

INTERLOCAL AGREEMENT BETWEEN THE CITY OF ELLENSBURG AND KITTITAS COUNTY FOR CITY PROSECUTION DOCKET COVERAGE

This Agreement is made and entered into this 1st day of April, 2015, 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 is Tony Swartz, and

WHEREAS, the City recognizes Mr. Swartz may have periodic scheduling conflicts with City of Ellensburg criminal dockets in Lower District Court, and

WHEREAS, the County, through the Kittitas County Prosecutor's Office (the "County Prosecutor"), is willing to provide periodic criminal docket coverage 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 periodic scheduling conflicts for the City's criminal dockets involving cases filed in Lower Kittitas District Court.
2. Scope of Services. The County Prosecutor, upon request by Tony Swartz for designated and mutually agreed dates, will provide a prosecutor to appear in Lower District Court for the City's criminal cases filed in Lower Kittitas District Court. The County Prosecutor will attend and represent the City at the pre-determined pre-trial hearing dockets or probation violation and review hearing dockets.

The County 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.

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 County 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 County Prosecutor. If the parties cannot agree, they shall arbitrate the matter as provided below.

3. Compensation.

(A) Pretrial dockets. For each pretrial docket (held on a Wednesday at 1:30pm until completed), the City shall pay the County Prosecutor \$125 as compensation for the County

Prosecutor's services defined by this Agreement. The County Prosecutor will invoice the City on a monthly basis if applicable.

(B) Probation dockets. For each probation docket (held on a Thursday at 8:30am until completed), the City shall pay the County Prosecutor \$75 as compensation for the County Prosecutor's services defined by this Agreement. The County Prosecutor will invoice the City on a monthly basis if applicable.

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

4. Duration. This Agreement shall be effective April 1, 2015, shall be in effect 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 Lower District Court maintaining its docket calendar as currently adopted. Any material change of the docket calendar will render this Agreement terminable at the discretion of the County Prosecutor or City.

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.

6. Prosecutorial immunity. The City agrees that the County Prosecutor operates with prosecutorial immunity in the course of the County Prosecutor's representation of the City. The City agrees to defend and hold the County Prosecutor harmless from any claims arising from the County Prosecutor's acts or omissions in the scope of the County 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 5th Avenue, 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).

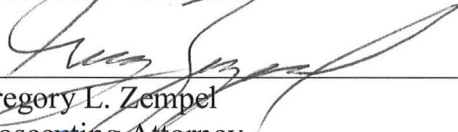
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

CITY OF ELLENSBURG

KITTITAS COUNTY

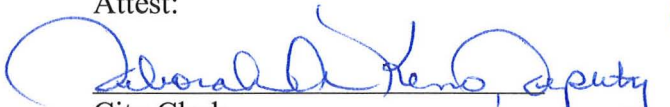


Rich Elliott
Mayor




Gregory L. Zempel
Prosecuting Attorney

Attest:




Donald D. Reno, Deputy
City Clerk



Paul Jewell
Chair, Board of County Commissioners

Approved as to form:



City Attorney

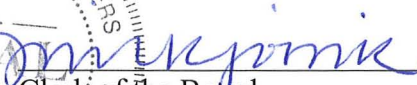


Gary Berndt, ~~Vice-Chair~~



Obie O'Brien, Commissioner

Attest:



Clerk of the Board

