

COUNTY DEPARTMENT: Information Technology
CONTACT PERSON: JD Braathen
ADDRESS: 3000 Rockefeller Ave. Everett, WA 98201
TELEPHONE NUMBER: (425) 388-7171
PUBLIC AGENCY: Community Transit
CONTACT PERSON: Mike Berman
ADDRESS: 7100 Hardeson Road, Everett, WA 98203
TELEPHONE/FAX: (425)438-6101/ (425) 428-2698
PROJECT: Information Technology Services
AMOUNT: As specified in supplemental work orders
FUND SOURCE: Community Transit
CONTRACT DURATION: Five (5) Years beginning 12/10/19

INTERGOVERNMENTAL SERVICES AGREEMENT TO PROVIDE INFORMATION
TECHNOLOGY SERVICES

THIS AGREEMENT is entered into by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington, through its Department of Information Technology (hereinafter "County" or "SCDOIT") and the Snohomish County Public Transportation Benefit Area, Community Transit, a municipal corporation of the state of Washington (hereinafter "CT"), for the purpose of SCDOIT providing information services to CT.

WHEREAS, Chapter 2.350 of the Snohomish County Code (SCC) provides that SCDOIT may provide information services, information processing, proprietary software and purchased services to public agencies and cash-on-delivery customers; and

WHEREAS CT is a "public agency" as that term is defined under Snohomish County Code 2.350.020(13);

WHEREAS, CT requires information services including maintenance and support, assistance in the planning, management, control, operation, and use of information services, network, telecommunications, information processing, equipment, purchased services and proprietary software;

NOW, THEREFORE, for and in consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. Scope of Information Services to be performed by SCDOIT: SCDOIT will provide information technology equipment and information processing services upon receipt of a fully executed Supplemental Work Order (SWO), approved and signed by the duly authorized persons(s) at the County and CT, and subject to the general terms of this Agreement. Each Supplemental Work Order will include a description of the specific services to be provided, the term, and the costs of such service from quotation or from the published rate or fee schedule, and any other terms or conditions applicable to that service.
2. Scope of services to be provided by CT to SCDOIT: CT may provide fiber connectivity services to SCDOIT as part of this Agreement. Any services will be identified in a Supplemental Work Order (SWO).
3. TREATMENT OF ASSETS: COMPUTER APPLICATION PROGRAMS AND OTHER SOFTWARE SYSTEMS FURNISHED TO CT BY COUNTY ARE FURNISHED ON AN "AS IS" BASIS WITH NO REPRESENTATIONS OR WARRANTIES REGARDING USE OR RESULTS INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, UNLESS INDICATED IN A SUPPLEMENTAL WORK ORDER FOR SERVICE.

Title to all property furnished by the County shall remain in the County. Title to all property purchased by the CT for which CT is not reimbursed by the County shall remain in CT. Title to all property purchased by CT for which CT is reimbursed by the County which is used as a component of services provided under this Agreement shall pass to and vest in the County upon completion, termination, or cancellation of the relevant SWO or this Intergovernmental Services Agreement.

Any County property furnished to CT shall, unless otherwise provided for in this contract, or approved by SCDOIT Director or his/her designee, be used only for the performance of this Agreement or a Supplemental Work Order. CT shall be responsible for any loss or damage to County property that County furnishes to CT.

If County property is lost, destroyed, or damaged, CT shall immediately notify the County and shall take all reasonable steps to protect the property from further damage.

Surrender of Property: CT shall surrender to the County all property belonging to the County upon completion, termination, or cancellation of this Agreement.

3. Time of Performance. This Agreement shall become effective December 10, 2019 and shall remain in force for a period of five (5) years, unless terminated earlier by either party upon ninety (90) days prior written notice to the other party.
4. Compensation: At no cost to CT, CT may request an estimate or quotation of cost for proposed information technology equipment or information processing services from the County. Specific agreements addressing costs, term, schedules, and other factors will be described in an associated Supplemental Work Order developed from initial estimates or quotations.

CT will pay the County for services provided hereunder and as set out in Supplemental Work Orders.

Charges for information technology goods and information processing services under this Agreement will be based on the then current published rate or fee schedule of the SCDOIT, or on the specific quotation described in Supplemental Work Orders. Rate and fee schedules are subject to change. The most current rate and fee schedule supersedes and replaces all previous published rate and fee schedules.

The County will submit an invoice to CT monthly, or as defined in a Supplemental Work Order, detailing charges for services rendered during the preceding month. Payment is due in full upon 30 days of receipt of the invoice by CT and becomes delinquent 60 days thereafter.

The County may apply a late payment fee may be applied to any remaining balance 90 days after receipt of invoice. Late payment charges, if any, will be imposed by the County on the unpaid balance at a rate of one percent (1%) per month. The County may terminate and discontinue Services on Supplemental Work Orders with balances more than 90 days past due. Amounts disputed by CT under section 7 of this Agreement are not subject to late payment charges.

5. Obligations of CT are as follows: As to all new CT acquisitions of any information technology equipment, software or systems to be serviced by the County under this Agreement, CT shall undertake such acquisitions in accordance with guidelines, standards or procedures established by the County and shall secure written concurrence for any such procurement from the SCDOIT director or his/her designee.

CT shall make payment to County of all submitted invoices and advices of charge pursuant to Section 4 of this Agreement.

