

INTERLOCAL AGREEMENT
BETWEEN THE CITY OF ELLENSBURG AND KITTITAS COUNTY
REGARDING USE OF GEOGRAPHIC INFORMATION SYSTEM AND INFORMATION
TECHNOLOGY EQUIPMENT, MATERIALS, AND PERSONNEL

This Agreement made and entered into this ____ day of _____, 2015, under the provisions of Chapter 39.34 RCW, the Interlocal Cooperation Act, between Kittitas County, a political subdivision of the State of Washington, hereinafter referred to as "County," and the City of Ellensburg, a non-charter code city of the State of Washington, hereinafter referred to as "Ellensburg" (collectively referred to as "the Parties").

WHEREAS, Ellensburg and the County are two governments operating Geographic Information Systems "GIS" and Information Technology "IT" Systems in Kittitas County, State of Washington, and

WHEREAS, RCW 39.34.080 permits public agencies to contract with one another for the performance of governmental services, and

WHEREAS, GIS and IT systems require certain specialized equipment, materials and personnel for the operation of the County and Ellensburg, and

WHEREAS, State law provides for the entering into an agreement between the Parties for the providing of services, and

WHEREAS, Ellensburg and the County desire to utilize equipment, materials and personnel of the other that are specialized in GIS and IT in the event of shortages and events that require additional manpower, materials, or specialized equipment, and

WHEREAS, the parties will strive toward the balancing of consideration for the utilization of equipment, materials and personnel and if not balanced within a fiscal year, compensation will be paid from one Party to another to achieve a result that will not be adverse to the respective parties, and

WHEREAS, it is an enhancement of public health, safety and welfare to be able to draw upon equipment, materials and personnel of another party when the necessity arises, and

NOW, THEREFORE, based upon mutual covenants to be derived the parties agree as follows:

1. **Purpose:** It is the purpose of this Agreement to permit the parties to make the most efficient use of their resources by enabling them to cooperate regarding the use of geographic information system and information technology equipment, materials, and personnel by furnishing each other labor, equipment and materials, when available, on a reimbursable basis.

2. **Personnel:** The County and Ellensburg agree to dispatch certain personnel specialized in GIS and IT to the party requesting, provided it will not adversely affect the entity making the personnel available. The requesting entity ("User") agrees to pay for the costs of the personnel by reimbursing the entity ("Provider") from whom the

personnel were employed for their hourly rate plus benefits and travel costs. Such billing will coincide with the pay period of the personnel being utilized. Personnel of Ellensburg utilized by the County will remain employees of Ellensburg and personnel utilized by Ellensburg that are employees of the County shall remain employees of the County.

3. **Materials:** The County and Ellensburg will reciprocate with each other on the sharing of certain materials for GIS and IT when requested and when those materials are not being utilized by the entity making the materials available. The cost of the materials shall be charged and the Parties shall do an annual accounting to balance the actual cost of the shared materials.

4. **Equipment:** The County and Ellensburg will reciprocate with each other on the temporary sharing of certain equipment for GIS and IT when requested and when that equipment is not being utilized by the entity making the equipment available. The equipment may only be shared on a temporary basis while the requesting agency acquires replacement equipment. There will be no cost for sharing equipment. The Parties agree that any time a request is made for the use of equipment, the User shall be responsible for the proper care, maintenance and security of the equipment until the equipment is returned to the Provider.

5. **Supervision:** Employees of the County working in Ellensburg and employees of Ellensburg working in the County shall receive general project direction from the User entity at which they are working, but shall remain employees of the Provider for all purposes.

6. **Maintenance of Records:** Each party hereto agrees to maintain books, records and documents using accounting procedures which accurately reflect all direct and indirect costs related to the performance of services under this Agreement. Each party may examine the other party's books and records to verify the accuracy of invoices. Each party's fiscal management system shall include the capability to provide accurate and complete disclosure of all costs invoiced under this Agreement.

Prior to the end of each calendar year the Parties shall share an annual accounting with the other Party. The Party that incurred a higher total cost of equipment, materials, and personnel than the other Party shall be reimbursed by the other Party for the amount that exceeded the other Party's total cost of equipment, materials, and personnel.

