

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

RESOLUTION NO. 2018-212

A RESOLUTION AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE KITTITAS COUNTY PROSECUTING ATTORNEY AND THE CITY OF ELLENSBURG, WASHINGTON FOR PRE-TRIAL DIVERSION

WHEREAS, RCW 39.34, the Interlocal Cooperation Act, provides the capability for public agencies to cooperate by providing services and facilities for mutual advantage; and

WHEREAS, the Kittitas County Prosecutor's Office has developed and implemented an internal pre-trial misdemeanor diversion program; and

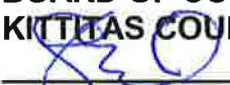
WHEREAS, The City of Ellensburg is desirous of making use of that program as a community benefit for a rate of compensation and other terms and conditions mutually agreed upon by the parties; and

WHEREAS, the Prosecuting Attorney and the Ellensburg City Counsel have properly entered into the Interlocal Agreement attached hereto; and

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Board of County Commissioners of Kittitas County, Washington ratifies the action of the Prosecuting Attorney and execution of this Interlocal Agreement that is attached hereto, and incorporated herein by this reference, and which shall be forthwith filed with the Kittitas County Auditor pursuant to RCW 39.34.040.

ADOPTED this 18th day of December 2018.

**BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON**



Laura Osiadacz, Chairwoman

ABSENT

Obie O'Brien, Vice-Chair



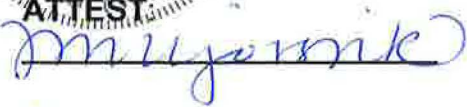
Cory Wright, Commissioner

APPROVED AS TO FORM/DRAFTED BY:

Douglas R. Mitchell, Deputy Prosecuting Attorney



ATTEST



Clerk of the Board- Julie Kjorsvik

Deputy Clerk of the Board- Mandy Buchholz

**INTERLOCAL AGREEMENT BETWEEN
KITITAS COUNTY AND THE CITY OF ELLENSBURG
FOR MISDEMEANOR DIVERSION SERVICES**

This INTERLOCAL AGREEMENT (“Agreement”) is entered into on this 18th day of December, 2018, by and between Kittitas County, a municipal corporation of the State of Washington, (hereinafter the “County”), and the City of Ellensburg, a municipal corporation of the State of Washington (hereinafter referred to as the “City”).

WHEREAS, Chapter 39.34 of the Revised Code of Washington (RCW), the Interlocal Corporation Act, allows governmental agencies to enter into agreements that provide for the efficient use of their powers and to cooperate with each other in providing services; and

WHEREAS, the County currently operates an internal diversion program for some first-offense misdemeanor cases; and

WHEREAS, the current County program systems, management, and processes will permit the City to benefit from the County’s operation of said program for a nominal fee, paid directly to the County by a misdemeanor suspect;

NOW, THEREFORE, the County and the City agree as follows:

1. Purpose. The purpose of this Agreement is to allow the City to utilize the County’s already-existing internal diversion program for select municipal prosecution cases. The County’s diversion program is identified as the “Kittitas County Prosecuting Attorney Adult Misdemeanor Pre-Charging Diversion Program, 2012 Version,” as set forth more fully in, attached to this Interlocal Agreement as “Exhibit A” (hereafter “County diversion program”).
2. Services.
 - a. The City will send case referrals to the County to be considered for eligibility in the County diversion program.
 - b. The County will process these cases through the diversion process using its existing program systems and management. To enter the County diversion program, a municipal case suspect will be required to pay the County diversion fee directly to the County. The County will pay to the City the sum of \$100 for the City’s administrative costs.
 - c. When a case complies with the program requirements, the County will inform the City Prosecutor of said compliance. The County will maintain the diversion case file and any related records. Nothing in this agreement changes in any manner the City’s obligations or practices as to its own records.
 - d. If an offender fails the program requirements, the County will inform the City Prosecutor of the failure to comply. The County will then deliver the case file to the City Prosecutor.

3. Duration. This Agreement shall be valid for one year. This Agreement will be automatically renewed unless either party gives 90 days advanced notice of its indication not to renew.

4. Termination. Either party may terminate this Agreement by giving ninety (90) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the Kittitas County Prosecuting Attorney (for the County) or the Ellensburg City Attorney (for the City).

5. Termination for Default. If either party fails to perform any of the obligations of this Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the other party may, by depositing written notice to the defaulting party in the U.S. mail, postage prepaid, terminate this Agreement.

