

**AGREEMENT BETWEEN KITTITAS COUNTY AND KITTCOM
FOR IT HOSTING SERVICES**

This Agreement is made by and between Kittitas County, Washington, a political subdivision of the State of Washington (the "County"), and KITTCOM, a Washington municipal corporation ("KITTCOM").

WHEREAS, the County is a municipal corporation organized and existing under the Washington State Constitution and the laws of the State of Washington, and particularly those set forth at RCW Title 36;

WHEREAS, KITTCOM is a multi-jurisdictional public safety answering point services provider jointly and cooperatively created and administered by various public agencies in Kittitas County under the authority of an Interlocal Cooperative Agreement executed pursuant to RCW Chapter 39.34; and

WHEREAS, the County desires to have KITTCOM provide specified IT Hosting Services to support the County;

WHEREAS, KITTCOM has agreed to provide IT Hosting Services under the terms and conditions of this Agreement;

WHEREAS, the County's Board of County Commissioners authorized the execution of this Agreement by action taken at a regular meeting;

WHEREAS, KITTCOM's Administrative Board authorized the execution of this Agreement by action taken at a regular meeting; and

NOW, THEREFORE, in consideration of the premises and promises, terms and conditions set forth below, it is hereby agreed as follows:

**ARTICLE I
PURPOSE**

1.01 **Purpose.** The purpose of this Agreement is to set forth the terms and conditions under which KITTCOM will provide specific and limited IT Hosting Services for the County.

**ARTICLE II
SERVICES**

2.01 **Services by KITTCOM.** KITTCOM shall provide Kittitas County with the services described in Appendix A which by this reference is hereby incorporated into and made part of this Agreement. The services provided by KITTCOM to County are intended to assist the County with a "hosted backup solution". IT Hosting ("hosted backup solution") defined as an off site co-location service in a secure environment.

2.02 **Supplies Included.** County agrees to provide the equipment and supplies necessary to fulfill this Agreement as described in Appendix B which by this reference is hereby incorporated into and made part of this Agreement.

ARTICLE III ADMINISTRATION

3.01 **Administrator.** The KITTCOM Director shall be responsible for the administration of this Agreement.

ARTICLE IV DURATION AND RENEWAL

4.01 **Duration and Renewal.** This Agreement shall become effective when executed by both parties and shall automatically renew annually on August 5th. Renewals are subject to the termination clause in Article V.

ARTICLE V TERMINATION

5.01 **Termination.** This Agreement maybe terminated at anytime with the mutual agreement of both parties. Should either party desire to unilaterally terminate the agreement, the other party shall be notified by written notice not less than 120 days prior to the date of termination.

ARTICLE VI COMPENSATION TO KITTCOM

6.01 **Compensation.** KITTCOM agrees to provide the services specified in Appendix A in return for an exchange for services of like kind and value which will include an offsite secure location on County premises to establish a remote back up of KITTCOM's UNIX server. KITTCOM and County will administer a separate agreement and the County will support KITTCOM for the specified IT Hosting Services.

ARTICLE VII INDEMNITY

7.01 **Claims.** To the extent of its comparative liability, each party shall indemnify, defend and hold the other party, its departments, elected and appointed officials, employees, and agents, harmless from and against any and all claims, damages, losses and expenses, including reasonable attorney's fees, for any bodily injury, sickness, disease, or death, or any damage to or destruction of property, including the loss of use resulting therefrom, which are alleged or proven to be caused in whole or in

part by a negligent act or omission of its officers, directors, and employees. It is further provided that no liability shall attach to either party by reason of entering into this contract except as expressly provided herein.

KITTCOM is offering the services specified on a best effort basis, and shall be held harmless for any loss of data or damages to county's equipment due to circumstances beyond the control of KITTCOM, such as, but not limited to, power loss, power surges, lightening, smoke, fire; or problems encountered during any confidence testing of KITTCOM's backup power systems.

ARTICLE VIII PERFORMANCE OF AGREEMENT

8.01 Compliance with All Laws. 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.

8.02 Maintenance and Audit of Records. Each party shall maintain books, records, documents and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents and other materials for the applicable retention period under federal and Washington law.

