

**SERVICES AGREEMENT  
THURSTON COUNTY / CITY OF SHELTON**

**THIS AGREEMENT** is made and entered into by and between **THURSTON COUNTY**, a municipal corporation, through its **CENTRAL SERVICES DEPARTMENT, EQUIPMENT REPAIR AND REPLACEMENT DIVISION** (hereinafter COUNTY) with its principal offices at 2000 Lakeridge Drive S.W., Olympia, Washington 98502 and **CITY OF SHELTON** (hereinafter CUSTOMER) located at 525 W. Cota Street, Shelton, Washington, 98584 (hereinafter collectively referred to as the PARTIES or individually as PARTY).

In consideration of the mutual benefits and covenants contained herein, the PARTIES agree as follows:

**1. DURATION OF AGREEMENT**

The term of this AGREEMENT shall begin upon execution by COUNTY, and shall, unless terminated or renewed as provided elsewhere in this AGREEMENT, terminate on June 30, 2016.

**2. SCOPE OF SERVICES**

**a. Communications System Work:**

All maintenance, repair, installation, engineering, and upgrading of CUSTOMER'S radio communications system previously agreed to or requested in writing by CUSTOMER shall be carried out by COUNTY. Servicing schedules and specific arrangements shall be negotiated by the PARTIES, giving due consideration to the immediacy of CUSTOMER'S need and the workload of COUNTY.

At the request of CUSTOMER, COUNTY shall make any repairs necessitated by normal wear and tear resulting from normal operation, whenever such repairs are required for safe and proper operation of the radio system unit.

CUSTOMER, its agents and representatives shall be provided access to any radio system component(s) that COUNTY has in its' possession at any time mutually agreed upon by the PARTIES for the purpose of inspecting, altering, repairing, improving, adding to, or removing it.

**b. Equipment or Vehicle Mechanical Repair Work:**

COUNTY shall provide all maintenance, repair, installation, engineering, and upgrades of CUSTOMER'S equipment or vehicle previously agreed to or requested in writing by CUSTOMER. Service schedules and any specific arrangements shall be negotiated by the PARTIES, giving due consideration to the immediacy of CUSTOMER'S need and the workload of COUNTY.

**3. AGREEMENT REPRESENTATIVES**

Each PARTY to this AGREEMENT shall have an AGREEMENT representative. Each PARTY may change its representative upon providing written notice to the other PARTY. The PARTIES' representatives are as follows:

a. For CUSTOMER:

Name of Representative: Greg Clark, P.E.

Title: Public Works Director

Street Address: 525 W. Lot 2 St. Shelton, WA.

Telephone Number: 360/432-5131

Fax Number: 360/426-7746

E-mail Address: gclark@ci.shelton.wa.us.

b. For COUNTY: Thurston County Central Services Department, Equipment Repair and Replacement Division shall be responsible for implementing this AGREEMENT on behalf of COUNTY.

Name of Representative: Brian Hanks

Title: Fleet Services Manager

Mailing Address: 9605 Tilley Road S. Olympia, WA 98512

Telephone Number: (360) 867-2442

Fax Number: (360) 709-3046

E-mail address: hanksb@co.thurston.wa.us

**4. COMPENSATION**

a. CUSTOMER shall pay COUNTY for providing the communications system services described above at the rate of eighty dollars (\$80.00) per hour from 8:00 a.m. through 3:30 p.m., plus time and one-half or double time adjustments, as required by law, when performed outside of the hours authorized by CUSTOMER. In addition, COUNTY shall be reimbursed its cost plus 20% for all materials and parts provided by COUNTY. COUNTY shall require advance written authorization from CUSTOMER for materials or parts purchases when the total amount will exceed five hundred dollars (\$500.00).

b. CUSTOMER shall pay COUNTY for providing the equipment or vehicle mechanical repair services described above at the rate of eighty dollars (\$80.00) per hour from 6:30 a.m. through 4:00 p.m., plus time and one-half or double time adjustments, as required by law, when performed outside of the hours authorized by CUSTOMER. In addition, COUNTY shall be reimbursed its cost plus 20% for all materials and parts provided by COUNTY.

COUNTY shall require advance written authorization from CUSTOMER for materials or parts purchases when the total amount will exceed five hundred dollars (\$500.00).

This compensation includes overhead and expenses. No other claims for reimbursement will be allowed under this AGREEMENT.

c. COUNTY shall invoice CUSTOMER detailing Portal-to-Portal time, parts and materials used by COUNTY. Payment is due upon receipt of invoice and shall be deemed in default if payment is not received thirty (30) days from date of invoice. Upon default, COUNTY shall retain at its sole discretion the option of terminating this agreement upon providing written notice or continuing the AGREEMENT and bill CUSTOMER at the rate of one (1) percent per month on the unpaid balance until the account is paid in full, retaining the right to terminate at any time after thirty (30) days of non-payment.

