

JAIL FACILITY USE AGREEMENT

This Jail Facility Use Agreement ("**Agreement**") is by and between Whatcom County ("**County**"); the City of Bellingham ("**Bellingham**"); the City of Blaine ("**Blaine**"); the City of Everson ("**Everson**"); the City of Ferndale ("**Ferndale**"); the City of Lynden ("**Lynden**"); the City of Nooksack ("**Nooksack**"); and the City of Sumas ("**Sumas**") pursuant to RCW Chapters 70.48 and 39.34. The County Executive, or designee, will serve as the administrator of the Agreement pursuant to RCW 39.34.

RECITALS

- A. The County is charged by State law with the operation and maintenance of the Whatcom County Jail and related correctional facilities ("**Jail**"), presently located on Prospect and Division Streets in Bellingham, (hereinafter, the "**Existing Jail**").
- B. The Existing Jail requires additional capacity and improved infrastructure in order to safely incarcerate the combined volume of city and county inmates currently and in the future. The city governments party to this Agreement (hereinafter, collectively, the "**Cities**") desire to continue use of the Jail for the detention of city inmates.
- C. The County intends to build, own and operate a new Jail located on LaBounty Road in Ferndale consisting initially of approximately 521 beds in phase 1, with an additional 128 available in phase 2, along with demolition of the existing jail at Prospect Street, and the construction of holding space and a sally port for inmate transfer at the Whatcom County Courthouse (hereinafter, the "**New Jail**"), to serve the needs of the community for the foreseeable future.
- D. The parties agree that the community and its taxpayers are best served by a cooperative, collective approach to public infrastructure, including the New Jail, through joint planning and financing, to maximize efficiency and promote economies of scale.
- E. In April 2015, the Whatcom County Council will consider a Resolution which finds that the Existing Jail cannot meet the demand of the combined volume of City and County inmates. The Resolution will place a proposition before Whatcom County voters that, if passed, would authorize additional sales and use tax at the rate of 0.2% to be used for the construction, maintenance, and operation of jail facilities, and for adult corrections programs including medical and behavioral health facilities and programs, all pursuant to RCW 82.14.450, and for other legal purposes (hereinafter, the "**Sales Tax Measure**").

- F. The parties intend to enter into this agreement in 2015, and Whatcom County will propose the Sales Tax Measure to the voters to authorize a 0.2% sales tax pursuant to RCW 82.14.450 (a copy of which statute, in its form as of the date of this Agreement, is attached hereto as **Exhibit A**), that will provide for jail construction funds and will service limited tax general obligation bonds to be issued by the County for the construction of the New Jail, together with any refunding bonds which may be issued by the County to refund the original bonds (hereinafter, the "**Bonds**"), and fund jail operations and related public safety requirements as permitted by law and consistent with this Agreement. The negotiation and execution of this Agreement is intended to yield a definitive, long-term agreement to globally address jail financing and certain operational matters related to the Jail.
- G. The parties to this Agreement are willing to make a long-term commitment and provide financial concessions in order to obtain access to the Existing and New Jail. Subject to the terms and conditions herein, the County agrees to make the Existing Jail and New Jail and jail-related programs available for City inmates.
- H. The parties hereto also desire to include within this Agreement the procedures for determining the costs associated with housing inmates within the Existing Jail and New Jail, the scope and level of service to be provided by the County, procedures for billing of the cost of services, the methodology for payment by the Cities to the County for the actual maintenance and operating costs of the Existing Jail and New Jail, as set forth in Exhibit B, and consistent with the Cities' usage rate of the Existing Jail and New Jail, and the County's contribution to the maintenance and operating cost of the Existing Jail and New Jail consistent with the County's usage rate of the Existing Jail and New Jail.
- I. As part of the **Existing Jail**, the County owns and operates an interim adult correctional facility and behavioral health triage center on Division Street in Bellingham. The County may sell or transfer the Division Street property when the **New Jail** is completed and operational. If sold or transferred, the resulting value and proceeds from this transaction will be applied by the County to facilities and programs that support the goals of treating adults with behavioral health problems. Further, the goals of these programs are to reduce incarceration rates of people with behavioral health problems.

NOW, THEREFORE, in consideration of the foregoing, the parties agree and contract as follows:

AGREEMENT

1. **NEW AGREEMENT.** This Agreement shall become effective when all parties identified above have duly executed this Agreement and the conditions set forth in paragraph 2, below, have occurred. Until this Agreement becomes effective, the existing jail use agreements between and among the parties (or between any of the parties) shall remain in force and effect pursuant to the terms thereof, subject to the stated length of term in each of those agreements. Once this Agreement becomes effective as described in paragraph 2, it shall entirely replace and supersede any and all previous agreements between the parties regarding use of the Existing Jail.

