

## INTERLOCAL COOPERATION AGREEMENT

### KITSAP EMERGENCY RESPONSE NETWORK

This Agreement is created under the authority of Chapter 39.34 RCW of the Interlocal Cooperation Act and in furtherance of the goals of Chapter 38.52 of the Emergency Management Act, in consideration of the terms and conditions set forth herein and the mutual benefits to be derived by the public agencies and Tribes which are parties to this Agreement.

1. Effective Date. This Agreement shall be effective upon the occurrence of all of the following conditions:

1.1 The approval of the Agreement by the governing body of Kitsap County, at least two cities of the county, and by the publication of the Agreement on the web site of Kitsap Regional Coordinating Council.

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1.2 Later approval of this Agreement by a new Member agency and publication of the later approved Agreement on the web site of Kitsap Regional Coordinating Council shall be deemed an authorized amendment to this Agreement as previously published, without the need for a reconsideration and approval by parties that have already approved and executed the Agreement except as provided below in Section 1.3.

1.3 If the terms of the Agreement are amended, the amended Agreement shall require reconsideration, approval and execution by all parties to the Agreement. In that event, the newly approved Agreement shall be published on Kitsap Regional Coordinating Council's web site and shall contain provisions indicating the amendment of the previously published Agreement.

2. Statement of Purpose. The primary purpose of this Agreement is to create, manage and maintain an intergovernmental intra-net network or "Cloud" in and among the local governmental entities and federally recognized Indian Tribes residing in Kitsap County ("Primary Purpose"). In the event of an emergency, the Cloud may be used by the agencies of the State of Washington and of the federal government by virtue of its role as an Emergency Management communication facility (Secondary Purpose). Kitsap County has established a Comprehensive Emergency Management Plan (CEMP) and, in aid of this plan, has created the Emergency Management Council of Kitsap County and the Department of Emergency Management (DEM) to provide emergency management and centralized communications. See Chapter 2.104 Kitsap County Code. Once established, the Cloud will be a communications vehicle which may be used by DEM, the Members, and Contract Parties in the event of an emergency. When applicable, this Agreement may become a tool utilized in any existing or future mutual aid agreement for emergency management entered into pursuant to Chapter 38.52 RCW. Kitsap County and the cities of Kitsap County are "political subdivisions" as defined by RCW 38.52.010(3) authorized to create a Comprehensive Emergency Management Plan. The

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parties are aware of the inherent limitations of existing means of communication and wish to supplement these communication systems with an intergovernmental intra-net system as an emergency management and response communications tool for its Members and for the public through local institutions in the event of an emergency or a disaster. Experience has shown that during public disasters and other emergencies traditional means of communication such as the phone system can be overwhelmed. The more information that is available to the participating agencies for the benefit of the citizens of Kitsap County, the better the activities of its public agencies can be coordinated, and the more effectively local governments can cope with an emergency or disaster. RCW 38.52.020(2) declares it to be the policy of the State of Washington that

“... all emergency management functions of this state and its political subdivisions be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies of other states and localities, and the private agencies of every type, to the end that the most effective preparation and use may be made of the nation’s manpower, resources and facilities for dealing with any disaster which may occur.

The parties to this Agreement find and believe that effective emergency management and preparation for emergencies includes establishment of a coordinated system for communication and information sharing. The Cloud and its related technology, such as video conferencing, offer new and expanding tools to communicate and to coordinate the activities of public and private agencies and the public during emergencies and disasters.

3. Initial Design of Cloud. The following provisions shall govern the design and maintenance of Kit~Net and the Cloud.

3.1 The Cloud’s initial and, absent an emergency, its primary use shall be as a governmental intra-net for communication and information/data sharing among its Members and Contract Parties. The term “Kit~Net” as used in this Agreement refers to Kit~Net as a cooperative venture managed by the Board of the Kitsap Regional Coordinating Council unless the context reasonably infers reference to the Cloud used as a communication tool by the member organizations comprising Kit~Net.

