



## SUBSCRIPTION AGREEMENT

Between

**City of Auburn**

and

**eCityGov Alliance**

*May 18, 2020*

## SUBSCRIPTION AGREEMENT

This Agreement is entered into between the eCityGov Alliance, hereinafter referred to as the "Alliance", and the City of Auburn, WA, hereinafter referred to as the "Subscriber" (each a "Party" or together, the "Parties").

WITNESSETH:

**WHEREAS, the Alliance was created and duly authorized by the legislative authority of each jurisdiction in accordance with the Interlocal Cooperation Act, Chapter 39.34 RCW and the Amended and Restated Interlocal Agreement Establishing eCityGov Alliance, as amended and restated on February 16, 2018 (the "Alliance Interlocal Agreement"); and**

**WHEREAS, the purpose of the Alliance is to provide a regionally coordinated portal for the delivery of municipal services via the internet and to provide a forum for the sharing of resources in the development and deployment of such services; and**

**WHEREAS, in keeping with its purpose, the Alliance has created several shared software applications and related products to deliver public sector services via the internet; and**

**WHEREAS the Alliance provides said software applications as a hosted service; and**

**WHEREAS, the Subscriber wishes to use certain shared software application(s) and related product(s) to deliver public sector services via the internet; and**

**WHEREAS, the Alliance pledges to work cooperatively in maintaining the highest level of standards for maintenance and operation of the Software Application(s) and related product(s) on behalf of Partners, Subscribers and users (each as defined herein); and**

**WHEREAS, the Alliance is duly authorized to enter into agreements as an independent entity; and**

**WHEREAS, it is the desire of the Parties to enter into an agreement for Software and related product(s) to deliver public sector services via the internet as provided herein;**

**NOW THEREFORE, the Parties agree as follows:**

## **I IDENTITY OF PARTIES**

1. **Alliance.** The Alliance is an independent joint agency formed under Chapter 39.34 RCW, the Interlocal Cooperation Act, and a Washington non-profit corporation, authorized to deliver certain public sector services as provided in the Alliance Interlocal Agreement.
2. **Subscriber.** The Subscriber is a municipal corporation that desires to subscribe to an Alliance hosted service(s) and/or application(s), and to participate as a non-voting but active member in the committees supporting that service(s) and/or application(s).

## **II PURPOSE**

1. The purpose of this Agreement is to provide the terms and conditions under which the Subscriber will receive hosted services from the Alliance. To accomplish this purpose, and in consideration of the benefits to be received by each of the Parties hereto, the Parties agree as follows:

### III DEFINITIONS

1. As used herein, the following capitalized terms shall have the following meanings. Terms not otherwise defined herein shall have the meanings set forth in the recitals of this Agreement and the Alliance Interlocal Agreement.
2. **“Agreement”**, **“this Agreement”**, **“the Agreement”**, **“hereof”**, **“herein”**, **“hereto”**, **“hereby”**, **“hereunder”** and similar expressions mean this Subscription Agreement, including all instruments supplementing, amending or confirming this Agreement. All references to **“Articles”** or **“Sections”** mean and refer to the specified Article or Section of this Agreement.
3. **“Alliance Interlocal Agreement”** has the meaning set forth in the recitals hereto.
4. **“Application Software”**, **“Application”** and/or **“Software”** means computer application and related computer code, presented in object code form operating on Hosting Service hardware. Application Software includes, but is not limited to computer code, databases, programs and interfaces in executable code form which have been created or licensed by the Alliance.
5. **“Application Team”**, **“Management Committee”** and/or **“Project Team”**, means a team made up of a representative(s) from each Alliance partner and subscriber agency for a particular Software Application. The purpose of the Application Team is to guide development and management of the Application.
6. **“Backend Integration”** means that a software application owned and/or licensed by the Subscriber is linked to the Application Software for the purpose of passing data between the two systems.
7. **“Board”** means the Alliance Executive Board.
8. **“Data and Content Management Tool(s)”** means the internet restricted accessible software application used by the Subscriber to update, change and manage application content and data.
9. **“Effective Date”** means the date this Agreement commences.
10. **“Hardware”** means the computers, application servers, magnetic storage devices and other related computer hardware owned by the Alliance for the purposes of providing services and software applications to Alliance partners, subscribers and the general public.
11. **“Hosting Service”** means the city and/or business at which Alliance Application(s), related software and hardware is physically located. The Hosting Service is also responsible for maintaining the shared portion of the service(s) and application(s) affected by this Agreement.

