

RESOLUTION NO. 04-97

A RESOLUTION RELATING TO COMMERCIAL COMPANY ACCESS TO CERTAIN PUBLIC RECORDS AVAILABLE ON THE IBM SYSTEM 36/AS400 COMPUTER SYSTEM.

WHEREAS, Mason County has established certain public records for real property including assessment records on the County's computer system; and

WHEREAS, Access to those records by electronic means will benefit Mason County by allowing employees to better support the general public; and

WHEREAS, Support of commercial access to the computer system will require fees for capital and labor costs; and

WHEREAS, Control of commercial access to the computer system to prevent misuse of information will require formal agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Mason County Commissioners that starting January 1, 1997 a formal agreement for commercial access to the IBM System 36/AS400 computer be implemented before access is granted, and that Mason County is hereby authorized to enter into such agreement in form and substance as is represented by exhibit "A" attached hereto and made a part hereof, and that fees be established as follows:

1997 Cost per access: \$600.00 per year

Direct support by a Mason County employee for public access: \$38.00 per hour

Dated this 28th day of January, 1997.

BOARD OF COUNTY COMMISSIONERS

Mary Jo Cady
Mary Jo Cady, Chairperson

John A. Bolender
John A. Bolender, Commissioner

Cynthia D. Olsen
Cynthia D. Olsen, Commissioner

ATTEST:

Rebecca S. Rogers
Clerk of the Board

APPROVED AS TO FORM:

Mark Platt
Chief Deputy Prosecuting Attorney

C: File
AUDITOR
TREASURER
PUBLIC WORKS
BUDGET DIRECTOR

AGREEMENT FOR COMPUTER ACCESS
between
MASON COUNTY and _____

THIS AGREEMENT is made this _____ day of _____, 199_____, by and between MASON COUNTY, a municipal corporation, hereinafter referred to as the "County", and _____, hereinafter referred to as the "Company".

The parties to this Agreement, in consideration of the mutual covenants and stipulations set forth herein, agree as follows:

1. **TERM OF AGREEMENT.**

The term of this Agreement shall be from January 1, 1997, through December 31, 1997, TWELVE (12) months unless terminated or extended as specified herein.

2. **PURPOSE OF AGREEMENT.**

The Company and the County agree that subject to the terms and conditions that follow, the County will provide remote telecommunications access to the County's central computer screens described and for the consideration set forth herein.

Computer access will be allowed between 8:00 AM and 5:00 PM, Monday through Friday, excluding holidays.

3. **DATA AVAILABLE.**

The County will allow the Company access, by telephone line, to data compiled by the Mason County Treasurer and Assessor and stored in the Mason County computer. This data is specifically limited to the Mason County computer screen, MENU:INQ. The company will limit its use of the data obtained through access to this screen to its operations as a _____, and it will not sell, give, loan, lease or otherwise transfer title, possession, or allow access or use of any of the data or screens by any person, firm, corporation or association without prior written approval of the County. The Company understands that it is only entitled to information that is not expressly exempt from public inspection and copying by Ch. 42.17 RCW, particularly RCW 42.17.310.

4. **RIGHTS IN DATA.**

The County does not convey, nor does the Company obtain, any rights in the computer systems, programs or related documentation owned or furnished by the County for the performance of this Agreement.

5. **PROPRIETARY INFORMATION.**

Proprietary information disclosed by either party to the other for the purposes of this Agreement, which is clearly so identified in writing as proprietary, shall be protected by the recipient in the same manner and to the same degree that the recipient protects its own proprietary information. Such information will be disclosed only to those employees of the recipient requiring access thereto in order to perform this Agreement. Nothing herein shall be construed to require withholding of information which is otherwise discloseable pursuant to RCW 42.17 et. seq.

6. **COMPANY NOT TO HAVE OR USE LIST OF INDIVIDUALS FOR COMMERCIAL PURPOSES.**

The Company agrees, warrants, promises and swears under penalty of perjury that it shall not use or allow others to use directly or indirectly the data, screens, or access thereto as a list or lists of individuals for commercial purposes.

