

**INTERLOCAL AGREEMENT
BETWEEN WINLOCK AND TOLEDO
FOR BUILDING INSPECTION, DEVELOPMENT PLAN REVIEW,
AND BUILDING RELATED SERVICES**

RECITALS:

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into between the City of Winlock, a Washington municipal corporation ("Winlock"), and the City of Toledo, a Washington municipal corporation ("Toledo"), (collectively the "Parties" or "Cities" or in the singular "Party" or "City").

WHEREAS, the Parties are "public agencies" as defined by Chapter 39.34 of the Revised Code of Washington (RCW) and through the provisions of that chapter are authorized by state law to enter into interlocal agreements on the basis of mutual advantage and thereby to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

WHEREAS, the Parties have similar building inspection needs and each Party can realize certain economies from sharing resources, thereby providing savings to taxpayers through contracting for shared services; and

WHEREAS, each Party has agreed to compensate a Party for services offered under this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed between the Parties as follows:

AGREEMENT

1. RECITALS INCORPORATED.

The above recitals are hereby incorporated in and made a part of this Agreement as fully as if set forth verbatim herein. These recitals are true and correct and the parties are bound thereby. By signing this Agreement, each Party acknowledges reading, understanding, and agreeing to all of these recitals.

2. PURPOSE.

It is the purpose of this Agreement to utilize the provisions of state law to enable the Parties to take advantage of economies of scale in sharing resources by Winlock offering building inspection services to Toledo.

3. SERVICES.

Winlock (the "Providing Party") agrees to offer the following services ("Offered Service(s)") to Toledo upon request (the "Requesting Party") pursuant to the following:

3.1. Offered Services.

- 3.1.1. Building Inspection. Winlock agrees to offer building inspection services, performed by Winlock's Building Inspectors, to the Requesting Party.
- 3.1.2. Development Plans Examination. Winlock agrees to offer plans examination services, performed by Winlock's Engineer and Building Official, to the Requesting Party.
- 3.1.3. Warranty. The Providing Party represents and warrants that their building inspectors, respective building officials, and engineer have the requisite licensing, certification, training, skill, and experience necessary to provide the services offered under this Agreement. The Providing Party's building inspectors, respective building officials, and engineer will perform the services under this Agreement in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.
- 3.2. Requests for Offered Services. The Requesting Party shall submit a written request to the Providing Party for performance of an Offered Service, including any and all needs, specifications, or standards that must be considered. Such written request must be made by the Requesting Party's Community Development Director or authorized designee. For the purposes of this subsection, the Parties agree that a written request may be submitted by a Requesting Party to a Providing Party via email.
- 3.3. Acceptance of Request for Offered Services. The Providing Party shall respond to a written request for an Offered Service with a written acceptance or denial within seventy-two (72) hours of receipt of a written request ("Response Period"). Weekends and legal holidays of the Providing Party shall not be calculated as part of the Response Period (i.e., a written request for services received by the Providing Party at 2pm on a Thursday shall be responded to by the Providing Party no later than 2pm on the following Tuesday). The Providing Party may deny a request for an Offered Service at its sole discretion and without reason. Such written acceptance or denial of a request for an Offered Service must be issued by the Providing Party's Community Development Director or authorized designee. For the purposes of this subsection, the Parties agree that a written acceptance or denial may be issued by the Providing Party to the Requesting Party via email.
- 3.4. Providing Party Administrative Oversight. The Providing Party shall have administrative oversight of the Offered Service requested and shall be responsible for invoicing the Requesting Party for the Offered Service rendered pursuant to Section 5 herein.

4. TERM OF AGREEMENT.

- 4.1. The Agreement shall take effect on October 30th, 2023, or as soon thereafter as all of the following events have occurred ("Commencement Date"):
- 4.1.1. Approval of the Agreement by the official action of the governing bodies of each of the Parties;
- 4.1.2. Execution of the Agreement by the duly authorized representative of each of the Parties; and

4.1.3. Filing a copy of this Agreement or posting a copy of this agreement to the Parties websites or recording a copy with the County Auditor as required by RCW 39.34.040.

4.2. Unless terminated pursuant to the terms of this Agreement, this Agreement shall remain in full force and effect until December 31, 2025. This Agreement may be extended by written agreement of the Parties subject to the approval of such extension by each Party's legislative body.

