

RECEIVED
MAY 26 2009

**INTERLOCAL AGREEMENT BETWEEN KITTITAS COUNTY AND
CITIES AND TOWNS FOR ADMINISTERING HOUSING FUNDS
PURSUANT TO RCW 36.22.178**

TOWN OF SOUTH CLE ELUM

THIS INTERLOCAL AGREEMENT is entered into pursuant to the provisions of Chapter 39.34 RCW, by and between Kittitas County, a political subdivision of the State of Washington organized under Title 36 of the Revised Code of Washington (hereinafter referred to as "**COUNTY**"), and the **CITIES and TOWNS of ELLENSBURG, CLE ELUM, SOUTH CLE ELUM, ROSLYN, and KITTITAS**, all municipal corporations of the State of Washington (hereinafter referred to as "**CITIES and TOWNS**").

WITNESSETH:

WHEREAS, the Interlocal Cooperation Act, as amended, and codified in Chapter 39.34 of the Revised Code of Washington, provides for interlocal cooperation between governmental agencies;

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

WHEREAS, the Washington State Legislature enacted RCW 36.22.178 which became effective June 13, 2002, as later amended ("**SHB 2060**"); and

WHEREAS, the legislation authorized a Ten Dollar surcharge on certain documents recorded with the Kittitas County Auditor's office for the purpose of providing funds for affordable low-income housing ("**SHB 2060 affordable housing surcharge funds**"); and

WHEREAS, the **COUNTY** and its **CITIES and TOWNS** agree that additional resources are needed for housing projects or units within housing projects that are affordable to very low-income persons with incomes at or below 50 percent of the area median income; and

WHEREAS, RCW 36.22.178 (2) requires the County and its Cities and Towns to develop an Interlocal Agreement for the distribution of these funds; and

WHEREAS, the parties are authorized to enter into such agreements by virtue of chapter 39.34 RCW.

NOW THEREFORE, in consideration of the mutual benefits for low-income households within the **COUNTY** and its **CITIES and TOWNS**, and the mutual covenants, terms and conditions contained herein, the **COUNTY** and its **CITIES and TOWNS** agree as follows:

1. **PURPOSE.** The purpose of this Interlocal Agreement is to implement RCW 36.22.178 and to memorialize agreement between the parties relating to administration

of the SHB 2060 affordable housing surcharge funds. Each party shall administer this Agreement as to its own responsibilities under the Agreement.

2. **COUNTY OBLIGATIONS.** The County shall:

- a. Collect the revenue authorized by RCW 36.22.178 and hold it in a segregated fund; and
- b. Participate in activities in accord with the Kittitas County Homelessness Prevention and Reduction Plan adopted by the Board of Kittitas County Commissioners on February 3, 2009; and
- c. Acting through the Board of Kittitas County Commissioners upon recommendation by the Kittitas County Homeless and Affordable Housing Committee, oversee the revenue sharing process provided for in this Agreement; and
- d. Disburse the SHB 2060 affordable housing surcharge funds to designated eligible recipients in accord with **Exhibit 1**, the Kittitas County Affordable Housing Funds Grant Application, Guidelines and Instructions; and
- e. At the start of each calendar year, provide to all parties an annual written summary of funds collected and expended under the terms of this Agreement during the preceding calendar year.

3. **OBLIGATIONS OF CITIES AND TOWNS.**

- a. The CITIES and TOWNS agree to abide by **Exhibit 1**, Grant Application, Guidelines and Instructions, for the use of the SHB 2060 affordable housing surcharge funds.
- b. The CITIES and TOWNS shall issue and provide to the COUNTY a letter showing that the proposed low-income housing projects located within their jurisdictional boundaries are consistent with their current Comprehensive Land Use Plan.

4. **FUND AVAILABILITY.**

- a. On an annual basis, the Board of Kittitas County Commissioners shall publish a Request for Proposal (RFP) setting forth the purpose of the SHB 2060 affordable housing surcharge funds, amount of funds available for award and the term to which the funds apply, how to obtain an application, deadline for submitting applications for award of funding, and other information related to the application and funding award process.

5. **ELIGIBLE RECIPIENTS.**

- a. Pursuant to RCW 43.185.060, eligible recipients of the SHB 2060 affordable housing surcharge funds include local governments, local housing authorities,

regional support networks established under Chapter 71.24 RCW (community mental health services), nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the State of Washington, and regional or statewide nonprofit housing assistance organizations. For-profit developers may qualify if the funds are used only for projects as defined in RCW 36.22.178. Eligibility requires that the recipient be in compliance with applicable revenue and taxation laws at the time the grant is made. Use of said funds shall be limited to the following:

- i. Acquiring, constructing or rehabilitating low-income housing projects (or units within low-income housing projects) that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including units for homeownership, rental units, seasonal and permanent farm worker housing units, and single room occupancy units;
 - ii. Supporting building operation and maintenance costs of housing projects or units within housing projects eligible to receive housing trust funds, that are affordable to very low-income households with incomes at or below fifty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses (i.e., "Maintenance and Operations support);
 - iii. Rental assistance vouchers for housing units that are affordable to very low-income households with incomes at or below fifty percent of the area median income, to be administered by a local public housing authority or other local organization that has an existing rental assistance voucher program, consistent with or similar to the United States Department of Housing and Urban Development's Section 8 rental assistance voucher program standards; and
 - iv. Operating costs for emergency shelters and licensed overnight youth shelters; and
 - v. The 2060 surcharge funds do not apply to assignments or substitutions or previously recorded deeds of trust.
- b. In the event RCW 35.22,178 is amended to include additional permissible uses of the 2060 affordable housing surcharge funds, those permissible uses shall also be permitted under this Agreement without formal amendment to this Agreement.
 - c. In the event RCW 36.22.178 is amended to disallow any current permissible uses of the SHB 2060 surcharge funds, those permissible uses shall no longer be permitted under this Agreement without formal amendment to this Agreement.
 - d. The Kittitas County Homeless and Affordable Housing Committee shall make a first review of the applications and recommend to the Board of Kittitas

County Commissioners which applicants should receive grant funding. Upon review of the Committee's recommendations, the Board of Kittitas County Commissioners shall make a final determination of grant awards, ensuring that the SHB affordable housing surcharge funds are distributed in a manner that balances existing needs throughout the COUNTY with program users' access to services. It is the overall intent of this Agreement that, over time, all areas of Kittitas County shall equitably receive appropriate levels of funding pursuant to this Interlocal Agreement.

6. TERM OF THE AGREEMENT.

- a. **Commencement and Renewal of Term.** This Agreement shall commence immediately upon execution by the COUNTY and the CITY or TOWN, and shall remain in effect on a calendar year basis. The Agreement shall automatically renew for one year terms beginning January 1 of the successive year, and shall end at midnight, December 31 of the same year, unless earlier terminated by giving Thirty (30) Days written notice to the other party.
- b. **Termination for Loss of Funding.** If the Washington State Legislature withdraws program funding under RCW 36.22.178, or if program funding is otherwise terminated, suspended, lost or impaired in whole or in part, this Interlocal Agreement is subject to immediate termination upon the same date of legislative enactment or other termination, suspension, loss or impairment.
- c. **Termination for Convenience.** Either party may terminate this Agreement for convenience upon giving the other party at least Thirty (30) Days advance written notice. In that event, the Recipient will be entitled to payment only for those expenses and costs reasonably and actually incurred prior to the effective date of the termination.
- d. **Termination for Default.** If either party defaults in its performance under this Agreement, the nondefaulting party may give the defaulting party written notice that it has Thirty (30) Days in which to cure the default. If the default is not cured within Thirty (30) Days of notice, the nondefaulting party may terminate the Agreement. In the event of such a termination, the nondefaulting party shall have all rights and remedies available to it under law.

7. INDEPENDENT CONTRACTOR RELATIONSHIP OF THE PARTIES.

- a. The CITIES and TOWNS are, and shall at all times be deemed to be, independent contractors. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between CITIES and TOWNS and COUNTY or any of the CITIES and TOWNS' agents, employees or representatives. The CITIES and TOWNS shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by COUNTY pursuant to this Agreement.

- b. Nothing in this Agreement shall make any employee of the CITIES and TOWNS a COUNTY employee, and nothing in this Agreement shall make any employee of the COUNTY an employee of CITIES and TOWNS for any purpose, including, but not limited to withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded CITIES and TOWNS or COUNTY employees by virtue of their employment
 - c. Each party is solely responsible for its own acts and the acts of its agents, employees and representatives during the term of this Agreement.
8. **NO THIRD PARTY BENEFICIARY.** This Agreement is entered into by the parties solely for that party's own benefit and it creates no rights of any kind in any other party. The COUNTY does not intend by this Agreement to assume any contractual obligations to anyone other than the CITIES and TOWNS, and the CITIES and TOWNS do not intend by this Agreement to assume any contractual obligations to anyone other than the COUNTY. The COUNTY and the CITIES and TOWNS do not intend that there be any third-party beneficiary to this Agreement.
9. **ASSIGNMENT.** Neither the COUNTY nor the CITIES and TOWNS shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.
10. **NON-DISCRIMINATION.** The COUNTY and the CITIES and TOWNS certify that they are Equal Opportunity Employers.
11. **COMPLIANCE WITH LAWS.** Each party accepts responsibility for compliance with federal, state and local laws, rules, regulations and policies. The COUNTY shall have no obligation to ensure such compliance by CITIES and TOWNS.
12. **INDEMNIFICATION AND DEFENSE.**
- a. Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of its officials, officers, agents or employees to the fullest extent required by law, and further agrees to save, indemnify, defend and hold the other party harmless from any such liability. Neither party assumes responsibility to the other party for the consequences of any act or omission of any person, firm or corporation not a party to this Agreement, and no liability shall attach to the COUNTY by reason of entering into this contract except as expressly provided herein.
 - b. The COUNTY shall defend, indemnify, and save harmless the CITIES and TOWNS and their officers, employees, and agents, from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the COUNTY and its officers, employees, or agents associated with this Agreement.
 - i. In executing this Agreement, the COUNTY does not assume liability or responsibility for, or in any way release, the CITIES and TOWNS from

any liability or responsibility arising in whole or in part from the existence or effect of RCW 36.22.178, and any CITY or TOWN ordinances, rules, regulations, resolutions, customs, policies, or practices.