12. “**Partner(s)**” means the governmental jurisdictions that are parties to the Alliance Interlocal Agreement.
13. “**Subscriber**” means the governmental jurisdiction or other organization that elects to enter into an agreement with the Alliance to purchase specific hosted internet software application service(s) on an annual basis. Subscriber status is further defined by the Alliance Administrative Policies and the Alliance Interlocal Agreement.
14. “**Subscription(s)**” means the internet accessible computer application(s) identified in Appendix A.
15. “**Subscription Liaison(s)**” means the Subscriber assigned staff member(s) for each subscription application.
16. “**User**” means members of the general public and city staff who use the services defined herein.

#### **IV APPLICATION SOFTWARE SUBSCRIPTION**

1. **Subscription.** During the term of this Agreement, the Alliance grants the Subscriber a non-transferable, nonexclusive subscription to use the Application Software in accordance with the terms and conditions state herein.
2. **Application Software License(s).** Application Software license(s) are and shall remain the property of the Alliance or its third-party service providers. The Subscriber shall have a non-exclusive right to use the Application Software specified in Appendix A. The Subscriber shall not have taken, or attempt to take, any right, title or interest therein or permit any third party to take any interest therein. The Subscriber will not transfer, sell, assign, sublicense, pledge, or otherwise dispose of, encumber or suffer a lien or encumbrance upon or against the Application Software or any interest in the Application Software.
3. **Application Software and Data.** The Subscriber may not move any Application Software or data from any installed location at the Hosting Service place of business without the prior written notification and subsequent technical approval of the Alliance.
4. **Hardware and Provision of System and Application Software.**
  - (a) The Alliance shall obtain, install and maintain the necessary hardware, systems software, and Application Software at the location of the Hosting Service to provide the appropriate computing platform to deliver the application services defined in Appendix A.
  - (b) The Hardware, Systems Software licenses, and Application Software code and licenses are and shall remain the property of the Alliance or its third-

party service providers. The Subscriber shall not have taken, or attempt to take, any right, title or interest therein or permit any third party to take any interest therein. The Subscriber will not transfer, sell, assign, sublicense, pledge, or otherwise dispose of, encumber or suffer a lien or encumbrance upon or against the Hardware or Systems Software or any interest in the Hardware or Systems Software.

## **V SUBSCRIBER DATA AND DATABASES**

1. The Subscriber shall provide applicable data for each Software Application Subscription to the Alliance in accordance with data specifications in Appendix A.
2. The Subscriber is responsible for updating, changing and maintaining said data as specified in Appendix A.
3. Each Party shall treat all data and information to which it has access by its performance under this Agreement as confidential. Unless required to do so by law, a Party shall not disclose such data or information to a third Party without specific written consent of the other Party. In the event that one Party receives notice that a third Party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, the receiving Party shall promptly inform the other Party. This section shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon all Parties and their agents, employees, successors, assigns, subcontractors or any Party or entity claiming an interest in this Agreement.
4. The Alliance will not transfer, sell, assign, sublicense, pledge, or otherwise dispose of, encumber, or suffer a lien or encumbrance upon or against the Subscriber data or database or any interest in the Subscriber data or database. The Alliance will maintain the Subscriber data or database at the Hosted Service, and shall notify Subscriber in writing if the data or database is to be moved from the Hosted Service. The Alliance shall not be responsible for any damage to, or loss of, the data, except in cases of gross negligence or wilful misconduct.

## **VI ACCESS AND USE OF DATA AND CONTENT MANAGEMENT TOOL(S)**

1. The Subscriber shall name and authorize certain employees as content managers for the Software Application(s) specified in Appendix A.
2. It is the responsibility of the Subscriber to authorize and manage opening and closing user accounts for third party vendors and/or contract employees.