5. PAYMENT.

The Requesting Party shall pay for Offered Services provided by the Providing Party pursuant to the following:

5.1. Payments for Offered Services. A Requesting Party shall pay for actual direct and related indirect costs, including any overhead and administrative charges, for Offered Services provided by the Providing Party pursuant to the fees listed for each in Exhibit A, attached hereto and incorporated herein by this reference (the "Service Fees").

5.1.1. Annual Adjustment of Service Fees. The Providing Party may annually adjust their respective Service Fees, beginning January 2025. The respective city or mayor of the Providing Party shall provide the Requesting Party with ninety (90) days advance written notice of the effective date of, and basis for, Service Fees adjusted pursuant to this subsection.

5.1.2. Pass-through costs. The Providing Party shall pass through the costs incurred by its Engineer in reviewing development plan review. These costs may be passed on to the developer/landowner, but shall be paid by the Requesting Party as set forth in Section 5.2. Toledo agrees to pay the costs incurred by the Providing Party for review of development plans.

5.2. Billing. The Providing Party shall submit itemized invoices on a monthly basis to the Requesting Party for the Offered Services performed for the month invoiced. The Parties understand that in some months no invoicing will occur if no services are performed. Each invoice shall detail work performed and supplies or materials purchased. Payment shall be made by the Requesting Party within thirty (30) days of receipt of said invoice from the Providing Party. Invoices shall be deemed received three (3) days after placement of the notice in the U.S. Mail, first class postage pre-paid.

5.3. Billing Disputes. In the event there is a dispute regarding an invoiced amount by the Providing Party, the Parties in dispute shall make every effort to resolve such dispute by mutual agreement. In the event there is no mutually agreed resolution to the dispute, the Parties shall forward the dispute to each Party's City Mayor for resolution. In the event there is no resolution after review by the Parties' City Mayor, the Parties shall seek mediation through a mutually agreed mediation service and each Party shall bear its own costs for mediation. If mediation is unsuccessful, either Party may pursue any legal remedy available from a court of competent jurisdiction. Any dispute that has gone to mediation and mediation was unsuccessful in resolving the dispute shall be grounds for either Party to terminate this Agreement for material breach.

6. TERMINATION.

- 6.1. Termination by Notice. Either Party may terminate its participation in this Agreement by providing the other Parties with sixty (60) days advance written notice of the effective date of such termination. The Party providing such notice shall remain responsible for any costs incurred under this Agreement.
- 6.2. Termination by Mutual Written Agreement. This Agreement may be terminated in its entirety at any time by a written agreement executed by both of the Parties.
- 6.3. Termination for Breach. Either Party may terminate its participation in this Agreement for material breach of the terms of this Agreement upon fourteen (14) days advance written notice to the other Party, provided that disputes regarding billing statements shall be handled pursuant to Subsection 5.3 and shall not be deemed a breach of this Agreement except as set forth in Subsection 5.3.

7. ADMINISTRATION.

- 7.1. The Winlock Community Development Director ("Winlock Director") shall administer the provisions of this agreement in coordination with Toledo's City Clerk / Treasurer ("Toledo Coordinator").

8. INDEMNIFICATION AND HOLD HARMLESS.

- 8.1. The Providing Party shall defend, indemnify, and hold the City of Toledo, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including reasonable attorney fees, arising out of or resulting from the acts, errors, or omissions of the Providing Party in performance of this Agreement, except for injuries and damages caused by the sole negligence of Toledo.
- 8.2. The City of Toledo shall defend, indemnify, and hold the City of Winlock, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including reasonable attorney fees, arising out of or resulting from the acts, errors, or omissions of the City of Toledo in performance of this Agreement, except for injuries and damages caused by the sole negligence of Winlock.
- 8.3. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or property caused by or resulting from the concurrent negligence of the Providing Party and the Receiving Party, its officers, officials, employees, and volunteers, the Providing Party liability, including the duty and cost to defend, hereunder shall be only to the extent of the Providing Party's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Providing Party's waiver of immunity under the Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.
- 8.4. In the event the acts or omissions of the officials, officers, agents, and/or employees of either Party in connection with or incidental to the performance or non-performance of Offered Services, duties, or obligations under this Agreement are the subject of any liability claims by

a third party, both Parties shall each be liable for its proportionate concurrent negligence in any resulting suits, actions, claims, liability, damages, judgments, costs, and expenses and for their own attorneys' fees.

8.5. Nothing contained in this Section or in this Agreement shall be construed to create a right in any third party to indemnification.