6. Mutual Covenants: CT will promptly notify the SCDOIT in writing of issues regarding invoices, or of services which CT believes do not conform with the agreed upon terms of this Agreement and/or Supplemental Work Order, within 60 days of receipt of invoice or performance of services, whichever occurs later. Failure of CT to give written notice within 60 days after receipt of invoice or performance of services constitutes waiver of any objection to services or invoices.

The parties shall attempt to resolve any issues arising under this Agreement and/or Supplemental Work Order through negotiation and consultations. If that fails, the parties may seek to resolve disputes through the aid of a mutually selected, independent third party;

When necessary, the parties may modify this Agreement as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Agreement.

Both parties understand that County retains discretion regarding the operation and allocation of the aggregate information processing capacity at its disposal, including the capacity covered by this Agreement. County agrees to allocate sufficient capacity to meet the existing processing requirements of CT during the term of this Agreement.

7. County Review/Approval: Upon submittal of any request to execute a Supplemental Work Order or to perform optional services under any executed Supplemental Work Order, County may, following review by the SCDOIT Director or his/her designee, agree to perform such work or reject it, or request such modification or additions as it deems appropriate;

Upon the submittal of a request for or modification to a Supplemental Work Order, County will either accept or reject CT systems and services as listed in the Supplemental Work Order. County will not bill CT until County has accepted service and/or system delivery responsibility, and the Supplemental Work Order has been approved per section 1 of this Agreement. CT is not required to pay for services or systems until County accepts delivery responsibility for those services and/or systems.

8. Access to Books/Records: Each Party may, at reasonable times, and upon prior notification inspect the records of the other party relating to performance of this Agreement. County and CT shall keep all records required by this contract in accordance with statutory archival requirements.
9. Indemnification and Hold Harmless: CT shall hold harmless, indemnify, and defend, at its own expense, County, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever, arising out of CT's performance of this Agreement, including claims by CT's employees or third parties, except for those losses or claims for damages caused by the negligence or willful misconduct of the County, its elected and appointed officials, officers, employees or agents.

Subject to the liability limitations stated in section 11 of this Agreement, the County shall hold harmless, indemnify, and defend, at its own expense CT, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever, arising out of County's performance of this Agreement, including claims by County employees or third parties, except for those losses or claims for damages caused by the negligence or willful misconduct of CT, its elected and appointed officials, officers, employees or agents.

10. LIMITATION OF LIABILITY: IN NO EVENT WILL THE COUNTY BE LIABLE FOR ANY STATUTORY OBLIGATIONS, CONSEQUENTIAL, INDIRECT, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO BREACH AND/OR LOSS OF DATA NOT CAUSED BY THE COUNTY, LOSS OF REVENUE, LOSS OF GOODWILL OR LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE COUNTY UNDER THIS AGREEMENT OR ANY SUPPLEMENTAL WORK ORDER HEREUNDER,

WHETHER BASED IN CONTRACT, TORT, INTENDED CONDUCT OR OTHERWISE, INCLUDING WITHOUT LIMITATION COSTS INCURRED AS A RESULT OF DECISIONS MADE IN RELIANCE ON THE SERVICES, LOSS OF THE SERVICES, OR ANY OTHER LOSS OF DATA, THE COSTS OF RECOVERING OR RECONSTRUCTION SUCH DATA OR CLAIMS BY THIRD PARTIES.

11. Compliance with Laws: County and CT shall comply with all applicable federal, state and local laws, rules, and regulations in performing this Agreement. CT will comply with County procedures and policies related to technology management and use of applicable County systems, applications and services. The County agrees to provide CT with copies of all procedures and policies related to such systems, applications and services or other information sufficient to enable CT to be advised of procedures and policies related to such systems, applications and services.
12. Non-assignment: Neither County or CT shall assign any of the rights, duties, nor obligations covered by this Agreement without the prior express written request and consent of each party.
13. Conflicts between Attachments and Text: Should any conflicts exist between any attached Exhibit or schedule and the text of this Agreement, the text of this Agreement shall prevail.
14. Governing Law and Venue: This Agreement shall be governed and construed by the laws of the State of Washington and any lawsuit regarding this contract must be brought in Snohomish County Superior Court, Washington.
15. Public Records Act: This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of CT are needed for the County to respond to a request under the Act, as determined by the County, CT agrees to make them promptly available to the County. If CT considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, CT shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by CT and

the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify CT (a) of the request and (b) of the date that such information will be released to the requester unless CT obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If CT fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of CT to claim any exemption from disclosure under the Act. The County shall not be liable to CT for releasing records not clearly identified by CT as confidential or proprietary. The County shall not be liable to CT for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

16. Severability: Should any clause, phrase, sentence or section of this Agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.
17. No Separate Entity Created: This Agreement is not intended nor shall it be construed to establish a separate legal or administrative entity.
18. Prior Agreements: Any and all prior agreements of the parties related to the same subject matter as this Agreement shall be replaced and superseded by this Agreement.

Signature Page Follows

"County"

"CT"

SNOHOMISH COUNTY

COMMUNITY TRANSIT

By: [Signature] 7/4/19
County Executive Date

By: [Signature] 7-23-19
Chief Executive Officer Date

KEN KLEIN
Executive Director

Recommended for Approval:

By: [Signature] 7/31/19
Department of Information Services Director
Technology

Approved as to Form Only:

By: [Signature] 7/9/2019
Deputy Prosecuting Attorney Date

By: [Signature] 7/22/19
Community Transit Attorney Date

COUNCIL USE ONLY
Approved: 9.4.19
Docfile: D-13