- ii. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such law, ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the CITIES and TOWNS shall defend the same at their sole expense, and if judgment is entered or damages are awarded against the CITIES and TOWNS, the COUNTY, or both, the CITIES and TOWNS shall satisfy the same, including all chargeable costs and attorney's fees.
- c. The CITIES and TOWNS shall defend, indemnify and save harmless the COUNTY and its officers, employees and agents, from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the CITIES and TOWNS and their officers, employees or agents associated with this Agreement.
- i. In executing this Agreement, the CITIES and TOWNS do not assume liability or responsibility for, or in any way release, the COUNTY from any liability or responsibility arising in whole or in part from the existence or effect of COUNTY ordinances, rules, regulations, resolutions, customs, policies, or practices.
 - ii. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such COUNTY ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the COUNTY shall defend the same at its sole expense, and if judgment is entered or damages are awarded against the COUNTY, the CITIES and TOWNS, or both, the COUNTY shall satisfy the same, including all chargeable costs and attorney's service charges.
- d. Each party to this Agreement shall be responsible for the negligence of its own officers, employees, and agents in the performance of this Agreement and any Program or Grant Agreement.
- i. No party to this Agreement or any Program or Grant Agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this Agreement and any Program Agreement.
 - ii. The COUNTY and the CITIES and TOWNS shall cooperate in the defense of tort lawsuits, when possible, although both parties agree and understand that this provision may not be feasible in all circumstances.
 - iii. The COUNTY and the CITIES and TOWNS agree to notify the attorneys of record in any tort lawsuit where both are parties if either the COUNTY or the CITIES and TOWNS enter into settlement

negotiations. Such notice shall occur prior to any negotiations, or as soon as possible, and the notice may be either written or oral.

13. **INSURANCE COVERAGE.** The CITIES and TOWNS shall maintain at all times during the course of this Agreement a general liability insurance policy or other comparable coverage with a self-insured retention of no more than Two Million Dollars (\$2,000,000) and a policy limit of no less than Five Million Dollars (\$5,000,000).

14. **NOTICE.**

- a. Any formal notice or communication to be given by the COUNTY to the CITIES and TOWNS under this Agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

City or Town
Address
City, WA 98901
Attention: Director or Administrator

- b. Any formal notice or communication to be given by the CITIES and TOWNS to the COUNTY under this Agreement shall be deemed properly given if delivered, or if mailed postage prepaid and addressed to:

Clerk of the Board
Kittitas County Board of County Commissioners
205 West 5th Avenue, Suite 108
Ellensburg, WA 98926

- c. The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the CITIES and TOWNS or the COUNTY giving notice thereof to the other as herein provided.

15. **WAIVER.** No waiver by a party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach of the same or of a different provision of this Agreement.

16. **ENTIRE AGREEMENT.** This Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Agreement and no prior or other agreements shall be effective for any purpose.

17. **AMENDMENT.** Provisions within this Agreement may be amended only with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both parties.

18. **NO REAL PROPERTY ACQUISITION OR JOINT FINANCING.** This Interlocal Agreement does not provide for the acquisition, holding or disposal of real property. Nor does this Agreement contemplate the financing of any joint or

cooperative undertaking. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Interlocal Agreement.

19. **AUTHORIZATION.** By resolution or ordinance, the governing bodies of the COUNTY and the CITIES and TOWNS have authorized their respective designated officials to execute this Agreement on their behalf.
20. **FILING.** Copies of this Interlocal Agreement, together with the resolution of the Board of Kittitas County Commissioners and the CITIES and TOWNS Council's approving and ratifying this Agreement, shall be filed with the CITIES and TOWNS Clerk and the Kittitas County Auditor after execution of the Agreement by the parties. Executed copies of this Agreement shall be filed as required by Section 39.34.040 of the Revised Code of Washington prior to this Agreement becoming effective.
21. **SEVERABILITY.** If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

AGREED TO AND SIGNED this 19th day of May, 2009.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON


Alan Crankovich, Chair


Paul Jewell, Vice Chair

ABSENT

Mark McClain, Commissioner



APPROVED AS TO FORM:


Deputy Prosecuting Attorney

AGREED TO AND SIGNED this 16th day of June, 2009.

CITY (OR TOWN) OF South Cle Elum

James L. De Vere
Authorized Official of City or Town

ATTEST:
Loa Brunster
City or Town Clerk

APPROVED AS TO FORM:
[Signature]
City or Town Attorney