6. Agreement Management. The Agreement administrator for each of the parties shall be responsible for and shall be the contact person for all communication and billings regarding the performance of this Agreement.

The Agreement administrator for the County is:

Prosecutor Greg Zempel
205 West 5th Avenue
Ellensburg, WA 98926

The Agreement administrator for the City is:

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

7. Payment. The County shall collect a fee directly from the offender to be supervised within the program. The portion of the fee described in (2)(b), above will be sent by the County to the City. No payment will be made to the County by the City.

8. Billing Procedure. Per Section 2(b) above, the County shall remit the City's portion of the program fee to the City on a quarterly basis. Payment shall be submitted to the City of Ellensburg, Attention: Finance Department, 501 N. Anderson Street, Ellensburg WA 98926.

9. Force Majeure. Neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including acts of nature, acts of war, accident, labor disruption, acts, omissions or defaults of third parties, and official, governmental, or judicial action not the fault of the party failing or delaying in performance.

10. 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 the services described herein. Each party may examine the other party's books and records to verify the accuracy of invoices. All books, records, documents, and other materials relevant to this agreement will be retained for six (6) years after expiration of the Agreement, and the Office of the State Auditor or other persons authorized by law and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period. Each party will utilize reasonable security procedures and protections to ensure that records and documents provided by the other party are not erroneously disclosed to third parties.

11. Hold Harmless and Indemnification. Each Party shall hold harmless and indemnify the other Party and its directors, officers, employees, agents and representatives against any and all loss, liability, damage, or expense, but not including attorney's fees unless awarded by a court of competent jurisdiction, for injury or death to persons, including employees of either party, and damage to property, including property of either party, arising out of or in connection with intentional, willful, wanton, reckless, or negligent conduct. However, neither party shall be indemnified hereunder for any loss, liability, damage or expense resulting from its sole negligence or willful misconduct. Any waiver in this section has been mutually negotiated by the parties and this entire section shall survive the expiration or termination of this Agreement.

12. Warranty. Except as expressly stated herein, there are no express or implied warranties respecting this Agreement or the services provided.

13. Assignment. This Agreement cannot be assigned, transferred or any portion subcontracted by either party hereto without the prior written consent of the other party, which consent shall not be unreasonably withheld.

14. Administration of Agreement. There shall be no separate legal entity created by the Agreement. This Agreement shall be administered jointly by the County or designee and the City or designee.

15. Property. The terms of this Agreement do not contemplate the acquisition of any real or personal property. Unless otherwise specifically agreed by the parties in writing, all property, personal and real, utilized by the parties hereto in the execution of this Agreement shall remain the property of that party initially owning it.

16. 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.

17. Relationship of the Parties. 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. 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.

18. Disputes. In the event that a dispute arises under this Agreement, it shall be determined by a majority vote of a three-member Dispute Resolution Board comprised of one representative chosen by each of the parties hereto and a third chosen by the two selected parties. If said determination is not acceptable to the parties, the parties are entitled to use whatever remedies to which they may be entitled at law or in equity.

19. Jurisdiction. Any legal dispute between the parties to this Agreement shall be governed by the laws of the State of Washington, and any action to enforce this Agreement shall be brought in Kittitas County, Washington.

20. Modification. The provisions of this Agreement may be modified or amended only by written mutual agreement of the parties, executed by personnel authorized to bind each of the parties.

21. 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.

22. 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.

23. 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 confirms 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.

24. Filing. This agreement shall be filed or be posted online as required by RCW 39.34.040.

25. Effective Date. This agreement shall take effect on January 1, 2019.

Dated this _____ day of _____, 2018.

[Remainder of page intentionally blank]

CITY OF ELLENSBURG


Bruce Tabb, Mayor

ATTEST:


City Clerk

PROSECUTING ATTORNEY


Gregory L. Zempel

**BOARD OF COUNTY COMMISSIONERS
Kittitas County, Washington**


Laura Osiadacz, Chair

ABSENT

Obie O'Brien, Vice-Chairman


Cory Wright, Commissioner

ATTEST:

CLERK OF THE BOARD



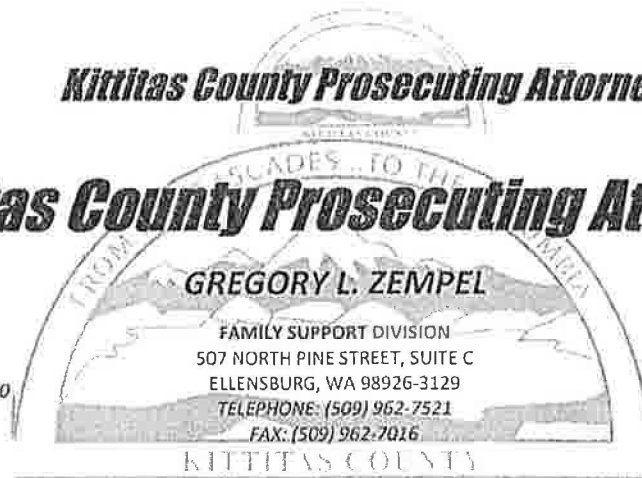
Julie A. Kjorsvik

EXHIBIT A

Kittitas County Prosecuting Attorney

Kittitas County Prosecuting Attorney

KITTITAS COUNTY COURTHOUSE
205 WEST FIFTH, ROOM 213
ELLENSBURG, WA 98926-3129
TELEPHONE: (509) 962-7520
FAX: (509) 962-7022 / SCAN: 962-7520



CIVIL DIVISION
205 WEST FIFTH, ROOM 213
ELLENSBURG, WA 98926-3129
TELEPHONE: (509) 962-7664
FAX: (509) 962-7060

KITTITAS COUNTY PROSECUTING ATTORNEY ADULT MISDEMEANOR PRE-CHARGING DIVERSION PROGRAM 2012 Version

A Pre-Charging Diversion program is an alternative method for holding offenders accountable for violating the law. A Pre-Charging Diversion program removes a criminal case from the processes and procedures of formal court proceedings. It is designed to be used for first time offenders who have committed minor offenses with the intention of saving judicial, prosecutorial, and defense resources. The program is also intended to give an offender the opportunity to accept accountability for their actions, participate in an evaluation process to determine if there are other issues of concern to be addressed, and to provide the offender with an opportunity to atone for their actions by providing service to the community. The benefit to the offender, if they accept responsibility for their actions and successfully complete the diversion program, is the avoidance of a criminal record. This program is similar to the program initially started in January, 2011, but with some modifications.

ELIGIBILITY FOR KITTITAS COUNTY PRE-CHARGING DIVERSION PROGRAM:

In order to qualify for a Pre-Charge Diversion, the offender must meet **ALL** of the following criteria:

- Facing a potential charge of Minor in Possession of Alcohol (MIP), Possession of Marijuana < 40 grams (POM<40), or Use of Drug Paraphernalia (misdemeanor level, marijuana related) (UODP). Other crimes are not eligible for the diversion program.
- Must not have obstructed or resisted the investigating officer during the investigation of the crime or treated the officer in a disrespectful manner
- **NO** prior convictions for any criminal offense, adult or juvenile.
- **NOT** have any pending criminal charges
- **NOT** be facing additional criminal charges from the same criminal investigation
- **NO** previous dismissal of charges resulting from a "Stay of Proceedings", similar pretrial agreement, or prior participation in the Kittitas County Pre-Charging Diversion Program.



THE DIVERSION PROCESS:

The investigating law enforcement agency will complete its investigation as normal, but rather than issue the offender a citation to be filed with the Court, **all** charges of MIP, POM and/or UODP (or combination thereof) will be referred to the Prosecutor for charging. **IF THE OFFENDER IS ALSO FACING ADDITIONAL CRIMINAL CHARGES AS A RESULT OF THE CRIMINAL INVESTIGATION, SUCH AS A DUI, THE OFFICER SHALL FILE ALL CHARGES DIRECTLY TO THE COURT BY CITATION.**

EXAMPLES:

- LE investigation leads to PC for MIP – refer to Prosecutor
- LE investigation leads to PC for POM – refer to Prosecutor
- LE investigation leads to PC for POM and UODP – refer to Prosecutor
- LE investigation leads to PC for MIP and POM and/or UODP – refer to Prosecutor

- LE investigation leads to PC for MIP and DUI – LE cites both charges to court
- LE investigation leads to PC for POM and trespassing – LE cites both charges to court
- LE investigation leads to PC for POM and obstructing – LE cites both charges to court

Upon receipt of a law enforcement report on eligible cases/charges, the legal secretary will review the offender's criminal history in order to determine eligibility.

If the offender is not eligible based upon criminal history review, the prosecutor will review the case for probable cause and legal sufficiency and a charging decision will be made.

If the offender is eligible for the Pre-Charging Diversion program, then the prosecutor will review the case to assure probable cause and legal sufficiency and then will send the offender a letter outlining the nature of the charges faced, an explanation of the Pre-Charging Diversion program, a copy of the Pre-Charging Diversion Agreement, and the Voluntary Witness Statement admitting to the elements of the offense and indicating where the alcohol and/or drugs were obtained.

