KITTITAS COUNTY
DEPARTMENT OF PUBLIC WORKS

STAFF REPORT

HEARING DATE: December 20, 2011

ACTION REQUESTED: Consider an interlocal agreement with the City of Ellensburg to develop a Master Site Plan for the County owned Hansen Pits property.

BACKGROUND: Kittitas County's Hansen Pits property has been a valuable recreational resource for the citizens of Kittitas County. The "City to Canyon Trails Committee" identified the Hansen Pits property as a part of the "Yakima Canyon River Trail" providing connectivity to the City and the Yakima River Canyon.

The County has identified funds available for the development of a master plan through the Gas Tax Fund. County staff and the City of Ellensburg's Parks & Recreation Department would jointly oversee and administer the master planning process.

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

INTERACTION: Public Works

RECOMMENDATION: Recommend the Board take action on the interlocal agreement allocating $25,000.00 to a Master Plan for the Hanson Pits property.

ATTACHMENTS: Two original Interlocal Agreements

HANDLING: Return two originals to Public Works

LEAD STAFF: Kirk Holmes, Director

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

RESOLUTION NO. 2011-_____

INTERLOCAL AGREEMENT BETWEEN CITY OF ELLENSBURG, WASHINGTON AND KITTITAS COUNTY, WASHINGTON, FOR THE PURPOSE OF DEVELOPING A MASTER SITE PLAN FOR THE COUNTY OWNED HANSEN PITS PROPERTY

WHEREAS, the Hansen Pits property has long been a valuable recreational resource for the citizens of Kittitas County and the development of a master site plan ("master plan") will help ensure that the property remains open to the public; and

WHEREAS, The County has funding for the development of a master plan through their Gas Tax fund and the Board of County Commissioners have agreed to allocate $25,000 from this fund for the development of a master site plan; and

WHEREAS, the "City to Canyon Trails Committee" has identified the Hansen Pits property as a part of the "Yakima Canyon River Trail" providing connectivity to the City and the Yakima River Canyon; and

WHEREAS, the City Parks & Recreation Department and County Staff will jointly oversee and administer the master planning process; and

WHEREAS, the County's participation in parks for the public includes working with municipalities and service organizations in the construction and improvement of parks; and

WHEREAS, the parties wish to acknowledge the contribution of a master plan and recognize the beneficial social and economic impact to the County as a whole, 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 AND IT IS HEREBY ORDERED, in consideration of the above recitals, the Board of County Commissioners authorize the execution of the attached agreement.

ADOPTED this _____day of _____ 2011.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

_____
Paul Jewell, Chairman

_____
Alan Crankovich, Vice-Chairman

_____
Obie O'Brien, Commissioner

ATTEST:
CLERK OF THE BOARD

Julie A. Kjorsvik

APPROVED AS TO FORM:

Neil Caulkins
Deputy Prosecuting Attorney

INTERLOCAL AGREEMENT BETWEEN CITY OF ELLENSBURG, WASHINGTON AND KITTITAS COUNTY, WASHINGTON, FOR THE PURPOSE OF DEVELOPING A MASTER SITE PLAN FOR THE COUNTY OWNED HANSEN PITS PROPERTY

THIS INTERLOCAL AGREEMENT is made and entered into on this _____ day of _____, 2011 by and between Kittitas County, Washington, a Washington municipal corporation, hereinafter referred to as "County", and the City of Ellensburg, Washington, hereinafter referred to as "City", 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 Hansen Pits property has long been a valuable recreational resource for the citizens of Kittitas County and the development of a master site plan ("master plan") will help ensure that the property remains open to the public; and

WHEREAS, The County has funding for the development of a master plan through their Gas Tax fund and the Board of County Commissioners have agreed to allocate $25,000 from this fund for the development of a master site plan; and

WHEREAS, the "City to Canyon Trails Committee" has identified the Hansen Pits property as a part of the "Yakima Canyon River Trail" providing connectivity to the City and the Yakima River Canyon; and

WHEREAS, the City Parks & Recreation Department and County Staff will jointly oversee and administer the master planning process; and

WHEREAS, the County's participation in parks for the public includes working with municipalities and service organizations in the construction and improvement of parks; and

WHEREAS, the parties wish to acknowledge the contribution of a master plan and recognize the beneficial social and economic impact to the County as a whole, 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

1. **Improvements.** The County will advertise and retain the services of a landscape architect through a "Request for Qualifications" for a master plan of the County-owned Hansen Pits property, located on Canyon Road, Ellensburg, WA 98926, (Assessor's Map Number 17-18-

13030-0003). County staff will participate in the selection of a landscape architect, along with City staff and members from the "City to Canyon Trails Committee".