8.03 On-Site Inspections. Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement, and in compliance with federal, state and local laws, rules, regulations and ordinances. Furthermore, any county employee or representative who will be allowed unsupervised access to the equipment room shall have completed the required FBI/CJIS Technical Security training and associated finger printing and background check.

8.04 Improper Influence. Each party agrees, warrants and represents that it did not and will not employ, retain or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining or extending this Agreement. Each party agrees, warrants and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining or extending this Agreement.

8.05 Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

ARTICLE IX DISPUTES

9.01 **Time.** Time is of the essence of this Agreement.

9.02 **Waiver Limited.** A waiver of any term or condition of this Agreement must be in writing and signed by the waiving party. 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.

9.03 **Attorney's Fees.** If any legal action or other proceeding is brought for the 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's fees incurred in that action, arbitration or proceeding.

9.04 **Governing Law and Venue.** This Agreement shall be governed exclusively by the laws of the State of Washington. The Kittitas County Superior Court shall be the sole proper venue for any and all suits brought to enforce or interpret the provisions of this Agreement.

ARTICLE X GENERAL PROVISIONS

10.01 **Assignment.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

10.02 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. There are no understandings or agreements between parties other than those set forth in this Agreement. No other statement, representation or promise has been made to induce either party to enter into this Agreement.

10.03 **Modification.** This Agreement may not be amended, supplemented or otherwise modified unless expressly set forth in a written agreement signed by the parties and adopted by resolution of each party's legislative authority.

10.04 **Invalid Provisions.** The invalidity or unenforceability of any particular term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision and, to the greatest extent possible, this Agreement shall be construed in all respects as if such invalid or unenforceable term or provision was intentionally omitted.

10.05 Filing. Pursuant to RCW 39.34.040, this Agreement shall be filed by KITTCOM with the Kittitas County Auditor or, alternatively, listed by subject on a public agency's web site or other electronically retrievable public source prior to its entry into force. This Agreement shall also be filed with the KITTCOM Administrative Board Secretary.

Adopted this 5th day of August, 2008

KITTITAS COUNTY, WASHINGTON
BOARD OF COUNTY COMMISSIONERS

ABSENT

Mark D. McClain, Chair

Alan A. Crankovich
Alan A. Crankovich, Vice-Chair

Linda K. Huber
Linda K Huber, Commissioner



Julie Kjorsvik
Julie Kjorsvik, Clerk of the Board

APPROVED AS TO FORM:

Stephanie Harpold for
Gregory L. Zempel, Prosecuting Attorney

Adopted this 12th day of June, 2008 KITTCOM

Theodore A. Barkley
Theodore A. Barkley, Chairman
KITTCOM Administrative Board

ATTEST:

Darlene A. Mainwaring
Darlene A. Mainwaring
Administrative Board Secretary

APPROVED AS TO FORM:

R. James Pidduck
R. James Pidduck, Ellensburg City Attorney

Appendix A – Scope of Work for the IT Hosting to be provided by KITTCOM.

KITTCOM, within the KITTCOM secure equipment room, shall provide the following:

- 1) 12 Rack Units of rack space rack in an existing 19" two post rack.
- 2) Two outlets on a single branch breaker providing nominal 117VAC power from a battery backed UPS. Load connected to this circuit shall not exceed 2,500 watts continuous (not including startup surge). (The initial provisioning of this circuit shall be paid for by the county.)
- 3) Heating and cooling for the space.
- 4) Access to connectivity through the existing I-Net electronics or fiber optics.
- 5) Twenty four hour - seven days per week access limited to Kittitas County Information Services employees approved by KITTCOM.

Appendix B – Scope of Work for the IT Hosting to be provided by Kittitas County.

Kittitas County shall provide the following:

- 1) All IT equipment needed to accomplish the county's goal, including but not limited to: the server, switch, tape library, tapes, 1RU rack mount outlet strip (as specified by KITTCOM), and any other needed supplies, cabling, or equipment.
- 2) The cost of the initial provisioning of the UPS AC branch circuit to power the County's equipment.
- 3) List of the approved personnel names and Washington State Identification Number (SID).
- 4) An approved Kittitas County Information Services employee shall escort and supervise all Vendor support technicians when within the KITTCOM facility with prior scheduling and approval by KITTCOM staff.