

**Purchasing Department Merger
Interlocal Agreement**

This Agreement is entered into by and between the City of Yakima, hereinafter denominated as the “City”, and Yakima County, herein denominated as the “County”.

Whereas, such agreements are authorized by RCW Chapter 39.34 – Interlocal Cooperation Act; and,

Whereas, the City and County have entered into a Memorandum of Understanding (hereafter “MOU”) that establishes the framework to merge their respective purchasing functions;

Now, Therefore, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto mutually agree as follows:

During the Strategic Planning and Implementation phases of the merger the City and County shall agree to the following service provisions and consideration levels as outlined in the MOU:

1. SERVICES

The City Purchasing Manager shall serve as the Project Manager and shall provide project management during the strategic planning and implementation phase, as well as providing assistance to Yakima County on procurement regulation.

2. CONSIDERATION

In exchange for and in consideration of the services to be performed by the City pursuant to this agreement, the County agrees to pay the City a monthly sum of Four Thousand Seven Hundred Dollars (\$4,700.00), for the purpose of covering costs related to the strategic planning and implementation phase. In addition, the County agrees to pay the city for sixty percent (60%) of the total cost to hire an industry expert to facilitate the strategic planning and implementation phase, up to a maximum County contribution of Nineteen Thousand Two Hundred Dollars (\$19,200.00). In addition to this maximum contribution the County agrees to pay the City up to Five Thousand Dollars (\$5,000.00) for one-time costs related to the hiring of additional City staff to meet the terms of this agreement. Exclusive of all the above-stated costs and per the provisions set forth in Section 7 below, the County also agrees to share equally with the City of Yakima the cost of an E-Procurement system, which is estimated to cost Two Hundred Fifty Thousand Dollars (\$250,000.00). The City shall submit an invoice for each of the costs incurred, in accord with actual costs at the time of billing, up to the maximum costs established herein for each obligation, said invoice(s) to be delivered no later than thirty (30) days after the conclusion of each month. The County shall make payment to the City no later than thirty (30) days after receipt of the invoice. Any additional costs incurred after execution of this agreement shall be negotiated and approved through an agreement modification.

3. LIABILITY

- a. To the maximum extent permitted by law, the County shall indemnify, hold harmless and defend the City Purchasing Division, the City of Yakima, its employees, officers, elected officials, and agents from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements), and litigation brought by employees or former employees of the County arising out of or in connection with erroneous and/or negligent actions, information or instructions from the County, its officials, officers, employees, agents and/or volunteers under and pursuant to this Agreement. Further, by mutual negotiation, the County hereby specifically waives, as respects the City and its agents only, any immunity that would otherwise be available to the County against such claims or litigation under the worker's compensation provisions of Title 51 RCW.
- b. The City agrees to protect, defend, indemnify, and hold harmless the County, its officers, elected officials, agents, and employees from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements) arising out of or in connection with the erroneous and/or negligent actions, information or instructions of the City, its officials, officers, employees, agents and/or volunteers under and pursuant to this Agreement.
- c. In the event that both the County and the City are negligent in a matter arising out of the activities of the parties pursuant to this Agreement, each party shall be liable for its contributory share [so]of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including attorneys' fees).
- d. Notwithstanding any provision to the contrary, the terms of this section shall survive any expiration or termination of this Agreement.

4. IMPLEMENTATION

The County and the City shall be jointly responsible for implementation and proper administration of this Agreement under the direction of the Project Manager and will refer problems of implementation to the governing bodies for resolution if necessary.

5. TERMINATION

Termination of this Agreement by either party may be accomplished on thirty (30) days written notice to the other party of the intent to terminate the Agreement. All costs that have accrued up to the date of termination shall be allocated according to the terms of this agreement. Further, actual costs associated with termination and separation of merged purchasing services shall be reasonably allocated and reimbursed by the parties.

6. DURATION OF THE AGREEMENT

This Agreement shall commence on the date of execution by both parties, and shall terminate on midnight, June 30, 2009, unless terminated earlier by either party in accordance with Section 5.

7. PROPERTY

All real and personal property that is acquired through this agreement will remain the property of the City. If the parties choose to jointly acquire an E-Procurement system said acquisition shall be subject to a contractual agreement that is jointly approved by the City and the County. Any such agreement for an E-Procurement system shall specifically provide terms for separation and property distribution which are acceptable to both the City and County in the event a joint purchasing function is not achieved.

8. NONDISCRIMINATION PROVISION

Neither party shall discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, age, marital status, political affiliation, sexual orientation, or belief of the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 USC 12110 et seq.). In the event of the violation of this provision, the other party may terminate this Agreement immediately.

9. ASSIGNMENT

This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or part by the County or City to any other person or entity without the prior written consent of both parties. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the assignor as are stated herein.

10. AMENDMENT

This Agreement shall be amended only by written mutual consent of the parties. Amendments to this agreement may be initiated by any of the parties and shall become final after agreement by all parties and appropriate signatories are attached.

11. NON-WAIVER

The failure of either party to insist upon strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this agreement.

12. SEVERABILITY

If any portion of this Agreement is changed per mutual written agreement of the parties, or if any portion of this Agreement is held invalid, the remainder of the Agreement shall remain in full force and effect.

13. INTEGRATION

This written document, together with the associated Memorandum of Understanding executed by the City and the County on December 9th and 16th respectively, 2008 constitutes the entire Agreement between the City and the County. There are no other written agreements between the parties as to the subjects covered herein. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition are in writing and executed by both parties. In the event there is a conflict between the provisions of this Agreement and the MOU associated herewith, the terms and conditions of this Interlocal Agreement shall control.

14. NOTICES

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties to their addresses as follows:

City of Yakima Sue Ownby, Purchasing Manager
129 N. 2nd Street
Yakima, WA 98901

Yakima County: Craig Warner, Budget Director
128 N. 2nd Street
Yakima, WA 98901

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered to the named representatives at the addresses specified above.

15. GOVERNING LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Washington.

16. APPROVAL

Each party shall approve this agreement by resolution, ordinance or as otherwise specified by the laws and ordinances of the governing body of each party. The attested signatures of the Mayor and the Yakima County Commissioners below shall constitute a presumption that such approval was properly obtained.

CITY OF YAKIMA

R.A. Zais, Jr.
R.A. Zais, Jr., City Manager

Date: *December 23, 2008*

ATTEST:

Deborah Moore
City Clerk *Deborah Moore*
City Contract No. *2008-149*
Resolution No. *R-2008-16*



Approved as to form:

Befanie Wergand
Deputy Prosecuting Attorney



YAKIMA COUNTY

Ronald F. Gamache
Ronald F. Gamache, Chairman

J. Rand Elliott
J. Rand Elliott, Commissioner

Michael D. Leita
Michael D. Leita, Commissioner
*Constituting the Board of County Commissioners
for Yakima County, Washington*
Date: *12/16/08*

ATTEST:

Tiera L. Girard
Christina S. Steiner Tiera L. Girard
Clerk of the Board Deputy Clerk of the Board