

AGREEMENT
BETWEEN
OKANOGAN COUNTY
AND
ISPYFIRE, INC.

THIS AGREEMENT is entered into by and between iSpyFire, Inc. (hereinafter "iSpyFire") and the Okanogan County Sheriff's Office Communications Center (hereinafter "COUNTY"). The purpose of this Agreement is to provide iSpyFire non-exclusive access to Computer Aided Dispatch (CAD) data within the CAD system utilized by COUNTY. The CAD is created and utilized for the benefit of the dispatch center operations. iSpyFire's access to the CAD data will be for commercial for-profit endeavors through contractual relationships with only public safety first responder agencies (Law Enforcement, Fire Protection, Emergency Medical Services). References to iSpyFire shall include iSpyFire's agents, officers, employees, successors and assigns, unless otherwise noted; references to COUNTY shall likewise include COUNTY's elected and appointed officials, agents, officers, employees, successors and assigns, unless otherwise noted. The parties hereby agree as follows:

Section 1. Description of the Agreement. COUNTY operates a communications center facility to provide police, fire, and EMS support communications to certain governmental entities within Okanogan County, Washington under an Interlocal Agreement ("ILA entities"). iSpyFire wishes to utilize COUNTY's CAD data for use with a computer and mobile device application that provides contracted public safety first responder agencies and first responders with access to CAD data (address, notes, authorized comments and map coordinates for call location mapping) in near real time. The intent is to improve public safety response by delivering CAD data to the first responder.

CAD data is collected and documented for the express purpose of achieving CAD related tasks, using practices that best serve COUNTY and the ILA entities.

COUNTY has purchased CAD systems and will continue to operate the dispatch center for the purpose of best achieving the performance objectives and needs of COUNTY and the ILA entities. This agreement shall not be interpreted to contain any restriction upon COUNTY to make operational or software changes, modifications or replacements. COUNTY makes no assurances or guarantees as to COUNTY's future plans relative to the use, upgrade, maintenance, changes to, or replacement of the CAD software employed by COUNTY. In the course of maintaining the CAD systems, COUNTY will make reasonable, good faith effort to inform iSpyFire of planned changes to the CAD systems.

Data accessed by iSpyFire and iSpyFire's subscribers may be used ONLY for public safety purposes by COUNTY authorized public safety agencies. Public safety agencies, first responders,

and any other third party that are not authorized by COUNTY may not receive CAD data from COUNTY.

If iSpyFire learns of subscriber misuse of data for non-public safety purposes or the disclosure of CAD data to unauthorized parties, iSpyFire shall immediately notify COUNTY. If COUNTY learns of subscriber misuse of data for non-public safety purposes, COUNTY will direct iSpyFire in writing to terminate user and/or agency access to CAD data, by terminating the user and/or agency's access to iSpyFire. iSpyFire's failure to comply with COUNTY's directive to terminate access will result in the immediate termination of iSpyFire's connection to COUNTY's network and CAD without penalty to COUNTY.

COUNTY may request modifications to the iSpyFire software if information and data is published inadvertently or in the judgement of COUNTY is found to:

- Create a detrimental risk to the safety of first responders; or
- Violates the privacy rights or reasonable expectations of the public; or
- Releases investigative or tactical information detrimental to the agency or jurisdiction; or
- Other circumstances found to be unacceptable to COUNTY or ILA entities.

If iSpyFire fails to complete requested modifications within thirty (30) days of the written request by COUNTY, this Agreement shall terminate without penalty to COUNTY. COUNTY makes no statement, assurances nor guarantees as to the content, completeness or accuracy of the CAD data once the CAD data has exited the CAD system

Section 2. Nonexclusive Agreement. This Agreement is nonexclusive and does not preclude COUNTY from granting a similar Agreement, right, license, franchise, etc., to other carriers or other persons for telecommunications or any other purpose.

Section 3. Access Fee. In consideration for the provision of an access point to CAD data and the location of equipment on COUNTY property, iSpyFire shall pay COUNTY zero dollars (\$0) per year. Payment shall be due within thirty (30) days of the commencement date of this Agreement and annually thereafter. iSpyFire shall also provide the COUNTY access to the application to view and monitor records owned by the COUNTY.

Section 4. Term. The term of this Agreement is for five years. The commencement date will be the date when the parties execute this Agreement.

Section 5. Termination.

- A. **Termination by Notice.** Either Party may terminate this Agreement by providing 60 days advance written notice to the other Party of the effective date of such termination.
- B. **Termination by Mutual Written Agreement.** This Agreement may be terminated in its entirety at any time by mutual written agreement of the Parties.
- C. **Termination for Breach.** Either Party may terminate this Agreement for material breach of the terms of this Agreement upon 30 days prior written notice to the other party. Such notice shall specify in detail the breach or default claim.