If the offender signs and returns a copy of the Pre-Charging Diversion Agreement and the Voluntary Witness Statement within two weeks, the deputy prosecutor will review the documents to confirm sufficiently completed, and if sufficient, the deputy prosecutor and/or legal secretary will send the offender a letter indicating acceptance into the program, a reminder of the conditions and time frames for compliance with the program and specifying how and by when the required non-refundable payments are to be made for the program.

Simultaneously with submitting the acceptance letter to the offender, the deputy prosecutor and/or legal secretary shall send electronically copies of the police reports, Pre-Charging Diversion Agreement, Voluntary Statement and all correspondence to the investigating law enforcement agency records custodian.

If the offender completes the documentation but makes an error or alters the terms in any fashion, they will be given one opportunity to correct the deficiencies. This will be accomplished by the deputy prosecutor and/or legal secretary sending the offender a letter stating what was wrong with the original application, what



they must do to correct the deficiency, along with the required documents, and providing an additional two weeks to complete and re-submit the documents. If the offender corrects the problem within that two week period, the case will be processed accordingly, and at that time all documentation will be sent to law enforcement to complete their records.

If an offender is sent a letter offering entry into the Pre-Charging Diversion Program and fails to return the documentation within two weeks, or if they fail to correct any deficiencies in an initial application within the subsequent two week period, the deputy prosecuting attorney shall make a charging decision and work with the legal secretary to prepare the appropriate charging documents to bring the offender to court to commence processing their case through the criminal justice system.

Upon acceptance of an offender into the program, the Prosecuting Attorney's Office will keep the file in an active status for six (6) months. The Prosecuting Attorney's Office shall monitor compliance with the Agreement during the period of supervision. The Prosecuting Attorney's Office, upon successful completion of the terms and conditions of the Agreement and upon the expiration of the six (6) month supervisory period, shall then process the case into closed status with a letter to the offender that they have successfully completed the program and their case has been closed and that charges will not be filed.

During the period of supervision of the Agreement, if the Prosecuting Attorney's Office determines, in its discretion, that a violation of the Agreement has occurred, the deputy prosecutor and/or legal secretary will notify the offender of the violation and intent to revoke the Agreement with the filing of criminal charges in the district court, including with the notification a copy of the charging document and summons to appear in court. Copies of all such documentation shall be electronically submitted to the responsible law enforcement agencies records custodian.

The arraignment on the criminal charges shall be set upon the calendar in the respective courts following the usual procedure for newly charged cases.

An individual who has entered into a Pre-Charging Diversion Agreement, and failed to complete the program, shall not be eligible, upon the filing of charges, for a "Stay of Proceedings." An offender who was eligible for the Pre-Charging Diversion Program, but who failed to return the agreement as specified above and had charges filed against them, will be eligible for a "Stay of Proceedings", but charges will not be dismissed after filing in order to enter the program.

PRE-CHARGING DIVERSION PROGRAM REQUIREMENTS AND CONDITIONS:

FINES AND FEES:

All fines and fees are to be paid to the Kittitas County Prosecuting Attorney's Office in the form of a certified cashier's check or money order, with a total of two checks being drawn:

One in the amount of \$400.00 in favor of the Kittitas County Prosecuting Attorney. (Of this amount, \$250 is for administrative costs as previously determined when the diversion program initially began on January, 2011; \$100 is for 6 months of record check supervision, which is consistent with the cost assessed by Misdemeanor Probation for the same service; and \$50 is for costs related to monitoring


Kittitas County Prosecuting Attorney

participant's completion of community service hours and compliance with getting the alcohol/drug evaluation and completing any required follow-up);

One in the amount of \$100.00 in favor of the investigating law enforcement agency's diversion program fund as indicated on the Diversion Agreement.


Payment of fines and fees must be made at the time of entering into the Diversion Agreement.

OTHER REQUIREMENTS OF THE AGREEMENT:

1. A sworn statement signed under penalty of perjury admitting to the elements of the offense and identifying the supplier of the alcohol and/or drugs;
2. Proof of completing an alcohol/drug evaluation from a certified treatment agency and recommended follow-up;
3. Proof of completing 24 hours of probation-approved community service hours

The offender must also agree not to commit any new crimes. A mere arrest for a new criminal offense counts as a violation of the agreement.

Adopted this the 12th day of December, 2011.


Greg Zempel
Kittitas County Prosecuting Attorney