#### **5. AMENDMENTS AND CHANGES IN WORK**

a. No amendment, modification or renewal shall be made to this AGREEMENT unless set forth in a written AGREEMENT Amendment, signed by both PARTIES. All amendments, modifications or renewals shall be signed by both PARTIES and attached to this AGREEMENT. Work under an AGREEMENT Amendment shall not proceed until the AGREEMENT Amendment is duly executed by COUNTY.

b. The PARTIES agree to negotiate in good faith for any renewal of this AGREEMENT no later than thirty, (30) days prior to the termination date.

#### **6. HOLD HARMLESS AND INDEMNIFICATION**

a. CUSTOMER shall hold harmless, indemnify and defend COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of CUSTOMER'S acts, errors or omissions in the performance of this AGREEMENT. PROVIDED HOWEVER, that CUSTOMER'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of COUNTY, its officers, officials, employees or agents. PROVIDED FURTHER, that in the event of the concurrent negligence of the PARTIES, CUSTOMER'S obligations hereunder shall apply only to the percentage of fault attributable to CUSTOMER, its employees or agents.

b. With respect to CUSTOMER'S obligations to hold harmless, indemnify and defend provided for herein, but only as such obligations relate to claims, actions or suits filed against COUNTY, CUSTOMER further agrees to waive its immunity under the State Industrial Insurance Law, Title 51, RCW, for any injury or death suffered by CUSTOMER'S employees caused by or arising out of CUSTOMER'S acts, errors or omissions in the performance of this AGREEMENT. This waiver has been mutually negotiated by the PARTIES.

c. CUSTOMER'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by CUSTOMER, CUSTOMER'S employees, agents or subcontractors.

## **7. TERMINATION**

a. COUNTY may terminate this AGREEMENT in whole or in part whenever COUNTY determines, in its sole discretion that such termination is in the best interests of COUNTY. COUNTY may terminate this AGREEMENT upon giving ten, (10) days written notice by Certified Mail to CUSTOMER. In that event, CUSTOMER shall pay COUNTY for all cost incurred by COUNTY in performing the AGREEMENT up to the date of termination. Payment shall be made in accordance with Section 4 of this AGREEMENT.

b. If CUSTOMER breaches any of its obligations hereunder, and fails to cure the breach within five (5) days of written notice to do so by COUNTY, COUNTY may terminate this AGREEMENT. If, subsequent to termination, it is determined for any reason that CUSTOMER was not in default, the termination shall be deemed to be a termination for convenience.

## **8. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING**

a. The PARTIES shall perform the terms of the AGREEMENT using only their bona fide employees or agents, and the obligations and duties of CUSTOMER under this AGREEMENT shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of COUNTY.

b. CUSTOMER warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CUSTOMER, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this AGREEMENT.

## **9. NON-WAIVER OF RIGHTS**

The PARTIES agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this AGREEMENT does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving PARTY to enforce any of the provisions of this AGREEMENT at a later time.

## **10. COMPLIANCE WITH LAWS**

The PARTIES shall comply with all applicable federal, state and local laws, rules and regulations in performing this AGREEMENT.

## **11. NONDISCRIMINATION**

CUSTOMER, its assignees, delegates or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, ethnicity, religion, national origin, age, sex, marital status, veteran or military status, sexual orientation, or the presence of any disability. Implementation of this provision shall be consistent with RCW 49.60.400.

## **12. OWNERSHIP OF MATERIALS/WORK PRODUCED**

All reports, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work by COUNTY under this AGREEMENT shall remain the property of COUNTY, which shall retain the exclusive ownership of said items.

**13. DISPUTES**

Differences between CUSTOMER and COUNTY, arising under and by virtue of this AGREEMENT, shall be brought to the attention of COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due COUNTY shall be decided by COUNTY'S AGREEMENT representative or designee. All rulings, orders, instructions and decisions of COUNTY'S AGREEMENT representative shall be final and conclusive.

**14. CHOICE OF LAW, JURISDICTION AND VENUE**

a. This AGREEMENT has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each PARTY hereto that this AGREEMENT shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

b. Any action at law, suit in equity, or judicial proceeding arising out of this AGREEMENT shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.

**15. SEVERABILITY**

If a court of competent jurisdiction holds any part, term or provision of this AGREEMENT to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the PARTIES rights and obligations shall be construed and enforced as if the AGREEMENT did not contain the particular provision held to be invalid.

16. **ENTIRE AGREEMENT**

The PARTIES agree that this AGREEMENT is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this AGREEMENT are specifically excluded.

The PARTIES to this AGREEMENT have executed this AGREEMENT as of the date written below.

Executed in duplicate this 31<sup>st</sup> day of July, 2015.

CUSTOMER:

Firm: City of Shelton.  
By: Gary H. Cronce  
Signature: Gary H. Cronce  
Title: Mayor

Thurston County Washington

By: [Signature]  
Bryan Hanks, Fleet Services Manager  
Central Services Department

Approved as to form:

JON TUNHEIM  
PROSECUTING ATTORNEY

By: [Signature]  
Scott Cushing, Deputy Prosecuting Attorney II