3.2 The intergovernmental intra-net network or cloud to be created under this Agreement shall be designed so that DEM may utilize the Cloud as a communications tool of an incident command system as defined by RCW 38.52.010(15) and as a supplement to the radio communications and telecommunications tools currently available to local, state and federal agencies. It may also be utilized to provide programs through the Members to educate and train the public in order to be prepared for emergencies in accordance with the authorization of RCW 38.52.010(1)(e).

3.3 During the establishment and maintenance of the Cloud, the political subdivisions shall consult with DEM and the Washington State Office of Emergency

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Management and shall coordinate their plan for the creation of the Cloud as a communications tool with the County and State Comprehensive Emergency Management Plan. Kitsap County on behalf of its agency DEM [DEM is a creature of interlocal agreement between the County and Cities, as is CenCom, and is governed by the CenCom Policy Board. Kitsap County is the administrative entity/fiscal agent for DEM], agrees that upon the establishment of Kit~Net and the creation of a Cloud, DEM will amend its CEMP to include the Cloud as a tool and methodology for communication in the event of a declared emergency pursuant to RCW 38.52.070. The program and plan created by the political subdivisions shall be submitted by the Department of Emergency Management for approval as an amendment to the Kitsap County CEMP to the state director of emergency management and the Board of Kit~Net shall comply with all recommendations which shall be made by the state with respect to such plan, to the end that the programs created under this Agreement can be coordinated with Kitsap County and the state emergency management plans and programs. Upon approval by the State of the program and plan, the intranet created through this Agreement may be utilized to effectuate the program and plan. Provided, that nothing herein shall be interpreted to bind the Members and Contract Parties to remain participants if the Members or Associate Members deem such recommendation or requirement to be an inappropriate invasion of its sovereignty or in contravention of its corporate purposes.

4. Powers. The Interlocal Agreement which created the Kitsap Regional Coordinating Council (the KRCC Interlocal Agreement) authorized the Council and its Board to provide a regional forum for cooperative decision-making; undertake continuous, cooperative study of governmental problems of mutual interest; and carry out other coordinating activities authorized by vote of the Council. The KRCC Interlocal Agreement is attached hereto as Exhibit A and incorporated by this reference as fully as if herein set forth. The Kitsap Regional Coordinating Council and its Board's role in the administration of Kit~Net shall be consistent with the KRCC Interlocal Agreement and the provisions of this Kit~Net agreement shall be interpreted in such a way as to be consistent with the Council's authorized powers.

4.1 Kit~Net is an affiliate organization of the Kitsap Regional Coordinating Council. Kit~Net, and the Kitsap Regional Coordinating Council as the manager of Kit~Net shall have all powers available to it and its constituent Member agencies which are available under the provisions of Chapter 39.34 RCW, the Interlocal Cooperation Act or, which, upon incorporation in the Kitsap County CEMP, may be available under the provisions of RCW 38.52.070(2).

4.2 By way of illustration and not limitation, the Kit~Net, through the Kitsap Regional Coordinating Council, shall have the authority to enter into contracts, apply for grants, revise funds, purchase equipment and take any and all other actions necessary to establish, maintain, and coordinate the Cloud which best facilitates the primary and secondary purposes of this Agreement. Establishment of uniform minimum protocols for security, equipment, maintenance, training and access are examples of the actions which may be taken by Kit~Net. These actions are required in order to establish an effective intra-net network for communications and information sharing between and among the local governmental agencies and tribes who are Members under this Agreement as well as other public and private entities which lack authority under Chapter 39.34 RCW to join in this Interlocal Agreement. These

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public and private entities, as Contract Parties, are deemed necessary to the secondary purpose of emergency communication, in order to more fully reach and educate the public and coordinate emergency management in the event of an emergency or disaster. (See Section 3.3) In addition, Kit~Net may exercise those powers which may be available and are consistent with RCW 38.52.070(2) through the political subdivisions in the event of an emergency and when this Agreement has been authorized as a part of the Kitsap County approved program and plan as above provided.

4.3 In order to provide the maximum benefit to local taxpayers, the Cloud and its infrastructure may be used for any lawful purpose consistent with the statutory powers and authorizations of its Members. By way of illustration and not limitation, bandwidth and facilities may be used for other valid governmental purposes when not actually in use for emergency management services.