8.6. The provisions of this section shall survive any termination or expiration of this Agreement.

9. INSURANCE.

9.1. Each party hereto shall carry for the duration of this Agreement insurance with the following minimums:

9.1.1. General Liability, Property/Auto Damage: As required and provided through Associated Washington Cities/Risk Management Service Agency for both parties.

9.1.2. Industrial Insurance: Through Washington State Labor and Industries

9.1.3. It is understood that each of the parties hereto may fulfill the requirements set forth in this section either by way of self-insurance, an authorized insurance pool, or by an insurance provider authorized to do business in the State of Washington.

9.2. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, and General Liability insurance:

9.2.1. The Providing Party's insurance coverage shall be primary insurance as respect to the Requesting Party. Any insurance, self-insurance, or insurance pool coverage maintained by the Requesting Party shall be excess of the Providing Party's insurance and shall not contribute with it.

9.2.2. The Requesting Party will not waive its right to subrogation against the Providing Party. The Providing Party's insurance shall be endorsed to waive the right of subrogation against the Requesting Party, or any self-insurance, or insurance pool coverage maintained by the Requesting Party.

9.2.3. The Providing Party's insurance shall not be cancelled by any party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the other Party to this Agreement.

9.3. Verification of Coverage. Upon receipt of a written request from the Requesting Party, the Providing Party shall furnish the other Party to this Agreement with proof of coverage evidencing the insurance requirements of the Providing Service provider within 30 days.

10. INDEPENDENT SERVICE PROVIDER.

10.1. The Parties intend that an independent contractor relationship is created by this Agreement. In providing Offered Services under this Agreement, the Providing Party is an independent contractor and neither it nor its officers, agents, or employees are employees of the Requesting Party for any purpose, including responsibility for any federal or state tax, industrial insurance, or Social Security liability. Neither shall the provision of Offered Services under this

Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of the Providing Party under any applicable law, rule, or regulation. Nothing in this Agreement is intended to create an interest in or give a benefit to third persons not signing as a party to this Agreement. As an independent contractor, the Providing Party shall be responsible for the reporting and payment of all applicable local, state, and federal taxes. No agent, employee, or representative of the Providing Party shall be deemed to be an employee, agent, or representative of the Requesting Party for any purpose, and the employees of the Providing Party are not entitled to any of the benefits that the Requesting Party provides for its employees.

10.2. In the performance of the Offered Services herein, the Providing Party is an independent contractor with the authority to control and direct the performance of the details of the Offered Services; however, the results of the Offered Services herein must meet the approval of the Requesting Party and shall be subject to the Requesting Party's general rights of inspection and review to secure the satisfactory completion thereof. The Providing Party shall be solely and entirely responsible for its acts and for the acts of its agents, employees, or representatives performed within the authorized scope of its agents, employees, or representatives' duties during the performance of this Agreement.

10.3. The Parties agree that this is not an exclusive service contract. The Providing Party may provide similar or compatible services to other entities; provided that the Providing Party must fulfill obligations and duties and meet the standards established in this Agreement.

11. PERSONNEL AND EQUIPMENT.

11.1. Winlock and Toledo agree that:

11.1.1. Control of personnel, standards of performance, discipline and all other aspects of employee performance provided, shall be solely vested in Winlock.

11.1.2. All persons rendering service hereunder shall be for all purposes employees of Winlock.

11.1.3. All liabilities for salaries, wages, overtime, or other compensation, injury, sickness, or other personnel related matter shall be that of Winlock.

12. MISCELLANEOUS.

12.1. Notices. Notwithstanding Subsections 3.2 and 3.3 herein, notices to be provided pursuant to this Agreement shall be provided in writing to the person and address indicated below. Notices shall be deemed delivered three (3) days after placement of the notice in the U.S. Mail, first class postage pre-paid. Courtesy copies of notices may be provided via email transmission but shall not constitute delivery of written notice as set forth herein.

TO City of Winlock:
Mayor
323 NE First St.
PO Box 777
Winlock WA 98596

TO City of Toledo:
Mayor
130 N 2nd St
PO Box 517
Toledo, WA 98591

Email: mayor@cityofwinlock.com

Email: cityoftoledo@toledotel.com

With a copy to:

With a copy to:

City Clerk
323 NE 1st St
PO Box 777
Winlock, WA, 98596
Email: cityclerk@cityofwinlock.com

City Clerk
130 N 2nd St
PO Box 517
Toledo, WA 98591
Email: cityoftoledo@toledotel.com

12.2. Non-Waiver of Breach. The failure of either Party to insist upon strict performance of any of the covenants and agreements contained in this Agreement shall not be construed to be a waiver or relinquishment of those covenants, agreements, or options, and the same shall be and remain in full force and effect.