7. **Hold Harmless and Indemnification:**

A. **Usage of Equipment.** When using Provider equipment only, the User will protect, save and hold harmless and indemnify the Provider and its officers, agents, and employees from all claims, actions, damages, or expenses of any nature whatsoever by reasons of the acts or omissions of the Provider or its assigns, agents, contractors, licensees, invitees, employees, or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement arising solely out of the User's use of the Provider's equipment. In such cases, the User further agrees to defend the Provider and its officers, agents, employees, assigns, agents, contractors, licensees, invitees, and employees in any litigation, including payment of any costs or attorney fees for any claims or action commenced thereon arising out of or in connection with the acts or activities authorized by this Agreement. This obligation shall not include such claims, costs, damages or expenses which are caused by the sole negligence of the Provider or its officers, agents, employees, assigns, contractors, licensees, invitees, or employees.

B. Usage of Both Equipment and Labor. When the Provider provides both equipment and labor, the Provider will protect save and hold harmless and indemnify the User and its officers, agents, and employees from all claims, actions, damages, or expenses of any nature whatsoever by reasons of the acts or omissions of the User or its officers, agents, employees, assigns, contractors, licensees, invitees, or employees arising out of or in connection with any acts or activities authorized by this Agreement arising out of the use of both the Provider's equipment and labor. In such cases, the Provider further agrees to defend the User and its officers, agents, employees, assigns, agents, contractors, licensees, invitees, and employees in any litigation, including payment of any costs or attorney fees for any claims or action commenced thereon arising out of or in connection with the acts or activities authorized by this Agreement. This obligation shall not include such claims, costs, damages or expenses which are caused by the sole negligence of the User or its officers, agents, employees, assigns, contractors, licensees, invitees, or employees.

C. Waiver of Workers' Compensation Immunity. This hold harmless and indemnification shall include any claim made against a party by an employee of another party or an employee of an agent or subcontractor of a party even if the party is thus otherwise immune from liability pursuant to the Washington workers' compensation statute, Title 51 RCW.

D. Concurrent Negligence. If the claims or damages are caused by or result from the concurrent negligence of the Provider and their agents or employees, and the User, its agents or employees, and involves those actions covered by RCW 4.24.115, both the Provider and the User shall be liable only to the proportional extent of their respective negligence.

All of the foregoing provisions for Indemnification and Hold Harmless in Sections 7.A-D shall survive the termination of this Agreement.

8. Insurance: The Parties shall each shall maintain their own insurance and/or self-insurance for its liabilities arising out of its activities associated with this Agreement as they deem reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying part to the indemnified party(s).

9. Future Support: No 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 any party shall be deemed to be an agent, employee or representative of any other party for any purpose, and the employees of one party are not entitled to any of the benefits any other party provides to its employees.

12. 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.

13. **Dispute Resolution:** In the event any dispute should occur under this agreement or related to the performance of any person or equipment, the dispute shall be referred to the Information Technology Director of the County and Ellensburg's Energy Services Director for resolution. If they are unsuccessful, the dispute shall be referred to the Chair of the County commissioners and the Ellensburg City Manager for resolution. If not resolved by the Chair of the County commissioners and the Ellensburg City Manager within (30) days of referral, either party may pursue such legal actions as it may have available to use.

14. **Waiver:** A failure by any 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.

15. **Duration and Termination:** This Agreement shall commence and be effective upon execution, and remain in full force and effect until terminated 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 such termination.

16. **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.

17. **Entire Agreement - Modification:** The written provisions and terms of this Agreement supersede all prior written and verbal agreements and/or statements by any representative of the Parties, and those statements shall not be construed as forming a part of or altering in any manner this Agreement. This Agreement shall contain the entire Agreement between the parties unless modified in writing and signed by authorized representatives of the Parties.

18. **Administration:** The Information Technology Director of the County shall administer this Agreement for the County. The Administrator for Ellensburg shall be Ellensburg's Energy Services Director. No new separate legal or administrative entity is created to administer the provisions of this Agreement. No fixed assets or personal or real property will be jointly or cooperatively purchased, owned, or disposed of pursuant to this Agreement.

19. **Filing:** Pursuant to RCW 39.34.040, this Agreement shall be posted on the City of Ellensburg and Kittitas County websites and/or filed with the County Auditor.

In Witness Whereof, the parties have executed this Agreement this ____ day of _____, 2015.

APPROVED: CITY OF ELLENSBURG

APPROVED: KITTITAS COUNTY
BOARD OF COUNTY COMMISSIONERS

Rich Elliot, Mayor

Gary Berndt, Chair

ATTEST:

Obie O'Brien, Vice Chair

City Clerk

Paul Jewell, Commissioner

Approved as to form:

ATTEST:

City Attorney

Clerk of the Board of County Commissioners

Approved as to form:

Kittitas County Deputy Prosecuting Attorney