7. **THE COUNTY MAY PRIORITIZE PROVISION OF ACCESS.**

The County may limit, control or prioritize the access described herein to any extent necessary to prevent such from unreasonable disrupting the County's operations and to prevent excessive interference with other essential functions of the County and to the extent necessary to provide access to its public records by other members of the public.

8. **PAYMENT.**

In consideration of the provision of access to the County's computer described herein, the Company shall pay the County, for capital costs, a flat rate of SIX HUNDRED DOLLARS and no/100 (\$600.00) per year for the access line. Billings shall be on a yearly basis and payments are due upon receipt of said bill. During the term of this Agreement, the Company shall pay for any necessary system assistance, maintenance, and training provided by Mason County Information Services Personnel at the rate of THIRTY- EIGHT and no/100 (\$38.00) DOLLARS per hour.

In approximately November, 1997, it is anticipated that the County and the Company will re-negotiate this contract for 1998 with fees based on actual costs of the computer system.

9. **COSTS.**

The Company shall be totally responsible and liable for all costs incurred in the acquisition of its own equipment and software, including telephone lines and other supplemental equipment and the costs of connecting that equipment with the County's equipment.

10. **ADMINISTRATION OF AGREEMENT.**

The County hereby appoints and the Company hereby accepts Russell Johnson or his designee as the County's representative for the purpose of administering the provisions of this Agreement, including the County's right to determine

if contracting obligations are being performed in accordance with the federal, state or local laws and to administer any other right granted to the County under this Agreement.

11. ASSIGNMENT.

The Company agrees that it shall not assign any right or interest in this Agreement without the written permission of the County. Any attempted assignment by the Company without written permission by the County, or its authorized agent, shall be wholly void and totally ineffective for all purposes. Furthermore, the Company and the County agree that neither shall delegate any obligation which he has under this Agreement without the written permission of the other party. Any attempted delegation without written permission shall be wholly void and totally ineffective for all purposes.

12. PUBLICITY.

Neither party shall use the name of the other party in publicity releases or advertising without securing the prior written approval of the other.

13. LIMITATION OF LIABILITY.

The information supplied by the County in the screens described herein is provided on an "as is" basis "with all faults" and the Company's sole remedy in the case of inaccurate information is limited to a refund of an allocable portion of the fee charged therefor.

Nothing contained herein shall be construed to require the County to maintain the information or data on the screens in a more current form that the County shall from time to time determine.

Further, the County shall not be liable for nor be deemed to be in default on account of any failure to perform the services as set forth in Sections 2 and 3 herein, if said failure is due to system backup, scheduled hardware/software maintenance, central computer or peripheral malfunction, strikes, acts of God, utility failures, or any delays not a result of the negligence of the County or their duly appointed agents.

The obligations of the County and the rights and remedies of the Company set forth in this clause are exclusive and in substitution for all the warranties, obligations and liabilities of the County and rights, claims and remedies of the Company against the County expressed or implied arising by law or otherwise with respect to any data provided hereunder, including but not limited to any implied warranty arising from course of performance, courses of dealing or uses of trade, and, any obligation, liability, right, claim or remedy for tort, or for any actual or alleged infringement of patents, copyrights or similar rights of third parties, or for any other direct, incidental or consequential damages.

14. INDEMNIFICATION AND HOLD HARMLESS.

The County understands that Chapter 42.17 RCW imposes various penalties upon an agency for violation of its provisions. The Company further understands that RCW 42.17.260(6) prohibits any public agency or employees from giving, selling, or providing access to lists of individuals for commercial purposes unless specifically authorized or directed

by law. The Company also understands that RCW 42.17.310 exempts from public inspection and copying information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would violate the taxpayers right to privacy or would result in unfair competitive disadvantage to such taxpayer. The Company understands that taxpayers may seek to recover damages for the unreasonable invasion of personal privacy or other rights recognized by Chapter 42.17 RCW and other laws.

The Company specifically and expressly agrees to defend, indemnify, and save harmless the County, its officers, agents and employees from and against any and all suits, claims, actions, losses, costs, penalties and damages arising out of the Company's breach of this Agreement, including attorney's fees and claims by employees of the Company. The Company specifically and expressly waives any immunity under Industrial Insurance, Title 51 RCW, and acknowledges that this waiver was mutually negotiated by the parties herein. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney's fees shall be allowed to the prevailing party.