4.4 By way of illustration and not limitation, the Kitsap Regional Coordinating Council may negotiate and contract on behalf of Kit~Net for equipment purchases and other services and products on behalf of Kit~Net as provided in Chapter 39.34 RCW; provided that nothing herein shall be interpreted to bind a Member beyond its current annual assessment without the express approval of a Member pursuant to RCW 39.34.080. The Kitsap Regional Coordinating Council's authority to contract shall be limited to obligations that may be funded by the current year's budget. Long term agreements shall either be subject to a non-appropriation clause or approved by the individual Members pursuant to RCW 39.34.380.

4.5 At its discretion the Kitsap Regional Coordinating Council may create or contract with a not-for-profit corporation or other entity for utilization for any lawful purpose including use of Kit~Net as an Internet Service Provider (ISP).

4.6 Political activity prohibited. Kit~Net shall not participate in any form of political lobbying activity nor shall it be employed directly or indirectly for partisan political purposes. This provision shall be interpreted and applied in accordance with the requirements of RCW 42.17.

4.7 The Kitsap Regional Coordinating Council may purchase a policy or policies of insurance as may be necessary in the discretion of the Kitsap Regional Coordinating Council to adequately insure the reasonably foreseeable liabilities and risks associated with this Agreement.

4.8 The Kitsap Regional Coordinating Council is hereby authorized to enter into service agreements with Contract Parties, in a form approved by the Kitsap Regional Coordinating Council in order to authorize access to the Cloud and to bind Contract Parties to terms consistent with this Agreement. Contract Parties may include those agencies which are not authorized to contract under the Interlocal Cooperation Act Chapter 39.34 RCW. These Service Agreements are in aid of the secondary purpose of this Agreement which is to provide an effective tool for emergency communication through the Cloud in the event of an emergency. The effectiveness of the Cloud is directly related to the number of persons and local organizations who can be reached in an emergency.

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5. Definitions.

5.1 “Board” shall mean the governing board of the Kitsap Regional Coordinating Council.

5.2 “Cloud” means an open access intra-net system for the local governmental agencies who are Members to this Agreement and for the Contract Parties which contract for service with Kit~Net through contracts approved by the Board.

5.3 “Contract Party” shall mean a party who has executed a service agreement with Kit~Net.

5.4 “Emergency or disaster” shall have the meanings assigned by Chapter 30.52 RCW and mean an event or set of circumstances which:

5.4.1 Demands immediate action to preserve public health, protect life, protect public property or to provide relief to any district or community overtaken by such occurrences; or

5.4.2 Reaches such a dimension or degree of destructiveness as to warrant the Governor to declare a state of emergency pursuant to RCW 43.06.010 or a Mayor or chief executive of any political subdivision under state law or local ordinance.

5.5 “Emergency” shall mean, in addition to meaning provided in Section 5.4, an incident that requires a normal police, coroner, fire, rescue, emergency medical services or utility response pursuant to the statutes enumerated in RCW 38.52.430.

5.6 “Emergency Management” or “comprehensive emergency management” shall have the meanings provided by RCW 38.52.010(1).

5.7 “Kit~Net” means the organization managed by the Board of the Kitsap Regional Coordinating Council unless the context reasonably infers reference to the Cloud used as a communications tool by the Member organizations comprising Kit~Net.

5.8 “Kitsap Regional Coordinating Council” or “Council” shall mean an interlocal entity whose board serves as the granting and coordinating entity for Kit~Net and this Interlocal Agreement.

5.9 “Members” shall mean governmental entities authorized to enter into an interlocal agreement pursuant to the provisions of Chapter 39.34 RCW, the Interlocal Cooperation Act and who actually become parties to the agreement pursuant to Section 1 herein.

5.10 “Membership” shall include the local governmental entities that execute this agreement pursuant to the provisions of Chapter 39.34 RCW and Contract Parties.

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Membership may include all political subdivisions and federally recognized Indian Tribes within Kitsap County. Local public and private organizations including service organizations, charitable, community and educational organizations of Kitsap County may be Contract Parties by contracting for service with Kit~Net, with the limited participation set forth in this Agreement. Membership shall be effective upon authorized signature of this Agreement for Members or upon execution by a Contract Party of a service agreement approved by the Board.

