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OCT 29 2015

TOWN OF SOUTH CLE ELUM

**INTERLOCAL AGREEMENT  
BETWEEN KITTITAS COUNTY AND  
THE TOWN OF SOUTH CLE ELUM CONCERNING COST SHARING FOR  
PLANNING STUDIES ASSOCIATED WITH THE COMPREHENSIVE PLAN UPDATE  
AND URBAN GROWTH AREA REVIEW**

**THIS INTERLOCAL AGREEMENT** ("Agreement") is made and entered into this 20<sup>th</sup> day of October, 2015, between KITTITAS COUNTY ("the County") and the Town of South Cle Elum, ("the Town"). The County and the Town may be collectively referred to as "the Parties."

**WITNESSETH:**

**WHEREAS**, the Growth Management Act (GMA), Ch. 36.70A RCW, requires the County and Town to update their respective comprehensive plans and review and, if necessary, revise urban growth areas by June 30, 2017 (RCW 36.70A.130); and

**WHEREAS**, pursuant to RCW 39.34.060, public agencies entering into an interlocal agreement may appropriate funds and may sell, lease, give, or otherwise supply property, personnel, and services to the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking; and

**WHEREAS**, cooperative relationships, joint review of growth management planning issues, and coordination between the County and Town are mutually beneficial; and

**WHEREAS**, The County put out a request for proposal and went through a selection process to identify consultant services with the experience required to meet the County's needs. The incorporated areas of Kittitas County were invited to participate in the selection process which resulted in the County negotiating a contract with BERK Consulting Services for a total of \$53,500; and

**WHEREAS**, the Town and County desire to share costs for planning and analyses associated with the urban growth area review that is due by 2017 as part of the County's comprehensive plan update;

**NOW, THEREFORE**, subject to the terms and conditions contained herein, the Town and County agree as follows:

1. Purpose. The purpose of this Agreement is for the joint funding of a qualified consultant to perform certain work identified in Section 4.c for the benefit of the Parties, and required for the County and the Town to update their comprehensive plans by the deadlines established in the GMA, Ch. 36.70A.RCW.



2. Authority. This Agreement is entered into by the parties pursuant to the Interlocal Cooperation Act, Ch. 39.34 RCW, and the GMA, Ch. 36.70A RCW.

3. Delegation of Authority/Relationship of Parties. The County is hereby authorized on behalf of the Parties to prepare a scope of work and directly contract for the consultant services. The County shall be deemed the sole contracting party for the consultant duties, and the Town shall have no direct responsibility or liability to the consultant selected by the County. Should the Town find something unsatisfactory about the work or product(s) of the consultant, it shall make the County aware of it such that the County may bring the concern to the attention of the consultant. Should the County negotiate a reduction in cost, due to reduced scope of work, or unsatisfactory performance that reduction in cost will be passed on to the Town using the same cost formula found herein. Similarly, should the County negotiate with the consultant a fee increase due to increased scope of work that the Town has agreed or requested in writing that increased cost will also be subject to the same cost allocation formula found herein.

4. Cost Sharing for Planning Studies.

- a. The Town and County agree to provide a total of \$53,500 for:
  - i. Countywide population projection and allocations to urban growth areas;
  - ii. Countywide employment projections and allocations to urban growth areas;
  - iii. Residential land capacity analysis;
  - iv. Commercial and industrial land capacity analysis; and
  - v. Associated consultant administrative costs.
- b. The County will be responsible for the costs not covered by this cost share agreement or another cost share agreement with the City of Cle Elum, City of Ellensburg, City of Kittitas, or the City of Roslyn.
- c. The costs of determining countywide employment projections and allocations to urban growth areas, and the commercial and industrial land capacity analysis, will be apportioned in accordance with the percentage of population in the respective jurisdiction relative to the Washington State Office of Financial Management’s (OFM) 2015 population estimates of the incorporated population of Kittitas County. The breakdown for the Town is as follows:

Jurisdiction	2015 OFM incorporated population estimate	% of incorporated population	Funding share for 2017 update
South Cle Elum	530	2.2	\$400.40

- d. The Town’s share of the consulting services shall not exceed \$400.40.

