNTY

William Hunter
Chairperson

M. L. Faughender
Commissioner

Mary P. Cady
Commissioner

APPROVED AS TO FORM:

ATTORNEY

By:

Chris Witt
CHIEF DEP. PROS. ATTY

APPROVED BY RESOLUTION
NO. 100-95

DATE: 10/9/95, 1995.

BOARD OF COMMISSIONERS
KITSAP COUNTY

Will Frank
Chairperson

Phil Best
Commissioner

Mark By
Commissioner

APPROVED AS TO FORM:

ATTORNEY

By:

Signature: [illegible]
WSB 13861 dpa

APPROVED BY RESOLUTION
NO. _____

INTERLOCAL AGREEMENT BETWEEN MASON COUNTY
AND KITSAP COUNTY CONCERNING RECONSTRUCTION
OF BEAR-CREEK/DEWATTO ROAD--5

EXHIBIT A

FORM 2

Mediation

The parties agree to attempt to settle all disputes arising under this contract through mediation at the local offices of Judicial Arbitration & Mediation Services, Inc. (J.A.M.S.). The complaining party must contact J.A.M.S. to schedule a mediation within thirty (30) days. The parties may agree on a jurist from the J.A.M.S. panel. If they are unable to agree, J.A.M.S. will provide a list of the three available panel members and each party may strike one. The remaining judge will serve as the mediator. Neither party may initiate arbitration proceedings until mediation is completed.

Arbitration

All disputes arising under this contract which are not resolved through mediation will be submitted to Judicial Arbitration & Mediation Services, Inc. (J.A.M.S.) for binding arbitration.

The parties may agree on a jurist from the J.A.M.S. panel. If they are unable to agree, J.A.M.S. will provide a list of three available panelists and each party may strike one. The remaining panelist will serve as the arbitrator.

The parties have agreed to a Future Disputes Submission Agreement, a copy of which is attached hereto. This agreement sets forth the rights of the parties if the case is arbitrated and the rules and procedures to be followed at the arbitration hearing.

EXHIBIT B

FUTURE DISPUTES SUBMISSION AGREEMENT

Structuring the Arbitration Hearing

(NOTE: The Submission Agreement is important in that it sets forth the right of the parties and the rules and procedures to be followed at the arbitration hearing. The parties must decide whether they prefer to plan a potential arbitration proceeding before a dispute arises or if they would rather postpone those determinations until they actually face an arbitration hearing).

FUTURE DISPUTES SUBMISSION AGREEMENT

Pre-Hearing Conference

The arbitrator(s) shall schedule a prehearing conference to reach agreement on procedural matters, arrange for the exchange of information, obtain stipulations, and attempt to narrow the issues.

Discovery

It is our objective to expedite the arbitration proceedings by eliminating discovery. Instead of discovery, the parties agree to the following exchange of information:

- a. Either party can make a written demand for lists of the witnesses to be called or the documents to be introduced at the hearing. The demand must be received prior to the pre-hearing conference.
- b. The lists must be served within fifteen (15) days of the demand.
- c. No depositions may be taken for discovery.

The Hearing

- I. The parties must file briefs with the arbitrator(s) at least three (3) days before the hearing, specifying the facts each intends to prove and analyzing the applicable law.
- II. The parties have the right to representation by legal counsel throughout the arbitration proceedings.
- III. Civil rules of evidence and procedure relating to the conduct at the hearing, examination of witnesses, and presentation of evidence do not apply. Any relevant evidence, including hearsay, shall be admitted by the arbitrator if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the admissibility of such evidence in a court of law.

EXHIBIT B

FUTURE DISPUTES SUBMISSION AGREEMENT (Continued)

- IV. Within reasonable limitations, both sides at the hearing may call and examine witnesses for relevant testimony, introduce relevant exhibits or other documents, cross-examine or impeach witnesses who shall have testified orally on any matter relevant to the issues, and otherwise rebut evidence, as long as these rights are exercised in an efficient and expeditious manner.
- V. Any party desiring a stenographic record may secure a court report to attend the proceedings. The requesting party must notify the other parties of the arrangements in advance of the hearing and must pay for the cost incurred.
- VI. Any party may request the oral evidence to be given under oath.

The Award

- I. The decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The arbitrator(s) may grant any remedy or relief which is just and equitable.
- II. The award must be made in writing and signed by either the arbitrator or a majority of the arbitrators if a panel is used. It shall contain a concise statement of the reasons in support of the decision.
- III. The award must be mailed promptly to the parties, but no later than thirty (30) days from the closing of the hearing.
- IV. The award can be judicially enforced, corrected or vacated under the laws of the state where the arbitration takes place. It is final and binding and there is no direct appeal from the award on the grounds of error in the application of the law.

Fees and Expenses

Unless otherwise agreed, each party must pay its own witness fees.

Unless otherwise agreed, each party must pay its pro rata a\share of the arbitrator's fees.

Each party must pay its own attorney fees.