5.11 "Policy Advisory Group" shall mean the advisory body established by Section 7.2 and consisting of the representatives set forth in that section and its subsections.

5.12 "Political subdivisions" shall mean Kitsap County and the cities of Kitsap County exercising the powers available to them under Chapter 38.52 RCW and shall be interpreted consistent with the definition established by RCW 38.52.010(3).

6. Required Provisions: Interlocal Cooperation Act.

6.1 Termination:

6.1.1 This Agreement shall continue in full force and effect until terminated as provided herein. Termination may occur with respect to any individual Member upon the provision of at least one year's notice of withdrawal. Withdrawal by an individual Member shall not terminate its liability for any assessment made by the Board with respect to the calendar year in which notification of withdrawal is made. Absent dissolution of Kit~Net as an organization as below provided in paragraph 5.1.2, a withdrawing member shall forfeit its right to any division of the assets of Kit~Net, the organization, if any.

6.1.2 This Agreement may also be terminated by a majority vote of the Kitsap Regional Coordinating Council. Such termination shall be preceded by six (6) months notice to the Members, as evidenced by passage of the Board's motion. In the event of termination by vote of the Board, the assets of the organization, if any, shall first be offered to any successor organization at the depreciated value of the assets. Absent the creation of a successor organization by the dissolution date of Kit~Net, the organization, the assets shall be sold and the proceeds distributed pro-rata among the dissolving Members by the Kitsap Regional Coordinating Council.

6.1.3 Membership and participation of any Member or participation of a Contract Party may be suspended without notice or terminated for cause following notice by the Board. "Cause" is defined for the purposes of this section to include breach of any security or service standard adopted by the Board. Following suspension of access to the Cloud, a Member or Contracting Party ("breaching party") shall be provided written notice of its breach or breaches. The breaching party shall have ten (10) days to come into compliance. The Policy Advisory Group shall make a recommendation to the Board regarding whether the breach has been cured by the breaching party's actions. The Board may terminate membership of the breaching party if it, in its sole discretion determines that the breach has not been cured. The decision of the Board shall be final and may include termination of Membership or the imposition of conditions for continued Membership. Notwithstanding the above, access to the

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Cloud may be temporarily suspended without notice if the Board or designated administrator of the Cloud determines that a participant's access is undermining security or would harm other Members' interests if allowed to continue pending resolution.

6.1.4 The provisions of Section 9.2 or its equivalent in a service agreement shall survive termination of a Member or a service contract.

6.2 This Agreement does not establish a new, separate legal entity, but rather creates a communications tool for joint use to be managed by the Kitsap Regional Coordinating Council and its Board pursuant to this Agreement and the program and plan prepared and approved pursuant to section 3 and its subsections.

6.3 Property shall be acquired as provided for herein. While most equipment and property necessary to the Cloud will be owned by the Members and Contract Parties, any property acquired by Kit~Net shall be held by the Board of the Kitsap Regional Coordinating Council for and on behalf of the Member agencies. The property shall be disposed of as herein provided. The Board is hereby authorized to establish a special fund with the County treasurer servicing an involved public agency and designated as the "Operating Fund of the Kit~Net Joint Board."

6.4 Cooperative Purchasing. In accordance with Title 39 RCW and applicable provisions of any party's municipal or other adopted code, ordinances or resolutions, the parties hereby agree to a cooperative governmental purchasing agreement for the purpose of purchasing various supplies, materials, and equipment relating to the purpose of this Agreement, using the parties' competitively awarded contract. The following terms and conditions apply:

6.4.1 Each party in contracting for the purchase of supplies, materials, and equipment, agrees, at its sole discretion, to extend said contracts to the other party to the extent permitted by law, and agreed upon by the parties and the vendor(s).

6.4.2 Each party shall be responsible for compliance with any additional or varying laws and regulations governing purchases by or on their own behalf, including, but not limited to, compliance with the applicable provisions of RCW Title 39.

6.4.3 Any purchases shall be implemented by purchase order and directed to the vendor. The purchase order shall specify that the item(s) ordered are to be delivered to the party that placed the order.