5. Invoicing and Reimbursements. The County agrees to invoice the Town for their portion of the cost every three months. The Town agrees to reimburse the County for their portion of the cost within 30 days of receiving an invoice.

6. Administration. The County is the Project Manager designated to administer this Agreement. The County's point of contact for purposes of this Agreement shall be as follows:

Doc Hansen  
Kittitas County Community Development Services  
411 North Ruby Street, Suite 2  
Ellensburg WA 98926  
Phone: (509) 962-7506  
Fax: (509) 962-7682

7. Effective Date, Duration, and Termination. This Agreement shall be effective upon signature by the Mayor of the Town and the Kittitas County Board of County Commissioners. This agreement shall remain in effect until June 30, 2016 unless modified or terminated by written agreement of the Parties.

8. Compliance with legal requirements. 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.

9. Hold harmless. Each party shall be liable and responsible for the consequences of any negligent or wrongful act or failure to act on the part of itself and its employees. Neither party assumes responsibility to the other party for the consequences of any act or admission of any person, firm or corporation not a party to this agreement.

10. Indemnification.

a. The County and the Town shall defend, indemnify and hold each other harmless from and against any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from, or connected with, services performed or to be performed under this contract to the fullest extent permitted by law whether arising from contract liability(ies) or otherwise.

b. This mutual duty to indemnify shall not apply to liability from damages arising out of bodily injury to persons or damages to the property caused by, or resulting from, the sole negligence of either the County or the Town, or their respective officers, agents, and employees.

c. This mutual duty to indemnify for liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of either the County's or the Town's agents or employees, subcontractors and suppliers, shall apply only to the extent of negligence of the damages caused by or resulting from

the concurrent negligence of the County's or the Town's agents, employees, subcontractors and suppliers.

d. The County and the Town 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 Contract shall not be limited in any way by any limitation on the amount of 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.

e. This mutual 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 either party, or their officers, agents and employees.

f. The parties hereby certify that these indemnification provisions were mutually negotiated and agreed to by the parties.

11. Changes, modifications, amendments and waivers.

a. This Agreement may be changed, modified, amended or waived only by written agreement signed by the Parties and adopted by the Kittitas County Board of Commissioners and the Town.

b. 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.

c. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

12. Interpretation. This Agreement has been submitted to the review of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accord with its words, without consideration or weight given to its being drafted by any party or its counsel. 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 neutral gender.

13. Governing law and venue.

a. This Agreement shall be governed by the laws of the State of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. The venue of any action brought hereunder shall be in Kittitas County, Washington.

b. If any legal action or other proceeding is brought for 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 fees incurred in that action or proceeding.

14. Order of precedence. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable federal and state of Washington statutes, regulations, and rules.
- b. Mutually agreed upon written amendments to this Agreement.
- c. This Agreement.
- d. Any other provisions of this Agreement, including materials incorporated by reference.

15. Property. Unless otherwise specifically agreed by the parties in writing, all property, personal or real, utilized by the parties hereto in the execution of this Agreement shall remain the property of that party initially owning it.

16. Termination for cause. If for any reason, either party does not fulfill in a timely manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

17. Severability. Any provision of this Agreement, which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or un-enforceability, without affecting the validity or enforcement of the remaining provisions.

18. Official record-keeping. The County will keep the official project records and provide them to the Town.

19. Entire agreement. This Agreement contains all the terms and conditions agreed upon by the parties. 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. The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

20. Filing. Executed copies of this Agreement shall be filed with the County Auditor or posted on the Parties' Web site(s) as required by RCW 39.34.040.

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

**KITTITAS COUNTY BOARD OF COMMISSIONERS**

205 West 5<sup>th</sup> Avenue, Room 108  
Ellensburg, WA 98926

Gay Bult  
Board Chair

Dated: 10/20/2015

Christie B  
Vice Chair

[Signature]  
Commissioner



Mandy Buchholz  
Julie Kjorsvik, Clerk of the Board  
Deputy

Approved as to Form:


[Signature]  
Deputy Prosecuting Attorney

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

**TOWN OF SOUTH CLE ELUM**

P.O. Box 160


Cle Elum, WA 98922

  
James DeVere, Mayor

Dated: 11/3/15

ATTEST: \_\_\_\_\_

Approved as to Form:

  
Office of the Town Attorney