12.3. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Subject to Subsection 5.3, if the Parties are unable to settle any dispute, difference, or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference, or claim shall only be by filing suit exclusively under the venue, rules, and jurisdiction of the Lewis County Superior Court, Lewis County, Washington, unless the Parties agree in writing to an alternative dispute resolution process.

12.4. Assignment. This Agreement is not assignable by either Party, in whole or in part.

12.5. Modification. Except as provided for in Subsection 5.1.1, no waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless made in writing and approved by the legislative body of each city.

12.6. Compliance with Laws. Both Parties agree to comply with all local, federal, and state laws, rules, and regulations that are now effective or in the future become applicable to this Agreement.

12.6.1. Nondiscrimination in Employment. In the performance of this Agreement, neither Party will discriminate against any employee on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age, nor other basis prohibited by state or federal law unless based upon a bona fide occupational qualification. Both Parties shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state, and federal laws prohibiting discrimination in employment.

12.6.2. Nondiscrimination in Services. Neither Party will discriminate against any recipient of any Services provided for in this Agreement on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age, or other basis prohibited by state or federal law.

12.7. No Separate Legal Entity Created. This Agreement creates no Joint Board and no separate legal entity.

- 12.8. No Separate or Joint Budget Created. No separate or joint budget is created by the Agreement, and this Agreement does not contemplate acquisition or disposal of any property.
- 12.9. Entire Agreement. The written terms and provisions of this Agreement, together with any exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written, of any officer, employee, or other representative of each party and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the exhibits are hereby made part of this Agreement. Should any of the language of any exhibits to this Agreement conflict with any language contained in this Agreement, the language of this document shall prevail.
- 12.10. Severability. If any provision of this Agreement, in whole or in part, is adjudicated to be invalid, such action shall not affect the validity of any provision not so adjudicated.
- 12.11. Interpretation. The legal presumption that an ambiguous term of this Agreement should be interpreted against the Party who prepared the Agreement shall not apply.
- 12.12. No Third-Party Beneficiaries. This Agreement is between the Parties and is not meant to benefit any third party.
- 12.13. Headings Not Controlling. The headings in the Agreement are for convenience only and shall not affect the meaning of the terms as set out in the text.
- 12.14. Counterparts. This Agreement may be executed in multiple counterparts, any of which shall constitute an agreement by and among the Parties who have executed this Agreement, provided that each Party shall transmit to the attention of the other's City Clerk an original, executed signature page of this Agreement. Both the Toledo City Clerk and Winlock City Clerk shall cause a copy of this Agreement and a copy of each executed signature page of each party to be posted on their respective city websites pursuant to RCW 39.34.040.

Signature: 
Eric Hayes (Nov 2, 2023 08:53
Email: eric.hayes@toledo

IN WITNESS WHEREOF, the Parties below execute this Agreement, which shall become effective pursuant to the terms of Section 4, herein.

CITY OF WINLOCK

CITY OF TOLEDO

BY: 
BRANDON SVENSON, Mayor

BY: 
ERIC HAYES, Mayor
Email: eric.hayes@toledowa.us

Attest: 
Penny Jo Haney, City Clerk

Attest: 
Rachel Beaver, City Clerk
Email: rbeaver@toledowa.us

APPROVED AS TO FORM:

APPROVED AS TO FORM:


MARISSA Y. JAY, City Attorney

Signature: 
jmbuzzard (Oct 31, 2023 12:03 PDT)
Email: jmb@buzzardlaw.com
JAMES M.B. BUZZARD, City Attorney

EXHIBIT A

PROVIDING PARTIES' SERVICE FEES 2023-2024

Winlock Service Fees

(a) Building Inspection Services of Building Inspectors: \$75.00 per inspection.

(b) Building Administration Services of Building Official, including Project Review or Inspection: \$55.00 per hour.

(c) Development Plan Review Services of Winlock Engineer shall be as set forth in that separate contract between the City of Winlock and Engineer.

Services Fees may be reviewed annually by each Providing Party pursuant to Subsection 5.1.1.












DOC103123-002

Final Audit Report

2023-11-02

Created:	2023-10-31
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-  Document created by Penny Jo Haney (cityclerk@cityofwinlock.com)
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-  Agreement completed.
2023-11-02 - 3:53:05 PM GMT



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