6.4.4 No party shall accept responsibility for the performance of any vendor contracted for by another party as a result of this Agreement.

6.4.5 No party shall be responsible for the payment of any item(s) contracted for by another party as a result of this Agreement.

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6.4.6 Each item purchased shall become the sole property of the party that placed the order. No other party shall have a right or interest in or claim of title to that property.

6.4.7 The Administrator for this Section of this Agreement is the party that made the particular purchase.

6.4.8 For all purchase orders submitted by any agency that is a party hereto, the applicable provisions of that agency's purchasing code, if any, will apply.

6.4.9 The provisions set forth herein will not apply in the case of an emergency, pursuant to RCW 38.52.070.

7. Internal Organization. The Cloud and Kit-Net shall be managed by the Board of the Kitsap Regional Coordinating Council in furtherance of the Council's role as a coordinating agency for the governmental and tribal entities which comprise its membership (See Section 5.7 infra). The Board shall adopt operational protocols as needed and shall exercise the powers and authority which are necessary to accomplish the purposes of this Agreement and which are consistent with its underlying powers. The Board shall establish an annual budget, levy annual assessments to defray the cost of operation, contract for services including management support services and establish protocols for cooperative governance including establishing common equipment standards, user protocols and security protocols ("Protocols"). Protocols shall be adopted following an opportunity for recommendation from the Policy Advisory Group. Notice of annual assessments for the next calendar year shall be provided to the Members and service fees to the Contract Parties by October 31 of each year. Failure to pay within 90 days shall terminate access to the Cloud. The Board may establish penalties for late payment and other similar charges.

7.1 Policy Advisory Group. The Policy Advisory Group shall be responsible for assuring that the Membership is adequately informed regarding the decisions of the Board, the recommendations of the Policy Advisory Group and issues of common concern. The Policy Advisory Group shall assist in coordinating the provision of services, advise the Board regarding technological, governance and budget issues and mediate disputes within and between Members and Contract Parties. The Policy Advisory Group shall make recommendations to the Board regarding protocols for equipment, operation, security and other operational issues. The protocols may include security, information, technology and service standards consistent with the underlying agreements and the standards of any security agreement applicable to any Member or Contract Party. These protocols shall be considered the minimum necessary for access to the Cloud. Nothing herein shall be interpreted to discourage or prohibit a Member or contact Party from, in its sole discretion, taking any security precaution necessary for such Member or Contract Party to comply with its statutory or common law obligations or the provisions of any contract. The existence of minimum security protocols shall not relieve a Member or Contract Party from its primary security obligation. See Section 9.2. The Policy Advisory Group shall hear appeals of Members or Contract Parties relating to violations of service, security or other Membership standards and make recommendations regarding final action to the Board. Briefings of the Membership shall occur at least quarterly.

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7.2. Policy Advisory Group Structure. The Policy Advisory Group shall consist of representatives from each Member and Contract Party.

7.3. Voting. Each Member and Contract Party shall have one vote on recommendations of the Policy Advisory Group. No proxy voting shall be permitted. Nothing herein shall be interpreted to establish a membership requirement for attendance at meetings of the Policy Advisory Group.

7.4. Annual Meetings. An annual meeting of all Members and Contract Parties may occur as part of the Kitsap Regional Coordinating Council's annual local government forum or held separately on either the recommendation of the Policy Advisory Group or as the Board may designate. Nothing herein shall be interpreted to require an annual meeting, and additional meetings may be held at the discretion of the Board with the recommendation of the Policy Advisory Group.

8. Program Evaluation. The technology which forms the heart of the Cloud is constantly evolving. In order to maintain a network which fully utilizes the capabilities and technology of the intra-net and which provides the most efficient return on taxpayer dollars, Kit~Net commits itself to program evaluation every two years. Program evaluation shall include an opportunity for input from every Member and Contract Party, and shall include recommendations by the Policy Advisory Group as it deems appropriate regarding governance, budget and policy recommendations, along with such other matters as the Board, in its discretion, shall deem appropriate to assign to the evaluation process. The Policy Advisory Group shall recommend a schedule and process for program evaluation to the Board in September of every even-numbered year.