3. The Alliance will manage password protected user accounts for said employees and vendors. The Alliance will manage only named user accounts. The Subscription Liaison is responsible for authorizing new user accounts and ensuring unneeded user accounts are closed in a timely manner.
4. Access to Alliance web-based products is not restricted in anyway, however: Software Application functionality may be restricted or limited for certain Software Applications or portions of a Software Application to the residents of Alliance partner and subscriber cities. Such restrictions or limitations are dependant on the level of service(s) purchased by the Subscriber and shall be described in Appendix A.
5. An unlimited number of residents, staff and other customers of the Alliance product(s) may access and utilize the product(s) via the internet, except as noted in the previous section.

## VII WARRANTIES

1. Alliance represents and warrants that (a) Alliance has the legal right and authority to provide the services that are the subject of this Agreement; and (b) Application Software does not infringe upon any copyright, patent, trademark, trade secret, or any other intellectual property right of any third Party.
2. No Other Warranty. Other than the express warranties contained above, any software Subscription provided and all services performed pursuant to this Agreement are provided and performed on an “as is” basis, and Subscriber’s use of the Application Software and services is at its own risk. Alliance does not make, and hereby disclaims, all other warranties, whether express or implied. Alliance does not warrant that the Application Software and services provided hereunder will be uninterrupted, error-free, or completely secure.
3. Limitation of Liability; Damages. Alliance’s sole liability to Subscriber for any loss, liability or damage, including attorney’s fees, for any claim arising out of or related to this Agreement, regardless of the form of action, shall be limited to Subscriber’s actual direct out-of-pocket expenses which are reasonably incurred by Subscriber and shall not exceed the amount of the fees paid to Alliance by Subscriber under this Agreement for the calendar year in which such claim accrued. **In no event shall Alliance be liable to Subscriber or any third party for lost profits, revenue, lost data, consequential, special, incidental, or punitive damages arising out of or related to this Agreement regardless of the basis of the claim.**

## VIII SUPPORT

1. **Backend Integration**

- (a) Alliance is responsible for Alliance product(s) on the eCityGov.net web sites, including the transmittal of data to and from the Subscriber in the formats(s) identified in Appendix A, to meet the needs of Subscriber's back-end process. Interface and data transmittal standards are subject to approval by the Board.
  - (b) The Subscriber is responsible for any and all direct integration with their own business processes and systems, including the entire cost and overhead associated with integration of Alliance products to Subscriber-owned systems.
  - (c) For the purpose of Backend System Integration, the Alliance may assign, on a temporary basis, a reasonable number of Internet Protocol Addresses ("IP Addresses") from the address space assigned to Subscriber by the Hosting Service. The Subscriber acknowledges that the IP Addresses are the sole property of the Alliance and/or of its contracted Service providers, and are assigned for the term of this Agreement to Subscriber as part of the Software Application Subscription(s), and are not "portable".
  - (d) The Alliance reserves the right to change IP Address assignments at any time; however, the Alliance shall use all reasonable efforts to avoid any disruption to the Subscriber resulting from such renumbering requirement. The Alliance will give the Subscriber reasonable notice of any such renumbering. The Subscriber agrees that it will have no right to IP Addresses upon termination of this Agreement and that any renumbering required of the Subscriber after termination shall be the sole responsibility of Subscriber.
2. **Training.** The Alliance shall provide such training and consultation to the Subscriber regarding the use of a Software Application(s) and services as is determined to be appropriate by the Board and/or the Application Team(s) associated with specific Alliance Software Application(s).

## **IX SOFTWARE SUPPORT**

1. For Application Software residing on Alliance Server(s): The Hosting Service for each product is responsible for ensuring that the Application Software functions correctly, and for responding to Subscribers who submit requests for Application Software corrections in a timely manner. Application Software malfunctions that result in a non-responsive system or incorrect results for customers will be given high priority. Other Application Software malfunctions will be prioritized based on resources and overall project priorities. The actual response escalation levels are specified in SubSection 3 below.
2. For other software residing on Subscriber Servers: The Subscriber is fully responsible for the functioning of any software residing on Subscriber Servers,

including software designed to handle the interface between Alliance service(s) and Software Application(s) and all software licensed directly through third parties to the Subscriber.