Section 6. Interference. COUNTY has previously entered into Agreements with other entities. iSpyFire acknowledges that COUNTY's communications and CAD operations cannot be negatively impacted by this nor any other agreement. Should the agreed upon access to CAD be suspected of or found to cause any negative impact upon CAD, COUNTY operations, or first responder safety, the access will be immediately terminated. In the event that COUNTY's or any other agencies' operations or safety are negatively impacted, COUNTY and iSpyFire will seek resolution to the negative impacts sufficient to resume iSpyFire operations. If COUNTY and iSpyFire cannot correct the negative impacts within thirty (30) days of the termination of access this agreement shall terminate.

Section 7. Compliance by iSpyFire.

- A. This Agreement is contingent upon iSpyFire obtaining all necessary permits, approvals, and licenses for the proposed business operations. In the event that iSpyFire is unable to obtain and maintain all such permits, approvals, and licenses, iSpyFire may cancel this Agreement without further obligation, by giving thirty (30) days prior written notice to COUNTY.
- B. iSpyFire will satisfy and remain in compliance with the security requirements as specified by the Washington State Patrol and the Criminal Justice Information Security (CJIS) manual.
 - a. CJIS security requirements may evolve and must be met.
 - b. At current requirements are:
 - i. All iSpyFire agents and employees must sign the CJIS Security Addendum.
 - ii. All iSpyFire agents and employees must view the CJIS online Security Training.
- C. Failure to meet these requirements will result in termination of the agreement upon five (5) business days' written notice.

Section 8. Access and Interconnection.

- A. COUNTY shall provide a Virtual Private Network (VPN) access point for iSpyFire to access the CAD system.
- B. iSpyFire will provide COUNTY with agency access to the iSpyFire web application and iSpyFire mobile app for users authorized by COUNTY to monitor CAD data within iSpyFire.

Section 9. Damage to Property. Neither iSpyFire nor any person acting on iSpyFire's behalf shall take any action or permit any action to be done which may impair or damage the property, data, and network security of COUNTY, other ways or other property, whether publicly or privately owned, located in, on or adjacent to the site. In the event that damage is caused by iSpyFire or any person acting on iSpyFire's behalf, iSpyFire shall be responsible for the cost of repair as determined by COUNTY.

Section 10. Notice of Work.

- A. Unless otherwise provided in this Agreement, neither iSpyFire nor anyone acting on iSpyFire's behalf shall commence any work in or about, or upon COUNTY property without 5 working days advance notice to COUNTY, specifically to the Manager.
- B. Software evolves therefore iSpyFire will describe in writing and or illustration the nature of the iSpyFire-to-CAD interface to include but not limited to:
 - Identify each CAD data field that is being accessed
 - Identify each CAD data field exported from the CAD server
 - Identify rules and or logic that starts, limits, and terminates data export from CAD.
- C. Prior to providing a new agency access to County CAD data via the iSpyFire application iSpyFire will submit to COUNTY's point of contact, a written request for confirmation that the agency is an authorized public safety agency.
- D. COUNTY will hold confidential information received by way of section 10 to the extent permitted by law, including but not limited to the Washington Public Records Act, Chapter 42.56 RCW as amended.

Section 11. Maintenance of Facility. iSpyFire shall maintain their equipment in good and safe condition and in a manner that complies with all applicable FCC (Federal Communications Commission), and CJIS security requirements.

The provisions of this paragraph shall survive the expiration, revocation, or termination of this Agreement.

Section 12. Damage to Facility. Unless directly and proximately caused by the willful, intentional, or malicious acts by COUNTY, COUNTY shall not be liable for any damage to or loss of hardware or software.

Section 13. Insurance.

- A. Insurance Term. iSpyFire shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with iSpyFire's operation and use or access to COUNTY's property, data, and network security.
- B. Minimum Scope of Insurance. iSpyFire shall obtain insurance of the types and coverage described below:
 - iSpyFire shall continuously maintain in full force and effect and provide COUNTY with a copy of a policy of commercial general liability insurance with limits of One Million Dollars (\$1,000,000) covering iSpyFire's work and operations upon the Premises.
- C. Minimum Amounts of Insurance. iSpyFire shall maintain the following insurance limits:
 - Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence.
- D. Other Insurance Provisions. The iSpyFire's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect COUNTY. Any Insurance, self-insurance, or self-insured pool coverage maintained by COUNTY shall be excess of the iSpyFire's insurance and shall not contribute with it.

- E. Verification of Coverage. iSpyFire shall furnish COUNTY with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of iSpyFire.
- F. Notice of Cancellation. iSpyFire shall provide COUNTY with written notice of any policy cancellation within two business days of their receipt of such notice.
- G. Failure to Maintain Insurance. Failure on the part of iSpyFire to maintain the insurance as required shall constitute a material breach of this Agreement, upon which COUNTY may, after giving five business days' notice to iSpyFire to correct the breach, terminate this Agreement.
- H. COUNTY Full Availability of iSpyFire Limits. If iSpyFire maintains higher insurance limits than the minimums shown above, COUNTY shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by iSpyFire, irrespective of whether such limits maintained by iSpyFire are greater than those required by this contract or whether any certificate of insurance furnished to COUNTY evidences limits of liability lower than those maintained by iSpyFire.

