

INTERLOCAL AGREEMENT BETWEEN THE CITY OF ELLENSBURG AND  
KITITITAS COUNTY FOR INTERIM PROSECUTION SERVICES

This Agreement is made and entered into this 11<sup>th</sup> day of September, 2014, by and between the City of Ellensburg, a municipal corporation (the "City"), and Kittitas County, a political subdivision of the State of Washington (the "County").

WHEREAS, the City of Ellensburg's City Prosecutor has given notice of termination for prosecuting City cases effective September 30, 2014, and at that time will cease serving as City Prosecutor, and

WHEREAS, the City will therefore be in need of interim city prosecution services until such time as regular prosecution services may be retained through an appropriate selection process, and

WHEREAS, the County, through the Kittitas County Prosecutor's Office (the "Prosecutor"), is willing to provide interim city prosecution services to the City upon terms mutually agreeable to both parties, and

WHEREAS, this Agreement for cooperative services is authorized by the provisions of Chapter 39.34 RCW, the Interlocal Cooperation Act,

NOW, THEREFORE, it is hereby agreed as follows:

1. Purpose. The purpose of this Agreement is to set forth the respective responsibilities of the City of Ellensburg and Kittitas County regarding the provision of interim prosecution services by the Prosecutor for the City's criminal cases filed in Lower Kittitas District Court.
2. Scope of Services. The Prosecutor will provide misdemeanor and gross misdemeanor prosecution services for the City's criminal cases filed in Lower Kittitas District Court. The Prosecutor will attend and represent the City at all pre-trial hearings, probation violations and review hearings, all bench and jury trials, but need not attend first appearances or arraignments.

The Prosecutor shall provide and be responsible for any and all office expenses related to the representation of the City, as defined above, including office supplies and equipment and the compensation of any necessary staff.

The Prosecutor shall screen cases for legal sufficiency and will utilize independent judgment following the Prosecutorial Standards set forth at RCW 9.94A.401-.480 and the Rules for Professional Conduct Rule 3.8 in determining whether to file or pursue prosecution of a criminal charge.

The Ellensburg City Attorney shall have final authority on the disposition and sentencing of all cases in which the Prosecutor represents the City. The exercise of

prosecutorial discretion shall not be considered a breach of the Prosecutor's duties under this Agreement.

The Prosecutor shall meet periodically with the City Attorney and Chief of Police to review the status of case prosecutions, outstanding legal issues, and to address such other matters as may be necessary to the effective provision of prosecution services.

The Prosecutor will represent the City in appeals from City cases to Superior Court and the appellate courts (except such appeals currently being handled by Halverson Northwest), which services shall be compensated under section 3(B) of this Agreement. The Prosecutor shall not represent the City on infraction cases.

All costs associated with the prosecution of criminal cases, such as witness fees (expert or factual), records checks, and court costs shall be paid for or provided by the City.

Any costs or fees not contemplated by this Agreement which may arise during the term of the contract shall be brought to the City Attorney's attention by the Prosecutor. The parties shall review this Agreement as a whole and make an attempt to determine whether the unanticipated cost should be paid by the City or the Prosecutor. If the parties cannot agree, then they shall consider the ordinary course of business between an attorney and client, including whether the cost is usually paid by the client or the attorney. If the parties still cannot reach an agreement, they shall arbitrate the matter as provided below.

### 3. Compensation.

(A) General prosecution services. Beginning October 1, 2014, the City shall pay the Prosecutor Five Thousand Nine Hundred Thirty-six dollars (\$5,936.00) per month as compensation for the Prosecutor's services defined by this Agreement. Payment will be made on or before the 1<sup>st</sup> day of each month, commencing November 1, 2014. Payment for any portion of a month that prosecution services are rendered will be paid on a pro-rata basis.

(B) Appellate services (Superior Court, Court of Appeals and State Supreme Court). The City shall pay the Prosecutor One Hundred Twenty-five dollars (\$125.00) per hour (plus costs) as compensation for any appellate work performed under this Agreement. The Prosecutor will invoice the City on a monthly basis for any such appellate work. The Prosecutor shall obtain the approval of the City Attorney prior to working more than five (5) hours on any particular appellate case.

(C) Taxes. The Prosecutor shall be responsible for all federal, state and local taxes associated with the City's compensation to the Prosecutor and any tax liability resulting from the Prosecutor's employment of staff to assist with the representation of the City.

4. Duration. This Agreement shall be effective October 1, 2014, shall be in effect through December 31, 2014, or until such time as a new City Prosecutor commences or other time as the parties may mutually agree upon in writing. This agreement presupposes, and is contingent upon, the City maintaining its criminal code as currently adopted. Any repeal of that code will render this Agreement voidable at the discretion of the Kittitas County Prosecuting Attorney.

5. Termination. This Agreement may be terminated earlier than its agreed-upon duration by agreement of the parties, or by written notice of termination given by one party to the other party at least thirty (30) days prior to the date of termination. Charges will be pro-rated for any portion of a month that prosecution services are provided should such cancellation occur.

6. Prosecutorial immunity. The City agrees that the Prosecutor operates with prosecutorial immunity in the course of the Prosecutor's representation of the City. The City agrees to defend and hold the Prosecutor harmless from any claims arising from the Prosecutor's acts or omissions in the scope of the Prosecutor's representation of the City as set forth by this Agreement.

7. Arbitration. If a dispute arises regarding either party's obligations under this Agreement, the parties shall be required to arbitrate in an attempt to resolve the disagreement. The arbitrator shall be agreed to by the parties and shall be an attorney at law who is not practicing in Kittitas County. The cost of arbitration shall be split by the parties. Neither party shall be liable for the other party's costs or attorney fees incurred in preparation or attendance at the arbitration. The arbitration may occur during the pendency of a lawsuit filed regarding the same dispute, but must occur at least (30) days before a trial on the disputed issue(s).

8. Default and/or breach of contract. The obligations of both parties under this Agreement are bilateral and the failure of one party to perform the duties required by this Agreement will be considered a default or breach of contract. If either party fails to perform the obligations set forth in this Agreement or performs the obligations in such a manner as would be considered a material breach of this Agreement, the other party may be excused from further performance upon a ten-day written notice to the breaching party.

If either party breaches this Agreement, that party shall be liable for any direct damages incurred by the non-breaching party, but shall not be liable for consequential damages. If either party is forced to enforce or defend this Agreement in a court of law, the substantially prevailing party shall be entitled to all costs and reasonable attorney fees from the other party.

9. Future support. Neither party to this Agreement makes any commitment to future support and assumes no obligation for future support of any activity contracted for herein, except as may be expressly set forth in this Agreement.

10. Compliance with laws. Each party hereto, in its performance of this Agreement, agrees to comply with all applicable local, State, and Federal laws and ordinances.
11. Relationship of the parties. No agent, employee or representative of the County shall be deemed to be an agent, employee or representative of the City for any purpose, and the employees of the County are not entitled to any of the benefits the City provides to City employees. No agent, employee or representative of the City shall be deemed to be an agent, employee or representative of the County for any purpose, and the employees of the City are not entitled to any of the benefits the County provides to County employees.
12. Non-delegation / Non-assignment. Neither party may delegate the performance of any contractual obligation to a third party, unless mutually agreed in writing. Neither party may assign this Agreement without the written consent of the other party.
13. Agreement not for benefit of third parties. This Agreement is entered into solely for the benefit of the parties hereto and vests no rights in, or is it enforceable by, any third parties.
14. Governing law; venue. This Agreement shall be governed by and construed in accordance with the Laws of State of Washington. The venue for any action to enforce or interpret this Agreement shall be in the Kittitas County Superior Court.
15. Entire agreement; modification. This Agreement constitutes the entire Agreement of the parties. The provisions of this Agreement may be modified or amended only by written mutual consent of the parties.
16. Waiver. 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.
17. Severability. 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.
18. Administration and notices.

This Agreement will be administered on behalf of the City by, and all notices to be issued to the City by the County shall be addressed to the attention of:

Terry Weiner  
City Attorney  
501 N. Anderson Street  
Ellensburg, WA 98926

This Agreement will be administered on behalf of the County by, and all notices to be issued to the County by the City shall be addressed to the attention of:

Paul Sander  
Chief Administrative Deputy Prosecuting Attorney  
Kittitas County Prosecutor's Office  
205 West 5<sup>th</sup>, Suite 213  
Ellensburg, WA 98926

19. Filing. Pursuant to RCW 39.34.040, this Agreement shall be posted on the Kittitas County and/or City of Ellensburg public website(s).

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

CITY OF ELLENSBURG

  
\_\_\_\_\_  
Rich Elliott  
Mayor

Attest:

  
\_\_\_\_\_  
David A. Jones, Deputy  
City Clerk

Approved as to form:


  
\_\_\_\_\_  
City Attorney

KITTITAS COUNTY

  
\_\_\_\_\_  
Gregory L. Zempel  
Prosecuting Attorney

  
\_\_\_\_\_  
Paul Jewell  
Chair, Board of County Commissioners

absent  
\_\_\_\_\_  
Gary Berndt, Vice-Chair

  
\_\_\_\_\_  
Obie O'Brien, Commissioner

Attest:

  
\_\_\_\_\_  
Clerk of the Board