15. TERMINATION OF AGREEMENT - EVENTS OF DEFAULT.

Without limiting the generality of the foregoing, this Agreement may be terminated by default upon an event of default, which events of default include but are not limited to the following:

- a. If the Company wrongfully uses the data or screens provided by the County.
- b. If the Company copies the data or screens which are subject to restrictions set forth in RCW 42.17.010 et. seq. without written authorization of County.
- c. If the Company has not paid the yearly invoice on any of the sums described in Section 8 of this Agreement within thirty (30) days of billing.
- d. If this Agreement is in conflict with federal or state law, county resolutions or ordinances which are in effect at the time of this agreement or may be imposed in the future.
- e. If the customer uses or attempts to use information provided in such a manner as to violate a taxpayer's right to privacy or to create an unfair competitive disadvantage for a taxpayer.
- f. If there is an impossibility of performance of this Agreement through no fault of any party hereto.
- g. If the Company sells, gives, leases or loans access to the screens or the data contained therein to any person or in any way directly or indirectly allows copies, which are subject to restriction set forth in RCW 42.17.010 et. seq., to be made by any person without the express written approval of the County.
- h. If the Company allows access to the screens or the data contained therein, or any part thereof, to be used as a list of individuals for commercial purposes.
- i. If the Company violates any of the provisions of Section 10 herein.
- j. If the County determines that the Company is, for whatever cause or reason incapable or unable to fulfill the terms of the Agreement, including, but not limited to, those embodied in Section 14, the County may terminate this Agreement upon thirty (30) days written notice to the Company.

16. SCOPE OF AGREEMENT.

This Agreement constitutes the entire Agreement between the County and the Company and supersedes all

proposals, oral or written, and all of the communications between the parties in relation to the subject matter of this Agreement. No other agreement or understanding exists between the County and the Company except as expressly set forth in this instrument. These terms and conditions shall prevail notwithstanding any additional or different terms and conditions of any other document or writing submitted by the Company in respect to the data to be provided hereunder.

17. TERMINATION BY NOTICE.

Any party to this Agreement may terminate the agreement, for any reason, by providing the other party with thirty (30) days prior written notice of its intention to terminate the agreement.

18. VENUE STIPULATION.

This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed to by each party hereto that this Agreement shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action in law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in the courts of competent jurisdiction in Mason County, Shelton, Washington.

19. MODIFICATION.

No change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing, executed by both parties.

20. GENERAL.

a. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

b. The failure of any party to enforce at any time any of the provisions of this Agreement, or to exercise any option which is herein provided, or to require at any time performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to effect the validity of this Agreement, or any part thereof, or the right of any party to thereafter enforce each and every such provisions.

c. If any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not effect other terms, conditions or applications of the agreement.

d. All terms, conditions or applications of this Agreement are declared severable.

e. The parties acknowledge that they have read and understand this Agreement, including any supplements or attachments hereto and do agree thereto in every particular.

f. The remedies of the County in the case of default by the Company are in no way waived by, limited by, or exclusively set forth in this Agreement.

g. The Company shall make its books and records available in a place designated by the County to the County, its agents and attorneys, upon twenty (20) days notice for the purpose of determining if the Company has violated any provision of this Agreement.

MASON COUNTY, WASHINGTON

IN WITNESS THEREOF, the parties have caused this Agreement to be properly executed on this _____ day of _____, 199_____.

DORENE RAE
County Treasurer

MARY JO CADY
Chairperson

DARRYL CLEVELAND
County Assessor

JOHN A. BOLENDER
Commissioner

CYNTHIA D. OLSEN
Commissioner

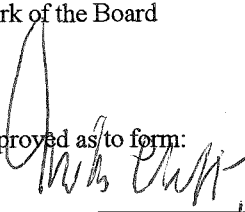
Attest:

COMPANY

Clerk of the Board

By: _____

Title: _____

Approved as to form:


Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF MASON)

On this _____ day of _____, 199_____, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ of _____ to me known to be the individual described herein and who executed the foregoing instrument, and acknowledged that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal affixed this _____ day of _____, 199_____.

NOTARY PUBLIC in and for the
State of Washington, residing at