2. **SALES TAX MEASURE AND EFFECTIVE DATE OF AGREEMENT.** The County will place the Sales Tax Measure on the August 4, 2015 Primary Election ballot, or if necessary, the November 3, 2015 General Election ballot. In the event that the Sales Tax Measure fails to pass on either election, this Agreement shall be immediately null and void without further action by the parties. In the event the Sales Tax Measure passes by approval of the voters at either election, this entire Agreement will become fully effective and immediately binding on the parties on the date the election is certified by the Whatcom County Auditor (the "Effective Date"), consistent with its terms, without further action or consent by the parties hereto. Of the two tenths of a percent authorized upon approval of the Sales Tax Measure, one tenth of a percent shall be limited to the life of the bonds, and shall expire thereafter in coordination with Parties of this agreement and the Washington State Department of Revenue ("DOR"), and any ballot measure placed on the ballot shall so indicate. When the bonds are fully repaid or at the conclusion of 30 years from the initial bond issuance, whichever occurs first, all parties shall take the steps necessary to terminate one tenth of a percent of the sales tax levy referenced in this Agreement.

PART 1-JAIL FINANCING

3. **JAIL FUNDING SOURCES.** Upon voter approval of the Sales Tax Measure, the parties agree that all funds derived therefrom will be distributed to the County and the various incorporated cities within the County by DOR according to the distribution formula in state law of 60% to the County, and 40% to the cities on a pro rata basis of the population within incorporated cities. For the years 2016, 2017, and 2018, upon receipt of the distribution of this portion of the sales tax from the DOR, each City shall remit to the County Treasurer no later than the twentieth day of the following month, 75% of the distribution it has just received. These remittances will be deposited by the Treasurer, along with the necessary County funds, into the New Jail Project Fund for use as payment toward costs of the construction of the New Jail, payment of the debt service on interim financing, and on debt service on the Bonds sold to construct the New Jail. Each remittance will be accompanied by a copy of the distribution notification from the DOR. For 2019 and the years following, until full repayment of the Bonds that will be sold to finance the New Jail construction, each city shall remit to the County Treasurer monthly an amount to be determined by the following formula: $\$147,233.08$ ($\$1,766,797$, representing the cities' aggregate share of the annual bond payment, divided by 12) times that city's percentage share of the total city jail bed day use over the previous 5 years. Each year, each city's percentage share of the total city share of the jail bond payment will be determined by its corresponding average of the previous 5 years of jail bed day use. The jail bed day use information will be set by the County using jail population data provided through December of the previous year by the County Sheriff's office. The County Treasurer shall deposit the Cities' funds into the New Jail Project Fund, along with County funds necessary to repay and service the Bonds sold to construct the New Jail. The sales tax measure funds the Cities receive by the last business day of every month shall be delivered in the amounts described above to the County Treasurer by the twentieth day of the following month by check or Automated Clearing House (ACH) transaction. The Cities agree that payments required under this Agreement will be made as set forth herein, and are not subject to any claims or disputes relating to jail operations or any other terms of this agreement.

4. **NEW JAIL PROJECT FUND.** Whatcom County agrees to utilize the New Jail Project Fund ("Fund") to construct and pay for the New Jail. The New Jail Project Fund shall consist of "**Total Revenues,**" defined as **(1)** all bond proceeds and savings from bond

refunding; **(2)** a portion of revenue received from the countywide Sales Tax Measure necessary to repay and service the Bonds; **(3)** all contributions and grants provided for the construction of the New Jail.

- a. The parties acknowledge that the County intends to issue Bonds not later than 2018 in reliance upon the commitments and agreements of the parties reflected in this Agreement. The Bonds, when issued, will have a term not to exceed thirty (30) years, and may be refinanced by the County, without limitation, other than the limitation regarding the total duration of thirty (30) years. The maximum total duration of the Bonds, including any refunding or refinancing activity, shall be thirty (30) years. All references to Bond payments include any refunding bonds that may be issued to refinance the Bonds initially issued. The estimated amounts of the total Bond proceeds are \$97,000,000 and the estimated interest rate is five (5) percent over a period of 30 years. The resulting annual Bond payment amounts are calculated at \$6,309,989. If after the issuance of the Bonds the resulting total annual Bond payment is higher than \$6,309,989, the City share of the annual Bond payment will be set to a level equal to 28% of the annual Bond payment and the County share will be 72%, however, the total City share of the Annual Bond payment will not exceed \$1,850,933. The County will use debt structures that provide for the opportunity for early repayment of the Bonds no later than 10.5 years after issuance.
- b. The net proceeds derived by the County from the sale of the Bonds and any savings from future refunding shall be deposited into the New Jail Project Fund and used only for expenses related to the construction of the New Jail, including those pre-construction costs incurred by the County after January 1, 2015, the demolition of the existing jail at Prospect Street, the construction of Courthouse holding space and sally port for inmate transfers and all related soft and hard costs of construction. The total estimated costs of the New Jail project is estimated at \$97,000,000. The costs of approximately \$7,000,000 incurred by the County for the purchase and analysis of the LaBounty property, expended prior to January 1, 2015, will not be calculated into these total project costs nor used as a basis for determining Bond payments. Once the New Jail building project is complete, any remaining Bond proceeds will be used only as allowed by the bond documents.
- c. The County also intends to construct new facilities housing the Sheriff's Office facilities adjacent to the New Jail. The proceeds from the Sales Tax Measure, jail use charges, and other revenue identified in this Agreement will not be used to pay for the design and construction costs of the Sheriff's Office facility anticipated and planned by the County. The County will use other County revenue and resources for the construction and operation of the anticipated Sheriff's Office facilities. If the County issues a single Bond for both the New Jail and Sherriff's Office facilities the County will ensure that there is a clear delineation of issuance costs and debt service allocable to the New Jail and the Sheriff's Office facilities separately.
- d. On an annual basis, the County shall provide a detailed revenue and expense report that accounts for the activity of the Existing and New Jail and all related County jail funds.

PART II-JAIL OPERATIONS

5. **CONTROL OF JAIL.** The Cities acknowledge the County's statutory responsibility for, ownership of, and operational control over the Existing Jail and New Jail. The County shall administer the jail in accordance with the ordinances, policies, procedures, rules, and regulations of the County (including any emergency security rules imposed by the Sheriff), and in accordance with the rules and regulations of any agency of the State of Washington empowered to make rules governing the administration of county corrections facilities. The Cities hereby consent and agree that inmates committed to the Existing Jail and New Jail by the Cities are subject to all rules and regulations applicable to County inmates incarcerated therein, including but not limited to all terms and conditions of this Agreement. It is further understood by the parties that the County shall be solely responsible for operational decisions regarding the appropriate level of security, inmate management, and housing of all inmates. The Sheriff will reasonably consult with the Chiefs of Police of the parties to this Agreement regarding issues concerning city inmates. The Sheriff, at least once a year, on or around June 30th to coincide with the Parties' budget processes, will convene a meeting of the parties to this Agreement to discuss the operational and financial performance of the Existing Jail and New Jail, including per diem rates and fees.

6. **AVAILABILITY OF JAIL FACILITIES AND SERVICES PROVIDED.** The County agrees to provide inmate services for gross misdemeanor or misdemeanor cases initiated by the Cities and felony cases referred to the County for those offenses alleged to have been committed by adults within the Cities. The County shall provide inmate services consistent with the *standards* contained in Exhibit B. If circumstances require the County to reduce services to all jurisdictions, including Whatcom County, such reduction in services shall be made uniformly among the County and all Cities for gross misdemeanants and misdemeanants, and the County shall provide reasonable notice to the Cities of its intention to reduce service levels in any correction program. The uniform reduction in service provided herein shall not apply to felony cases and inmates. Wherever possible, the County will provide a minimum of thirty (30) days' notice of such reductions unless specific circumstances require more immediate action.

7. **CAPACITY OPERATIONS.** The New Jail will be made available to parties to this Agreement, and if capacity is available, to non-participating entities. The County will not accept non-Party inmates at any times the Sheriff has determined the New Jail is at capacity, except as required by law or for the safety of the Whatcom County community, in which event the Sheriff will seek alternative accommodation for any inmates as soon as is reasonably practicable. In the event the New Jail reaches capacity, the Parties shall in good faith pursue joint contracting for outsourcing or other alternative accommodation.

8. **INMATE CONFINEMENT FEES AND CHARGES FOR SERVICES.** The parties to this Agreement shall pay the County for bed space at the established daily rates and for services provided as set forth in Exhibit B to this Agreement, which is incorporated herein by this reference. Charges for services rendered shall be verified as they accrue, and shall be paid within thirty (30) days of the issuance of each month's final invoice. The per diem bed rate/booking costs for each correction program shall be established by the County consistent with the adopted budget for each program area during the contract year. All Parties to this agreement, including the County, will pay the same rates and fees. All fees for service charged to the parties to this Agreement shall ultimately be based on the actual cost of service, with subsequent adjustment, if necessary, and limited to the amount necessary to

reimburse the County for services provided. The total amount charged to each city annually shall not exceed the total amount of each city's use based on the city's jail usage divided by total jail usage multiplied by the total actual cost of operating the jail. This formula does not include any non-routine or extraordinary medical costs as referenced in Exhibit B. Disputes as to the appropriate fees for service will be subject to the Venue and Dispute Resolution provision set forth below.

9. **DETERMINATION OF CASE STATUS.** The Prosecuting Attorney shall have the sole authority to determine which felony arrest cases submitted by the Cities shall be charged as felonies and which as gross misdemeanors or misdemeanors. The Cities shall not be responsible for any case charged as a felony, following determination of case status by the Prosecuting Attorney, except Cities will be responsible for the cost of non-routine services provided by outside medical providers administered prior to sentencing for felony offenders arrested by City law enforcement officers as provided in RCW 70.48.130, following the efforts by the County to reduce medical costs as set forth in Exhibit B. If the determination is made by the Prosecuting Attorney that a case should be charged as a gross misdemeanor or misdemeanor, such cases shall be referred to the appropriate City Attorney for filing in the Municipal Court with inmate services charged to the City. Any case originally charged by the Prosecutor as a felony and later plea bargained or adjudicated to a gross misdemeanor or misdemeanor shall not require compensation by the Cities. If a determination is made by the Prosecuting Attorney that a City case originally charged as a gross misdemeanor or misdemeanor will be charged as a felony, then all inmate services will be charged to the County.

10. **INMATES DEFINED**

- a. City Inmate. As used herein, "City Inmate" shall mean those inmates charged in municipal courts of the Cities, those inmates arrested by a city law enforcement officer while held prior to charging or to release without charges, or those inmates who are originally arrested for felony offenses and are referred to the appropriate City Attorney for filing in Municipal Court as described above.
- b. County Inmate. As used herein, "County Inmate" shall mean those inmates originally charged in Whatcom County District Court on gross misdemeanor and misdemeanor offenses, those inmates arrested by the County Sheriff while held prior to charging or to release without charges, and persons arrested for, or charged with, any felony offense charged in Whatcom County Superior Court or are held by magistrate warrant.
- c. Third Party Inmates. For the purposes of this Agreement, County Inmates and City Inmates shall not include those inmates who are committed to the Jail by entities that are not a party to this Agreement, or other inmates arrested by state and federal agencies.
- d. Material Witnesses Held In Jail. Inmate days arising from a material witness warrant shall be allocated to the party issuing the material witness warrant.

11. **BILLING INFORMATION.** The County shall provide each City with an itemized monthly billing report for each service area. The monthly billing report shall include the dates used in computing the fees and the initiation and, if available, release date for each

corrections program, with adjustments made for any temporary releases that may occur within the time frame of the specific incarceration. Calculations will also include the application of good time sentence reductions as appropriate.

12. **ASSIGNMENT.** The County shall provide at least 30 days' prior notice to the parties of its intent to assign or delegate duties under this Agreement, specifying which duties it intends to assign or delegate and the name and address of the party to whom it intends to assign or delegate.

13. **ARREST WARRANT OR CITATION.** City law enforcement officers placing inmates in the Jail shall, in every instance, furnish an arrest warrant, probable cause affidavit, citation or other charging document to the County Corrections Deputy on duty at the time.

14. **TRANSFER OF CUSTODY.** When custody of a City Inmate is transferred to the County, the City Inmate shall be subject to all applicable rules, regulations, and standards governing the operation of the Jail, including any emergency security rules imposed by the Jail administrator, subject to applicable law. For the purposes of this Agreement, "Custody" shall be defined as the point in time at which Jail staff accepts physical custody and control of an inmate. Any City law enforcement officer delivering an inmate to the Jail shall comply with all rules and regulations of the County Jail.

15. **TRANSPORTATION.** Each City shall be solely responsible for transportation of its inmates to the Jail for initial booking and to all court appearances in its municipal court. Cities may contract with the Sheriff to provide custody and/or transportation services for court appearances.

16. **MEDICAL CARE AND COSTS.** All inmates shall receive medical, mental health, and dental treatment when medically necessary to safeguard their health while in custody as required by law. Medical costs shall be allocated per state law or by agreement between the City and the County. If there is a difference between state law allocation of such costs and an agreement between the City and the County, the agreement shall control.

17. **CITY ACCESS TO INMATES.** All City law enforcement officers and defense attorneys shall have the right to interview City Inmates at any time inside the confines of the Jail, subject to Jail security rules and regulations. Interview rooms and appropriate communication technology will be made available to City law enforcement officers and defense attorneys as available.

18. **POSTING OF BAIL.** The County agrees to act as agent for Cities with respect to bail and/or bail bonds posted by inmates to secure their appearance and compliance with conditions of release in the various municipal courts. The County will deliver bail bonds or money posted for inmates to the Municipal Court in a timely manner. Performance bonds will not be accepted by the County, but must be posted directly with the Court of Jurisdiction.

19. **JAIL ALTERNATIVE PROGRAMS.** Inmates judged to be eligible for Jail Alternative Programs by the sentencing Judge may be permitted to participate in those programs at the discretion of the Sheriff or designee. Such programs may include but will not be limited to In Custody and Out of Custody Work Crews, Work or School Release and Electronic Home Monitoring/Detention. The County will make jail alternative programs available to City inmates to the same extent they are made available to County inmates.

20. **RELEASE OF CITY INMATE FROM COUNTY JAIL.** No City Inmate confined in the Jail shall be released therefrom, except by order of the court in those matters in which said courts have jurisdiction. The Sheriff may in his or her discretion transfer inmates to another facility as necessary to effectively operate the Jail.

21. **RECORD KEEPING.**

- a. Informational Project Updates. Prior to and during the construction of the New Jail, the County and its Project Manager will provide reasonably regular updates to the parties to this Agreement.
- b. Form of Records. The County agrees to maintain a system of record keeping relative to the booking and confinement of each City Inmate in such style and manner as equivalent to County records pertaining to County Inmates.
- c. City Access to Records. Records of services provided to City Inmates shall be available for review by the applicable City, unless their release is expressly prohibited by applicable law concerning the confidentiality of medical records (including the federal Health Insurance Portability and Accountability Act, "HIPAA"). The parties may enter business associate agreements under the HIPAA as necessary to implement the intent of this Agreement.
- d. Jail Bed-Day Utilization Reporting. At least quarterly the County shall report to the parties the actual number of inmate days utilized by each party in the previous quarter, and the total number of actual inmate days.

22. **INDEMNIFICATION.**

- a. County Indemnification. The County shall indemnify and hold harmless the other parties to this Agreement, their officers, agents, and employees from any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, by any reason of or arising out of any intentional or negligent act or omission of the County, its officers, agents and employees, or any of them, relating to or arising out of the performance of services pursuant to this Agreement. In the event that any such claim, action, loss or damages is brought against the other parties to this Agreement, the County shall defend the same at its sole cost and expense, including attorney fees.
- b. City Indemnification. Each City party to this Agreement shall indemnify and hold harmless the County and its officers, agents, and employees from any and all claims, actions, suits liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason or arising out of any intentional or negligent act or omission of the indemnifying City, its officers, agents, and employees, or any of them relating to or arising out of the performance of service pursuant to this Agreement. In the event that any such claims, action, loss or damages is brought against the other parties to this Agreement, the indemnifying City shall defend the same at its sole cost and expense, including attorney fees.

23. **TERM.** The life of the Bonds shall not be more than 30 years in duration from the date of their issuance. Until the bonds have been repaid, this Agreement shall not terminate. Following repayment of the Bonds, the provisions in this agreement regarding distribution of sales tax proceeds from the cities to the County shall no longer have any effect. After the bonds have been repaid, the Cities shall be entitled to receive and keep 40% of the .1% of Sales Tax Revenue that remains in effect. The remainder of this Agreement shall remain in effect and shall only be terminable by any party to this Agreement, as to that Party's participation in the Agreement, on one (1) year's written notice to each of the other parties to this Agreement. This Agreement may be modified in writing by mutual agreement of all the parties.

24. **SURVIVAL.** The provisions of paragraphs 25 and 26 shall survive the termination or expiry of this Agreement.

25. **VENUE AND DISPUTE RESOLUTION.** No party to this Agreement shall have standing to dispute the County's use of sales tax revenues for Bond Payments so long as the County uses the sales tax revenue consistent with this Agreement. This paragraph establishes the sole and exclusive remedy for disputes arising under this Agreement, except as otherwise set forth herein. If a dispute arises as to the administration of this Agreement between any City party to this Agreement and the County, such dispute shall be progressively resolved in the following manner:

- a. Through negotiations between the City and the County's respective contacts.
- b. Through negotiations between the City's Mayor and the County Executive.

In the event that the City and the County do not reach agreement within 90 days of commencing negotiations, the matter will be submitted to binding arbitration. The City and the County may mutually agree to extend the negotiation period. If the City and the County cannot agree upon the selection of an impartial arbitrator within fourteen days of a written request for arbitration by either the City or the County, the arbitrator shall be selected as provided in the Superior Court Mandatory Arbitration Rules by a judge of the Superior Court of Skagit County. The arbitration shall be conducted pursuant to the Superior Court Mandatory Arbitration Rules.

26. **NO THIRD PARTY BENEFICIARIES.** This Agreement is not intended to benefit any person, entity or municipality not a party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as beneficiary of this Agreement. This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, any agent, contractor, subcontractor, consultant, volunteer, or other representative of either party. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the parties hereto shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other party hereto.

27. **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, 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 extent and purpose the terms and conditions of this Agreement are declared severable.

28. **COMPLIANCE WITH LAWS.** The parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement. The parties shall obtain and comply with any and all necessary permits, approvals, consents and notice from or to all applicable jurisdictions prior to commencing any work or action related to this Agreement. The parties to this Agreement reserve all rights afforded under RCW 39.34.180 in the form enacted as of January 1, 2015.

29. **CAPTIONS AND COUNTERPARTS.** The captions in this Agreement are for convenience and reference only, and do not define, limit, or describe the scope or intent of this Agreement. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute one Agreement.

30. **NO SEPARATE LEGAL ENTITY.** This Agreement establishes a cooperative undertaking, and it is not the intention of the parties to create a new or separate legal entity by this Agreement. This Agreement does not establish or create a joint venture or partnership between the parties, and no party shall be responsible for the liabilities and debts of the other parties hereto.

31. **INTEGRATED AGREEMENT.** This is an integrated Agreement. Neither party has relied on any representation other than those expressly set forth herein in entering this Agreement.

32. **NEUTRAL AUTHORSHIP.** Each of the terms and conditions of this Agreement have been reviewed and negotiated with resort to legal counsel, and represents the combined work product of the parties hereto, and this Agreement shall not be interpreted for or against any Party hereto based upon authorship. The Parties represent that they have had a full and fair opportunity to seek legal advice with respect to the terms of this Agreement, and have either done so or have voluntarily chosen not to do so. The Parties represent and warrant that they and their authorized representatives executing this Agreement have fully read this Agreement, that they understand its meaning and effect, and that they enter into this Agreement with full knowledge of its terms. This Agreement contains terms and conditions agreed upon by the Parties. The Parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. No change or addition to this Agreement shall be valid or binding upon the Parties unless such change or addition is in writing, executed by all the Parties.

The Parties agree that during the performance of this Agreement no person shall, on the basis of race, creed, national origin, sex, marital status, age, religion, ethnicity, or the presence of any sensory, mental or physical handicap, be excluded from services which are within the scope of this Agreement and within the reasonable ability of the County to provide. The Parties shall not discriminate against any employee or applicant for employment for the above reasons; provided, the prohibition against discrimination in employment because of handicap shall not apply if the particular disability, with reasonable accommodation, prevents the proper performance of the work involved.

The Parties agree to aid and assist the other in accomplishing the objectives of this Agreement.

This Agreement shall be binding upon the Parties, and their successors and assigns.

33. **FURTHER ACTS.** The Parties agree to take such further actions and to execute documents as in their reasonable judgment may be necessary or desirable in order to carry out the terms of, and complete the transactions contemplated by, this Agreement.

34. **AGREEMENT CONTACT.** The County's initial contact for this Agreement shall be the County Executive. The Cities' initial contact shall be the Mayor of each respective city. The Parties to this Agreement may designate new contacts by providing written notice to all the other Parties.

IN WITNESS WHEREOF, the County and the Cities of Whatcom County have executed this Inter-local Agreement as of the date and year last written below.

ENTERED INTO this _____ day of _____, 2015.

WHATCOM COUNTY

Approved as to form:

Chief Civil Prosecuting Attorney

Executed this _____ day of _____, 2015 for WHATCOM COUNTY.

Jack Louws, County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this _____ day of _____ 2015, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof NOTARY PUBLIC in and for the State of Washington, residing at _____. My commission expires _____.

CITY OF BELLINGHAM

Kelli Linville, Mayor

Attest:

Finance Director

Approved as to form:

Office of the City Attorney

STATE OF WASHINGTON)

) ss

COUNTY OF WHATCOM)

On this _____ day of _____ 2015, before me personally appeared Kelli Linville, to me known to be the Mayor of Bellingham, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof _____ NOTARY PUBLIC in and for the State of Washington, residing at _____ . My commission expires _____ .

CITY OF BLAINE

Harry Robinson, Mayor

Attest:

Finance Director

Approved as to form:

Office of the City Attorney

STATE OF WASHINGTON)

) ss

COUNTY OF WHATCOM)

On this _____ day of _____ 2015, before me personally appeared Harry Robinson, to me known to be the Mayor of Blaine, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof _____ NOTARY PUBLIC in and for the State of Washington, residing at _____. My commission expires _____.

CITY OF EVERSON

John Perry, Mayor

Attest:

Finance Director

Approved as to form:

Office of the City Attorney

STATE OF WASHINGTON)

) ss

COUNTY OF WHATCOM)

On this _____ day of _____ 2015, before me personally appeared John Perry, to me known to be the Mayor of Everson, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof _____ NOTARY PUBLIC in and for the State of Washington, residing at _____. My commission expires _____.

CITY OF FERNDALE

Gary Jensen, Mayor

Attest:

Finance Director

Approved as to form:

Office of the City Attorney

STATE OF WASHINGTON)

) ss

COUNTY OF WHATCOM)

On this _____ day of _____ 2015, before me personally appeared Gary Jensen, to me known to be the Mayor of Ferndale, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof _____ NOTARY PUBLIC in and for the State of Washington, residing at _____. My commission expires _____.

CITY OF NOOKSACK

James Ackerman, Mayor

Attest:

Finance Director

Approved as to form:

Office of the City Attorney

STATE OF WASHINGTON)

) ss

COUNTY OF WHATCOM)

On this _____ day of _____ 2015, before me personally appeared John Ackerman, to me known to be the Mayor of Nooksack, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof _____ NOTARY PUBLIC in and for the State of Washington, residing at _____. My commission expires _____.

CITY OF SUMAS

Bob Bromley, Mayor

Attest:

Finance Director

Approved as to form:

Office of the City Attorney

STATE OF WASHINGTON)

) ss
COUNTY OF WHATCOM)

On this _____ day of _____ 2015, before me personally appeared Bob Bromley, to me known to be the Mayor of Sumas, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof _____ NOTARY PUBLIC in and for the State of Washington, residing at _____. My commission expires _____.

EXHIBIT A

RCW 82.14.450

Sales and use tax for counties and cities.

(1) A county legislative authority may submit an authorizing proposition to the county voters at a primary or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. The rate of tax under this section may not exceed three-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(2) (a) A city legislative authority may submit an authorizing proposition to the city voters at a primary or general election and; if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. The rate of tax under this subsection may not exceed one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax. A city may not begin imposing a tax approved by the voters under this subsection prior to January 1, 2011.

(b) If a county adopts an ordinance or resolution to submit a ballot proposition to the voters to impose the sales and use tax under subsection (1) of this section prior to a city within the county adopting an ordinance or resolution to submit a ballot proposition to the voters to impose the tax under this subsection, the rate of tax by the city under this subsection may not exceed an amount that would cause the total county and city tax rate under this section to exceed three-tenths of one percent. This subsection (2)(b) also applies if the county and city adopt an ordinance or resolution to impose sales and use taxes under this section on the same date.

(c) If the city adopts an ordinance or resolution to submit a ballot proposition to the voters to impose the sales and use tax under this subsection prior to the county in which the city is located, the county must provide a credit against its tax under subsection (1) of this section for the city tax under this subsection to the extent the total county and city tax rate under this section would exceed three-tenths of one percent.

(3) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county.

(4) The retail sale or use of motor vehicles, and the lease of motor vehicles for up to the first thirty-six months of the lease, are exempt from tax imposed under this section.

(5) One-third of all money received under this section must be used solely for criminal justice purposes, fire protection purposes, or both. For the purposes of this subsection, "criminal justice purposes" has the same meaning as provided in RCW 82.14.340.

(6) Money received by a county under subsection (1) of this section must be shared between the county and the cities as follows: Sixty percent must be retained by the county and forty percent must be distributed on a per capita basis to cities in the county.

(7) Tax proceeds received by a city imposing a tax under this section must be shared between the county and city as follows: Fifteen percent must be distributed to the county and eighty-five percent is retained by the city.

[2010 c 127 § 1; 2009 c 551 § 1; 2007 c 380 § 1; 2003 1st sp.s. c 24 § 2]

EXHIBIT B

COST METHODOLOGIES, FORMULAS, AND SERVICE STANDARDS

1. As set forth in Section 8 of this Agreement, the Parties will be notified by the County by June 30 of each year of the estimated rates and fees to be charged in the next year, and of the formula to be used for the calculations.
 - a. All parties to this Agreement will pay the same rates and fees. The final rates and fees will be determined following adoption of the County Budget by the County Council, and will be provided to the parties with the first monthly statement in the New Year.
 - b. Per diem rates and fees are determined by the allocation of actual costs to the appropriate program area. Once allocated, all appropriate program revenue will be assigned to each respective program area. The resulting net cost, by program area, will be divided by the estimated daily participation or use of the program to determine the per diem rate. The phrase "per diem rates and fees," as used in this Paragraph 1, includes rates and fees for jail per diem (bed day charges) and all alternative jail programs.
 - c. All rates will include a capital replacement charge to fund the replacement of component systems of the New Jail. (Communications, major maintenance expense, HVAC, computers, jail controls, plumbing fixtures, etc.) These replacement funds will be kept separate and distinct and regularly accounted for as the Capital Replacement Account. These replacement account funds will be used to acquire, repair or renovate the jail's component systems.
 - d. All services provided to entities not a party to this Agreement will be charged the established per diem rates and fees, a capital replacement charge, plus an additional capital construction charge. The capital construction charge will be separately accounted for and used in the year following their collection, or as soon as practical thereafter to reduce the per diem rates of the parties to this Agreement.
 - e. The County will allocate all operating costs, including maintenance, utility, and operating costs of facilities shared between the New Jail and other county divisions, bureaus, or departments on a rational and systematic basis open to audit and public inspection in a manner that recognizes that the city parties are not responsible for costs associated with non-jail activities or services. The costs of shared facilities allocated to any non-jail divisions, bureaus, or departments will be funded by non-jail revenues. Additionally, the County will allocate all operating costs, including site maintenance, utility, and site operating costs related to LaBounty Road non-jail facilities in a manner that recognizes that the city parties are not responsible for costs associated with non-jail maintenance and operations. The site costs allocated to non-jail facilities will be funded by non-jail revenues.
 - f. At the same time, annual notice of rates and fees are provided to the parties to this agreement, the County shall provide to the parties a detailed revenue and expense

report that accounts for and supports all the rates and fees charged under this Agreement.

2. Booking Charge – A booking fee shall be charged to the Cities and to the County, equally, for each person booked into the jail. The booking charge will also apply when other law enforcement agencies arrest and book persons into the jail on City's charges and/or warrants. Persons booked into the County jail and immediately released will only incur the booking fee. Persons who are booked into the jail and held in the facility will incur both the booking charge and a partial or full day per diem charge. If an offender is being booked on charges from multiple local jurisdictions, the booking fee will be split evenly between those jurisdictions.

3. Jail Per Diem- Cities cost per diem for all City prisoners incarcerated in County facilities for gross misdemeanor or misdemeanor offenses will include an initial bed day charge, with each day thereafter broken into quarter day charges, based on a full 24-hour charge or a pro rata amount based on quarter day increments.

4. Criteria for Assessing Per Diem Charges – In the event that an inmate is booked on multiple charges, the following procedure will apply to determine charges assessed the Cities:

Cities will be charged per diem on a quarter day basis for persons incarcerated in the County jail on City gross misdemeanor or misdemeanor charges or warrants. Persons incarcerated on felony charges will be the responsibility of the County, except nothing in this contract prevents the County from seeking reimbursement for felony medical costs prior to sentencing as provided in RCW 70.48.130. Persons originally incarcerated for a felony level violation that is declined by the County Prosecutor and returned to the City Attorney will be the City's responsibility from the date of booking. Any case originally charged by the Prosecutor as a felony and later plea-bargained or adjudicated to a gross misdemeanor or misdemeanor, shall not require compensation by the City.

If a City charge is concurrent to either Superior Court or another jurisdiction's gross misdemeanor or misdemeanor charge, the City shall be billed the proportionate percentage share of the per diem for the shared incarceration period.

5. Alternative Jail Programs/Per Diem - The City will be charged for Alternative Jail Programs as follows:

- a. If an offender participating in Whatcom County's **Work Release Program** the parties will be charged a per diem rate per bed day for work release inmates. Billing to the City for these participants will be based on a per diem rate set annually. Any funds collected from the offender will be credited to the cost to the City.

- b. If an offender qualifies for **Electronic Home Detention**, billing to the City for these participating offenders will be based on a per diem rate set annually. Any funds collected from the offender will be credited to the City.
- c. If an offender is participating in the **Out of Custody Work Crew Program**, billing to the City for these participants will be based on a per diem rate set annually. If the County bills the offenders for participating in this program, the funds collected from the offender will be credited to the City.
- d. If an offender is participating in the **In Custody Work Crew Program**, billing to the City for these participants will be based on a per diem rate set annually. If the County bills the offenders for participating in this program, the funds collected from the offender will be credited to the City.
- e. All participants must first be authorized by the sentencing judge to apply for alternative jail programs, and the Sheriff or designee must approve the terms and conditions of the program participation.
- f. If a City charge is concurrent to either Superior Court or another jurisdiction's gross misdemeanor or misdemeanor charge, the City shall be billed the proportionate percentage share of the current year per diem for the shared incarceration period.

6. Service Standards – The County agrees to furnish its facilities and personnel for confinement of City offenders and other services described in this Agreement in the same manner and to the same extent as the County furnishes for the confinement of its own gross misdemeanor or misdemeanor offenders, provided that the County shall meet or exceed all legal requirements.

7. Operational Control - Each City acknowledges the County's operational control of the jail and alternate jail programs, and each agrees that City offenders committed to the Whatcom County Jail and alternative jail programs will be subject to the same lawful rules and regulations required of other offenders incarcerated therein.

8. Health Care - The County shall be responsible for providing routine health care. Such health care will include those health care services routinely delivered at normal cost by County staff, contracted practitioners, or nursing staff, and delivered within the facility. The County is not responsible for services delivered to City offenders outside of the facility, or for non-routine services provided by outside medical practitioners within the facility. Payment for emergency, exceptional or non-routine necessary health care for City gross misdemeanor or misdemeanor offenders shall be made by the City upon written invoice by the County or upon such other terms as City and the County may agree in writing. The County will additionally bill the City for pre-sentence felony offenders, held on the City's case, who incur emergency, exceptional or non-routine necessary medical costs, as set forth in RCW 70.48.130. The County shall notify the City, as soon as reasonably possible, when the County becomes aware that an inmate being held on the City's charges or awaiting sentencing is in need of emergency, exceptional or non-routine necessary medical care, and work with the City to investigate the possibility of release from custody. The final decision to release a pre-trial City felon will rest with the County

Prosecutor and/or Superior Court Judge. Additionally, the County agrees to utilize all existing agreements with medical practitioners and organizations to mitigate any medical costs, to make its best efforts to negotiate additional favorable agreements, and seek out any and all eligible third party reimbursement for medical costs (including health or auto insurance, DSHS/Medicaid, and/or the State of Washington), in the same manner and to the same extent at the County does for offenders held on its own charges and prior to billing the City. No third party beneficiary contract or contract of insurance is intended by this contract. Non-routine necessary health care shall include all practitioner-ordered health care or medical services delivered to City offenders outside of the facility, specialized care provided by non-contract health care providers in or out of the facility, and emergency treatment, including EMS and the local Hospital Emergency Department.