2. **Public Involvement.** City and County staff, along with the landscape architect, will organize at least one community event related to the development of the master site plan.

3. **Control of Project.** Upon completion, the master plan will become the property of Kittitas County. Any future amendments to the master plan will be done so through the County.

4. **Funding.** Funding for the development of the master plan will come from the Kittitas County **Gas Tax Fund.**

5. **Future Support.** The City and County make no commitment to future support and assume no obligation for future support of the activity contracted for herein, except as may be expressly set forth in this Agreement.

6. **Compensation.** The exchange of services, the monies contributed by the County for this project, and the beneficial social and economic impact for both Parties shall be considered adequate compensation for the duties described herein.

   The City agrees to provide Parks & Recreation Department staff time, at no cost to County, to assist with the development of the master plan. This includes participating in the selection process of a landscape architect and assisting with the development of the master plan. Other than providing staff time, the City will not provide any financial resources to the development of the master plan.

ARTICLE II
ADMINISTRATION AND CONTACT INFORMATION

2.01 ***ADMINISTRATOR.*** The Public Works Director shall administer this agreement for the County and Parks & Recreation Director shall administer this agreement for the City.

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

TITLE : Director Kirk Holmes
DEPT.: Public Works
ADDRESS: 411 N. Ruby St., Ste. 1
Ellensburg, WA 98926
PHONE: 509-962-7523

TITLE: Director Brad Case
DEPT: City of Ellensburg Parks & Recreation
ADDRESS: 501 N. Anderson St
Ellensburg, WA 98926
PHONE: 509-925-8639

ARTICLE III
TERM

This Agreement shall enter into full force and effect for two (2) years from November, 2011 and end November, 2013, subject to earlier termination as provided by Article IV herein.

ARTICLE IV
TERMINATION

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 II 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 V
DISPUTES

5.01 ***TIME.*** Time is of the essence of this Agreement

5.02 ***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 Director 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' Director, or authorized designee(s), will participate in a good faith in-person negotiation to resolve any such dispute.

5.03 ***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.

5.04 ***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 VI
INDEMNIFICATION

Each Party agrees to hold harmless, indemnify and defend the other Party, its officers, agents and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of person, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Indemnitor, its officials, officers, agents or employees, in connection with the

services required by this agreement, provided however, the Indemnitor's obligation to indemnify, defend, and hold harmless shall not extend to any injury, sickness, death or damage caused by the other Party's sole negligence or willful misconduct. The Parties' obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Parties or of the Parties and a third party other than an officer, agent or employee of the Parties, shall apply only to the extent of the negligence or willful misconduct of each Party.

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 City, 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 VII
PERFORMANCE OF AGREEMENT

7.01 ***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.

7.02 ***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.

7.03 ***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.

7.04 ***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.

7.05 ***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.

7.06 ***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.

7.07 ***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 II.

ARTICLE VIII
GENERAL PROVISIONS

8.01 ***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.

8.02 ***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.

8.03 ***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.

8.04 ***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.

8.05 ***FILING***. Pursuant to RCW 39.34.040, this Agreement shall be posted on the County's website.

8.06 ***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.

8.07 ***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.

8.08 ***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 5th **DAY OF** December**, 2011**

CITY OF ELLENSBURG

Bruce Tabb, Mayor

ATTEST:

Coreen Reno, City Clerk

APPROVED AS TO FORM

Jim Pidduck, City Attorney

ADOPTED THIS ____ DAY OF _____, 2011

KITTITAS COUNTY

_____
Paul Jewell, Chair, Board of Commissioners

_____
Alan Crankovich, Vice-Chairman

_____
Obie O'Brien, Commissioner

ATTEST:

_____
Julie Kjorsvik, Clerk of the Board

APPROVED AS TO FORM:

_____
Neil Caulkins, Deputy Prosecutor