9. Legal Relations.

9.1 Indemnity Limited. Except as specifically provided herein, no separate indemnity provision is created by this Agreement. Each Member, Contract Party and the Kitsap Regional Coordinating Council shall bear their respective liability as determined in accordance with the laws of the State of Washington.

9.2 Each Party Responsible for Security; Hold Harmless and Indemnity. Each party to this Agreement agrees and warrants that it shall be solely responsible for the security of its own information technology systems and all records and information accessible by such system.

9.2. Each party to this Agreement, therefore, waives and releases every Member and the Kitsap Regional Coordinating Council and their respective officers, agents and employees, from any claim, loss or liability of any kind or nature arising from or out of any breach of its internal security and/or information technology system as well as from or out of the theft, release or misappropriation of information contained therein or accessible thereby as a result of participation in the Cloud.

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9.2.2 The Kitsap Regional Coordinating Council promises to hold harmless and indemnify each and every other party, Member or Contracting Party to this Agreement from every claim, cost or liability of any kind or nature arising from or out of the Kitsap Regional Coordinating Council's exercise of authority under this Agreement and for any and all liability arising from or out of this Agreement to the full extent, but only to the extent, that such claim, loss or liability is covered by a policy of insurance purchased by the Kitsap Regional Coordinating Council through the authorizations provided under Section 3 of this Agreement. To the extent that the reasonable costs of defense are covered by such policy, this promise to indemnify and hold harmless includes the cost of defense by counsel provided through such insurer or insurance pool.

9.2.3 Nothing herein shall be interpreted to limit or abrogate the immunities and liability protection provided pursuant to RCW 38.52.180 to the extent such immunity and liability protection exists.

9.3 Alternative Dispute Resolution. In the event that any dispute arises between the Members and/or Contract Parties of Kit~Net, the Board shall first attempt to mediate the dispute. In its discretion, the Board may, as a cost of the operation of the Cloud, engage a professional mediator to mediate the dispute. ~~Agood faith mediation participation shall be a condition precedent to filing suit to enforce or interpret any provision of this contract.~~

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9.4 Venue. Exclusive venue for the enforcement or interpretation of any terms of this Agreement shall be in Kitsap County, Washington.

10. Execution. This Agreement may be executed by any Member in counterparts. A Contract Party, as a term of its service agreement, shall be required to abide by all terms of this Agreement. Separate signature pages may be attached from time to time to reflect the acceptance of the terms of this Agreement by any Member.

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Acceptance of the entity as a member shall be approved by the Board in its minutes upon receipt of a clearly authorized and executed Agreement accompanied by payment of the first year's assessment. The approval of the Agreement by the governing body of each party to the Agreement, followed by filing of the executed Agreement with Kitsap County Auditor is required. Later approval and filing of this Agreement by additional parties shall be deemed an authorized amendment to any Agreement already on file with the Kitsap County Auditor, without the need for reconsideration and approval by parties that have already approved and executed the Agreement, with the following exception: if terms of the Agreement have changed, the Agreement shall need reconsideration, approval and execution by all parties to the Agreement. In that event, the newly approved Agreement will contain provisions indicating amendment of the Agreement originally on file with the Auditor.

Date: \_\_\_\_\_

CITY OF \_\_\_\_\_

By: \_\_\_\_\_  
Mayor/City Manager

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

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Acceptance of the entity as a member shall be approved by the Board in its minutes upon receipt of a clearly authorized and executed Agreement accompanied by payment of the first years assessment. The approval of the Agreement by the governing body of each party to the Agreement, followed by filing of the executed Agreement with Kitsap County Auditor is required. Later approval and filing of this Agreement by additional parties shall be deemed an authorized amendment to any Agreement already on file with the Kitsap County Auditor, without the need for reconsideration and approval by parties that have already approved and executed the Agreement, with the following exception: if terms of the Agreement have changed, the Agreement shall need reconsideration, approval and execution by all parties to the Agreement. In that event, the newly approved Agreement will contain provisions indicating amendment of the Agreement originally on file with the Auditor.

Date: \_\_\_\_\_

MEMBER: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF WASHINGTON )

COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC  
Printed Name: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

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