

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

RESOLUTION NO. 2020- 020

A RESOLUTION AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT
BETWEEN THE KITTITAS COUNTY PROSECUTING ATTORNEY AND THE CITY OF ELLENSBURG,
WASHINGTON FOR CITY DOCKET COVERAGE AND RECIPROCAL CONFLICTS ASSIGNMENT

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 and the City of Ellensburg has agreed to enter into an agreement for the prosecution of City misdemeanor and gross misdemeanor cases; and

WHEREAS, as part of the responsibilities as per the terms of the agreement the Kittitas County Prosecutor's Office will handle all City District Court cases from arraignment through final disposition concurrent with the terms of the agreement; and

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

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 4th day of February 2020.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON



Brett Wachsmith, Chairperson



Laura Osiadacz, Vice-Chairperson



Cory Wright, Commissioner



- Clerk of the Board- Julie Kjorsvik
 Deputy Clerk of the Board- Mandy Buchholz

INTERLOCAL AGREEMENT BETWEEN THE CITY OF ELLENSBURG AND KITTITAS
COUNTY FOR CITY DOCKET COVERAGE
AND RECIPROCAL CONFLICTS ASSIGNMENT

This Agreement is made and entered into this ^{4th} day of February, 2020 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's Assistant City Attorney is the City Prosecutor and responsible for prosecution of all City cases in the Lower Kittitas County District Court; and

WHEREAS, the City Prosecutor may have periodic scheduling conflicts with City of Ellensburg criminal dockets in Lower Kittitas County District Court; and

WHEREAS, the County, through the Kittitas County Prosecuting Attorney'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, the City and County agree that it is in each party's interest to engage the other's services in prosecution matters involving a conflict of interest for which the City's or County's prosecution of the matter would be more efficiently served by the other party handling the matter;

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, or for other conflicts of interest for either party, involving cases filed in Kittitas County Lower District Court.

2. Scope of Services – City Docket Coverage by County.

A. The County Prosecutor, upon request by the City Prosecutor for designated and mutually agreed dates, will provide a prosecutor to appear on the City's criminal cases filed in Kittitas County Lower 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.

B. 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.

C. Any costs or fees not contemplated by this Agreement which may arise during the term of the agreement 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. Assignment of Conflicts Matters by City or County.

A. Either party may, due to a conflict of interest as defined in the Washington Rules of Professional Conduct, request assignment of prosecution to the other party of misdemeanor and gross misdemeanor criminal cases in Kittitas County Lower District Court ("assigned Prosecutor"). The assigned Prosecutor will attend and represent the other party (City or County) at all pre-trial hearings, probation violations and review hearings, all bench and jury trials, but need not attend first appearances or arraignments.

B. The assigned Prosecutor shall provide and be responsible for any and all office expenses related to the representation of the other party, as defined above, including office supplies and equipment and the compensation of any necessary staff.

C. The assigned Prosecutor shall screen cases for legal sufficiency and will utilize independent judgment following the Prosecutorial Standards set forth at RCW 9.94A.401-.480 and the Rules for Professional Conduct Rule 3.8 in determining whether to file or pursue prosecution of a criminal charge.

D. The Ellensburg City Attorney or Kittitas County Prosecuting Attorney shall each have final authority on the disposition and sentencing for their respective cases in which an assigned Prosecutor represents the City or County. The exercise of prosecutorial discretion shall not be considered a breach of the Prosecutor's duties under this Agreement.

E. The assigned Prosecutor will represent the other party in appeals from their assigned cases to Superior Court and the appellate courts, which services shall be compensated under section 4(C) of this Agreement.

F. All costs associated with the prosecution of criminal cases, such as witness fees (expert or factual), records checks, and court costs shall be paid for or provided by the party making the assignment of prosecution to the other party.

4. Compensation.

A. Pretrial dockets. For each City pretrial docket, the City shall pay the County Prosecutor One Hundred and twenty-five dollars (\$125.00) per hour 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 City probation docket, the City shall pay the County Prosecutor Seventy-Five Dollars (\$75.00) per hour 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. Conflict and Appellate Services. For any case assigned by either party to the other due to a conflict (as provided in Section 3 above), the assigning party shall pay the assigned Prosecutor One Hundred Twenty-Five dollars (\$125.00) per hour (plus costs) as compensation for any work performed under this Agreement, including appeals taken to the Superior Court, Court of Appeals and State Supreme Court. The assigned Prosecutor will invoice the other party on a monthly basis for any such work.

D. Taxes. The assigned Prosecutor shall be responsible for all federal, state and local taxes associated with the assigning party's compensation to the assigned Prosecutor and any tax liability resulting from the assigned Prosecutor's employment of staff to assist with the representation of the assigning party.

5. Duration. This Agreement shall be effective from March 1, 2020 and continue until terminated as provided in Section 6.

6. Termination. This Agreement may be 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 termination.

7. Prosecutorial immunity. Each party agrees that the other party's Prosecutor operates with prosecutorial immunity in the course of the Prosecutor's representation of the City or County. Each party agrees to defend and hold the other party's Prosecutor harmless from any claims arising from the Prosecutor's acts or omissions in the scope of the Prosecutor's representation of the City or County as set forth by this Agreement.

8. 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).

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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
Asst. City Manager/City Attorney
City of Ellensburg
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:

Jodi Hammond
Chief Criminal Deputy Prosecuting Attorney
Kittitas County Prosecutor's Office
205 West 5th, Suite 213
Ellensburg, WA 98926

20. 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



Mayor

Gregory L. Zempel
Prosecuting Attorney

Attest:



Beth Leader
City Clerk



Cory Wright, Commissioner

Approved as to form:



City Attorney

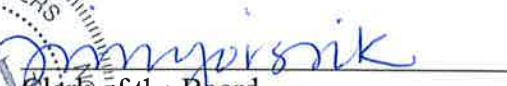


Brett Wachsmith, Chairman



Laura Osialacz, Vice-Chairman

Attest:



Clerk of the Board