3. Technical Support – Requests for technical support will be classified into three priority levels:
  - High – system is down or is returning incorrect results and customer is unable to fulfill critical business functions such as those pertaining to core business functions
  - Urgent – serious issue significantly impacting use of system although customer is still able to perform core business functions
  - Normal – all other issues.
4. Regular Hosting Service business hours are Monday through Friday 7:00 a.m. – 5:00 p.m., excluding holidays. During regular business hours, there is a guaranteed response time of 1 hour for High and Urgent calls. All other calls will be responded to within 8 business hours. Off-hours support (5:00 p.m. – 7:00 a.m., weekends and holidays) is offered only for network and server support. Only high priority calls will be responded to within 2 hours. The contact phone number is 425.452.2886.

## **X BENEFITS/RELATIONSHIP**

1. This Agreement is entered into for the benefit of the Parties to this Agreement only and shall confer no benefits, direct or implied, on any third persons. No joint venture or partnership is formed as a result of this Agreement.
2. The Subscriber is considered a voting member of the Application Team(s) supporting Alliance service(s) and Software Application(s) identified in Appendix A.
3. The Subscriber is entitled to attend Board meetings, but is not a voting member of the Board.
4. The Subscriber is entitled to use the regional portal for delivery of Software Application(s) subscribed to and defined in Appendix A.
5. The Subscriber may participate in and receive the benefits of all Alliance functions, projects, programs, and partnerships including but not limited to:
  - Training programs
  - Information sharing events



- Projects/programs with other public entities, including, but not limited to state, county, utility districts, libraries, and other cities.

## **XI FEES AND PAYMENT TERMS**

1. The invoice shall encompass Subscription fee(s) for one full calendar year or for the applicable pro-rata Subscription fee(s).
2. Annual payment is due within 30 days of invoice.
3. The invoice for the current year will be sent upon signing of this Agreement. Payment is due within 30 days of invoice.
4. Payments which are 30 days past due shall be considered to be in arrears. The Alliance may elect to discontinue service to the Subscriber until said account is paid in full. The Board, at its sole discretion, may elect to not disconnect a Subscriber that is in arrears if suitable arrangements have been made for future payment.
5. The City of Bellevue, acting as the fiscal agent for the Alliance, will issue all invoices. Payment(s) shall be made to the City of Bellevue. The City of Bellevue Tax Identifier Number (TIN) is 91-6007020.
6. Establishment of Fees – Each year the Board shall set Subscriber Fees for the next calendar year, no later than September 30th. At such time the Board may increase, decrease or leave fees unchanged depending need.

## **XII GENERAL PROVISIONS**

1. **Liability/Hold Harmless.** If a claim, demand or cause of action arises from the negligent act or failure to act or intentional wrongful act of one of the Parties hereto, or its officers, agents or employees, then that Party shall indemnify, defend and save the other Party and its officers, agents and employees harmless there from; provided, however, that such provision shall not apply to the extent that damage or injury arises from the fault of the other Party, its officers, agents or employees. In the case of negligence of both the Subscriber and the Alliance, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each Party, and each Party shall have the right to seek contribution from the other Party in proportion to the percentage of negligence attributable to the other Party.
2. **Assignment.** The Subscriber shall not assign, transfer, convey or otherwise dispose of its rights or obligations under this Agreement or permit use of applications and/or services by another entity or person who is not an Alliance Partner, Subscriber, or employee, officer or agent thereof, except to the extent as may be authorized by Alliance rules and procedures.

3. **Notices.** All notices, requests, demands and other communications required by this Agreement shall be in writing and, except as expressly provided elsewhere in this Agreement, shall be deemed to have been given at the time of delivery if personally delivered or three business days after mailing if mailed by first class mail, postage prepaid and addressed to the Party at its address as stated in this Agreement or at such address as any Party may designate at any time in writing with notice pursuant to this paragraph. At the time of execution the addresses of the Parties are:

**eCityGov Alliance**

P.O. Box 90012

Bellevue, WA 98009-9012

Attn: Tyler Running Deer

(425) 452-7821

trunningde@ecitygov.net

**City of Auburn, WA**

25 West Main Street

Auburn, WA 98001

Attn: Name

(XXX) YYY-ZZZZ

XXXX@YYYYY

4. **Dispute Resolution.** This section governs any dispute, or controversy between the Parties arising out of or relating to this Agreement or its breach (the "Disputed Matter"). It is agreed that King County shall be the venue for any arbitration. All Disputed Matters shall be submitted to the following dispute resolution process:

(a) Internal Mediation

First the Disputed Matter shall be referred jointly to the Alliance's Executive Director and the Subscriber's representative. If they do not agree within ten (10) days, the Disputed Matter shall be referred jointly to the Chair of the Executive Board and the Subscriber's chief executive or designee. If such persons do not agree upon a decision within ten (10) days after referral of the matter to them, or within such other period as may be mutually agreed upon, the Parties shall proceed to the next stage of the dispute resolution procedure.