Section 14. General Indemnification. iSpyFire hereby agrees, covenants not to bring suit and agrees to indemnify, defend and hold harmless COUNTY, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by iSpyFire's own employees to which iSpyFire might otherwise be immune under Title 51 RCW, arising from injury, sickness, or death of any person or damage to property which arises out of iSpyFire's use or access to COUNTY's property, data, and network security or from any activity, work, or thing done, permitted, or suffered by iSpyFire involving COUNTY's property, data, and network security, except only such injury or damage as shall have been occasioned by the sole negligence of COUNTY. Inspection or acceptance by COUNTY of any hardware or software installed by iSpyFire shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation, provided, that iSpyFire has been given prompt written notice by COUNTY of any such claim, has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim.

In the event that iSpyFire refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of iSpyFire, then iSpyFire shall pay all of COUNTY's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of COUNTY, including reasonable attorneys' fees of recovering under this indemnification clause.

The obligations of iSpyFire under the indemnification provisions of this paragraph shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of COUNTY, its officers, agents, employees or contractors. The provisions of this section, however, are not to be construed to require iSpyFire to hold harmless, defend or indemnify COUNTY as to any claim, demand, suit or action which arises out of the sole negligence of COUNTY. It is further specifically and

expressly understood that the indemnification provided herein constitutes iSpyFire's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. In the event that any court of competent jurisdiction determines that this contract is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

The provisions of this Section shall survive the expiration, revocation, or termination of this Agreement.

Section 15. Assignments or Transfers of Grant. This Agreement shall run with the property and shall be binding on and inure to the benefit of the parties, their respective successors, personal representatives and assigns. iSpyFire will not assign or transfer this Agreement or sublet all or any portion of the premises utilized without the prior written consent of COUNTY, which consent will not be unreasonably withheld, delayed or conditioned; provided, however, iSpyFire may assign or sublet without COUNTY's prior written consent to any party controlling, controlled by or under common control with iSpyFire or to any party which acquires substantially all of the assets of iSpyFire.

Section 16. Safety requirements. iSpyFire in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All hardware, software and connections, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. COUNTY reserves the general right to see that iSpyFire's system is constructed and maintained in a safe condition

Section 17. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorney's fees, including fees upon appeal of any judgment or ruling.

Section 18. Fire and Other Casualty. In the event the Facilities are destroyed or damaged by fire, earthquake or other casualty to such an extent as to render the same untenable by iSpyFire in whole or in a substantial part, iSpyFire shall have the option to terminate the Agreement immediately without further liability or obligation to COUNTY.

Section 19. Condemnation. In the event of the taking of the Facilities by condemnation or otherwise by any governmental, state or local authority, this Agreement shall be deemed canceled as of the time of taking possession by said authority.

Section 20. Non-Waiver of Breach. The failure of COUNTY to insist upon strict performance of any of the covenants and Agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenant, Agreement or option, or any other covenant, Agreement or option.

Section 21. Cancellation of Prior Agreements and Agreements. This Agreement supersedes all previous Agreements and Agreements, whether verbal or in writing or otherwise, between the parties which are hereby canceled.

Section 22. Non-Severability. Each term and condition of this Agreement is an integral part of the consideration given by each party and as such, the terms and conditions of this Agreement are not severable. If any section, sentence, clause or phrase of this Agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, this Agreement shall terminate unless suitable replacement terms can be agreed to by the parties.

Section 23. Merger. This Agreement constitutes the entire understanding and Agreement between the parties as to the subject matter herein and no other Agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Agreement.

Section 24. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. 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 Okanogan County Superior Court, Okanogan County, Washington, unless the parties agree in writing to an alternative dispute resolution process.

Section 25. Assignment. Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

Section 26. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Consultant.


Section 27. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

To COUNTY:	To iSpyFire:
Chief Deputy of Special Operations	_____
123 N 5 th Ave, Rm 200	_____
Okanogan, WA 98840	_____

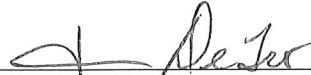
Section 27. Compliance with Laws. iSpyFire agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to iSpyFire's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

IN WITNESS WHEREOF, the parties through their authorized representatives have executed in duplicate this Agreement on the dates set out below.


Dated at Okanogan, Washington this 20th day of August 2017
2020

ATTEST:

Laleña Johns, Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON**



Jim DeTro, Chairman



Chris Branch, Member



Andy Hover, Member

APPROVED AS TO FORM:

David Gecas, Chief Civil Deputy

iSpyFire, Incorporated

Name & Position

Signature

Date

Section 27. Compliance with Laws. iSpyFire agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to iSpyFire's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

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2019 LS



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**BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON**

[Signature]
Jim DeTro, Chairman

[Signature]
Chris Branch, Member

[Signature]
Andy Hover, Member

APPROVED AS TO FORM:

[Signature]
David Gecas, Chief Civil Deputy

iSpyFire, Incorporated

Cy Soudley, CEO
Name & Position

[Signature]
Signature

09-10-19
Date