(b) Arbitration Procedures

The Subscriber or the Alliance may, within ten (10) days following completion of internal mediation, submit a written demand for arbitration to the American Arbitration Association. The decision of the other Party to invoke the arbitration process below shall constitute an election of

remedies barring the Party from further recourse to the dispute resolution or arbitration process not invoked by it.

Any Disputed Matter referred to arbitration shall be conducted under the Commercial Rules of the American Arbitration Association. The arbitrator may be selected by agreement of the Parties or through the American Arbitration Association. Any such arbitration will be held in the Seattle Metropolitan Area. The Parties will share the costs of the arbitration equally, subject to final apportionment by the arbitrator. However each Party shall bear the expenses of its own counsel, experts, witnesses and preparation of evidence. The decision of the arbitrator shall be final and shall not be subject to appeal by the Parties. Judgment upon any award rendered by the arbitrator may be entered in any court of competent jurisdiction.

(c) Performance to Continue

Pending the resolution of any Disputed Matter, both Parties shall continue their performance under this Agreement to the extent that such performance is feasible, including but not limited to the payment of all sums which are due or which become due during the dispute resolution process. Neither Party will institute any action or proceeding against the other Party in any court concerning any Disputed Matter that is or could be subject to resolution under this section.

5. **Effective Date and Duration.** This Agreement shall be effective on upon execution of both Parties, and shall continue until termination or withdrawal.

### XIII TERMINATION

1. **Termination by annual notice and/or default.** The Subscriber may terminate this Agreement by giving ninety (90) days written notice to Alliance in any year of its intention to terminate effective January 1 of the following year provided notice is given in writing and Subscriber is not in default of its obligations under this Agreement. There will be no refunds of monies collected for the current year. If the Subscriber is in default of a material obligation under this Agreement, and such default remains uncorrected more than thirty (30) days after receipt of written notice of default, the Alliance, in addition to any other rights available to it under law or equity, may terminate this Agreement by giving thirty (30) days written notice to the Subscriber. The Alliance shall be deemed in default if, as a result of the Software Application(s) or Alliance's failure to perform its obligations hereunder, the Software Application(s) continues to exhibit defects causing serious disruption of use and/or repeated periods of downtime, notwithstanding the Alliance's remedial or maintenance efforts, over a continuous period of ninety (90) days, and the Subscriber may terminate the Agreement by

giving thirty (30) days written notice to the Alliance, after which the Alliance shall reimburse the Subscriber for a pro-rated share of the Subscription Fee.

2. **Mid-year termination request by Subscriber.** The Subscriber may terminate this Agreement by giving written notice to the Alliance at any time during the calendar year. The Alliance will terminate the Subscriber's service at the earliest practical date in which the necessary Application reprogramming can be completed. There will be no refunds of monies collected for the current year.
3. **Termination as a result of changes to the Application(s).** In the event that the Alliance initiates changes to the Application(s) and/or Subscription fee(s) for which the Subscriber chooses not to continue with the Application Subscription, the Alliance will provide a pro-rata refund of the balance of current year Subscription fee. The refund will be calculated from the date in which the Application changes and/or Subscription fee changes take effect.
4. **Modification.** This Agreement represents the entire Agreement between the Parties. No change, termination or attempted waiver of any of the provisions of this Agreement shall be binding on either of the Parties unless executed in writing by authorized representatives of each of the Parties. The Agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the Parties.
5. **Severability.** In the event any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.

In witness whereof, the Parties have executed this Agreement as of the Effective Date.

**eCityGov Alliance**

**City of Auburn**

\_\_\_\_\_  
Accepted By (Signature)

\_\_\_\_\_  
Accepted By (Signature)

Tyler Running Deer  
Executive Director

<name>  
<title>

Date:

Date: