

JAIL FACILITY USE AGREEMENT

This Jail Facility Use Agreement ("Agreement") is by and between Whatcom County, a political subdivision of the State of Washington ("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

1. 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").
2. 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 that have agreed and are party to this Agreement (hereinafter, collectively, the "Cities") desire to continue use of the Jail for the detention of city inmates. The County and Cities may collectively be referred to as "Parties" hereinafter.
3. The County intends to build, own and operate a new Jail located on LaBounty Road in Ferndale, Whatcom County, Washington, hereinafter the "New Jail." The New Jail will include jail housing, booking and administration facilities, expanded medical and behavioral health facilities and jail alternative programming space to serve the needs of the community for the foreseeable future (as shown and anticipated, attached hereto as Exhibit A). The size of the New Jail will be 440 beds, with a 3% increase (453) or decrease (427) allowance based on design considerations, with an additional 36 medical and behavioral health facility beds. If any city listed and intended as a party to this Agreement fails to approve and execute this Jail Use Agreement by June 30th, 2017, the County may reduce the size and scope of the project, including a reduction of jail beds and medical and behavioral health facility beds. This may be commensurate with the non-participating city's actual and expected share of the annual payment for the New Jail.
4. 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 funding, to maximize efficiency and promote economies of scale.
5. In 2017, the Whatcom County Council will consider a resolution that 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 public safety purposes (hereinafter, the "Sales Tax Measure", attached hereto as Exhibit B).

6. The Parties intend to enter into this Agreement no later than June 30th, 2017. The negotiation and execution of this Agreement is intended to yield a definitive, long-term agreement to globally address funding of the New Jail and certain operational matters related to the Jail.
7. 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 participating Cities' inmates, as described further in this Agreement.
8. The Parties 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 relating to the Existing Jail and New Jail, as set forth in this Agreement. Should any city not approve and execute this Agreement by May 31, 2017, the procedures for determining costs of construction and services, the level of service, procedures for billing cost of service and the methodology for payment as set forth in this Agreement will continue to apply to the other cities which have approved this Agreement.
9. 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, Whatcom County, WA. 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. The goals of these programs are to reduce incarceration rates of people with behavioral health problems.
10. The Parties recognize and fully support the goals of the Incarceration Prevention and Reduction Task Force (IPRTF) to reduce incarceration and recidivism. The IPRTF will continually review Whatcom County's criminal justice and behavioral health programs and make specific recommendations to safely and effectively reduce incarceration of individuals struggling with mental illness and chemical dependency, and minimize jail utilization by pretrial defendants who can safely be released. The Parties agree to implement the recommendations of the IPRTF upon their final recommendation, where possible. This includes increasing the availability of Alternative Jail Programs, including Electronic Home Detention, Work Release and Work Crew programs, and the establishment of a County pretrial supervision program. To ensure the continued commitment to reducing incarceration and recidivism, the IPRTF will have a task force member on the County and Cities Finance and Operations Advisory Board.

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

AGREEMENT

1. **NEW AGREEMENT.** This Agreement shall become effective when the County and one or more of the Cities 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 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 approving this Agreement 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 General Election Ballot no later than November 7, 2017. In the event that the Sales Tax Measure fails to pass on this 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 the 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.
 - a. Upon voter approval of the Sales Tax Measure, the Parties agree that all funds derived therefrom will be distributed to the County and the incorporated cities within the County by DOR according to the distribution formula in state law, currently 60% to the County, and 40% to the cities on a per capita basis of the population within incorporated cities.
 - b. As described in PART I – JAIL FINANCING, below, the Cities will make 360 monthly payments to the County beginning January 20, 2019 and ending December 20, 2048.
 - c. Of the two tenths of one percent authorized upon approval of the Sales Tax Measure, one tenth of one percent shall expire as soon as practical after December 20, 2048 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. All parties shall take the steps necessary to terminate one tenth of one percent of the sales tax referenced in this Agreement, consistent with the intent of this Agreement.
 - d. After December 20, 2048, the County and the Cities shall continue to receive and keep a portion of the one tenth of one percent of Sales Tax Revenue that remains in effect, pursuant to statutory formula that may be in effect at that time.

PART I-JAIL FINANCING

1. **TOTAL CAPITAL COST FOR PROJECT.** For the purposes of this Agreement the TOTAL CAPITAL COST shall include the following: soft and hard costs related to the construction of the New Jail (as anticipated and shown in Exhibit A), including those pre-construction costs incurred by the County after January 1, 2012 and including projected cost increases, construction period

financing costs, acquisition costs of the New Jail property paid from the County's REET I and General Fund accounts, cost of repairs to the Existing Jail prior to completion of the New Jail, the cost to demolish the Existing Jail and cost to construct a holding space and sally port at the County Courthouse. Prior to the time when the jail is completed and all cost components are known, the TOTAL CAPITAL COST will be preliminarily estimated to be \$110,100,000. This preliminary estimate includes an anticipated separate capital payment from the Cities to the County for their pro-rata share of the property acquisition costs and property consulting fees that have been paid by the County to date. These capital payments will be applied as a credit to the Cities to pay down their portion of the preliminarily estimated TOTAL CAPITAL COST prior to the monthly payments beginning, on January 20, 2019. After completion of the project and when all cost components are known, the TOTAL CAPITAL COST will be finalized and will serve as the basis for payments from the Cities to the County as described below.

2. **BOND FINANCING.** The County intends to issue limited tax general obligation bonds to finance the New Jail, and may utilize interim financing prior to issuance of such bonds. The Parties acknowledge that the County intends to issue Bonds or enter into agreements for interim financing in reliance upon the commitments and agreements of the Parties reflected in this Agreement. 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.

The County intends to construct and operate new facilities housing the Sheriff's Office facilities adjacent to the New Jail, to be funded from County revenue and resources. If the County issues a single bond for both the New Jail and Sheriff'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, including separately calculating the "All-in True Interest Cost" (referred to herein as "AIC") allocable to each purpose. Such allocations, including calculation of the AIC, will be provided by a registered municipal advisor (financial advisor).

3. **CITY PAYMENTS TO THE COUNTY.** The Parties agree that the allocation of TOTAL PROJECT COSTS will be established as 78% County, 22% Cities. The Cities have agreed that the 22% City share will be paid to the County, with interest thereon, in 360 monthly payments, and will be allocated as follows: Bellingham 71.6%, Lynden 6.3%, Ferndale 14.7%, Blaine 3.6%, Everson (on behalf of Nooksack and itself) 2.6%, and Sumas 1.2%. Unless the County receives a written agreement from the Cities, signed by all Cities, that a different allocation is agreed among the Cities, the Cities hereby agree that they will pay the percentage allocation stated in this section, to ensure that the County receives the full 22% from the Cities each month. Additionally, it is acknowledged that because the cities of Nooksack and Everson have a service agreement in place, Everson will make the full 2.6% share of payment on behalf of both cities. In the event that service agreement is terminated, Nooksack and Everson shall each be responsible for half of the 2.6%, until such time the County receives a written agreement signed by both Nooksack and Everson that a different allocation is agreed between the two cities. Any dispute between the Cities is not cause for non-payment to the County under this Agreement.
 - a. Starting in calendar year 2019 each City that is a Party to this Agreement shall remit to the County Treasurer, for receipt no later than the twentieth day of each month (i.e., beginning January 20, 2019), an amount equal to the city's monthly apportioned share of the 22% of the TOTAL CAPITAL COST plus interest thereon. Such payment shall be made by ACH transaction.

- b. The amount of such payment will initially be based on \$110,100,000 million, a term of 360 months and a 4.5% annual interest rate, as shown in Exhibit C hereto.
- c. After final TOTAL CAPITAL COST has been established, new payment schedules will be calculated, based on the months remaining until the final payment on December 20, 2048, and based on the AIC achieved on the County Bonds issued and allocable to the New Jail. All payments made prior to the time final TOTAL CAPITAL COSTS are known, will be adjusted, and the resulting increase or reduction will be taken into account in development of a new payment schedule, as shown in Exhibit D hereto.
- d. The County will use debt structures that provide the opportunity for early repayment of the Bonds no later than 10.5 years after issuance. If the County's Bonds allocable to the New Jail are refinanced, the Cities will be notified of the result of the refinancing, and the monthly payments from the Cities will be modified to reflect the annual benefits of the refinancing. The total annual payments from the Cities will continue to total 22% of annual costs. This is intended to ensure that the Cities benefit from the annual debt service savings resulting from a refinancing of County Bonds issued for the New Jail.
- e. The County may, at its discretion, bond as needed for the Jail and other projects, but in no event will the Cities be responsible for payment of more or less than 22% of the final TOTAL CAPITAL COST plus interest thereon.

4. **FUNDS RELATING TO THE PROJECT.** The County agrees to establish funds and accounts that will allow for accountability of all funds relating to TOTAL CAPITAL COST, payments received from the Cities, bond and other financing payments, and separate funds for jail operations. Any interest earned in the funds relating to TOTAL CAPITAL COST, bond and other financing payments will remain in the funds and not used by the County for other county purposes. 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

1. **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 law, and 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 estimated per diem rates, charges and fees. Final per diem rates and fees will be set after the County approves its final budget in November.

2. **COUNTY AND CITIES FINANCE AND OPERATIONS ADVISORY BOARD.** All Parties to this Agreement will establish a Finance and Operations Advisory Board to meet at least yearly, or as needed, to discuss matters related to the operations of the Jail. The Board shall consist of up to seven (7) members dependent on being party to the agreement, including the two (2) representatives of Whatcom County, including the Whatcom County Executive and one other designee, two (2) representatives of the City of Bellingham, including the Mayor and one other designee, and two representatives from the small cities, and one member of the Incarceration Prevention and Reduction Task Force (IPRTF). The representatives shall be appointed (or their designee) by each party to this Agreement. The Board will serve in an advisory function on matters including but not limited to; preliminary budget, allocation of costs and revenue, establishing fees, operational capacity, uniform reduction of service, party and non-party use, modifications to the New Jail project, use of jail alternatives programs to reduce incarceration, jail transport practices, future facility expansion, and data collection. The Board may make recommendations to the Sheriff and Whatcom County Council on jail operational matters and financial matters.
3. **AVAILABILITY OF JAIL FACILITIES AND SERVICES PROVIDED.** The County agrees to provide inmate services for gross misdemeanor or misdemeanor cases initiated by the Cities party to this Agreement 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 this Agreement. 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. The County shall provide reasonable notice to the Cities of its intention to reduce service levels in any correction program, unless specific circumstances require more immediate action. The uniform reduction in service provided herein shall not apply to felony cases and inmates. Such reductions shall be at the sole discretion of the Sheriff in light of his assessment of potential overcrowding; challenges in maintaining critical infrastructure, life-safety and security systems; behavioral and security concerns regarding the inmate population; and other factors judged by the Sheriff to be relevant. Each City should contract for inmate housing services and the transportation of inmates to a jail facility or facilities other than Whatcom County to include a jail facility that will directly accept inmates from City officers following arrest.

As part of the effort to control jail population in such a way as to minimize jail utilization and the interruption of regular law enforcement practices, all Parties are encouraged to consider the following methods as alternatives to booking offenders into jail, including, but not limited to:

- Issue citations in lieu of physical arrest or refer low-level, non-violent, gross misdemeanor, misdemeanor or felony offences to the appropriate prosecutor's office in accordance with the law, community safety, and the effective administration of justice
- Refer or transport eligible persons to behavioral health or other diversion programs and/or facilities, as provided for by law

In an effort to not reduce booking and inmate holding services of the Parties' gross misdemeanor and misdemeanor offenders, the Sheriff will first consider the transfer of Department of Correction's inmates and review classification status for all appropriate inmates

for possible transfer to any other County correctional facility. If the above described measures do not provide the operational capacity needed to safely operate the Jail, the Sheriff will next consider the transfer or removal of sentenced / post-conviction gross misdemeanor and misdemeanor inmates, with the exception of those inmates who may be operating as inmate workers in the facility or participating in one of the Alternative Jail programs. If Whatcom County transfers an inmate who has shared charges of a Whatcom County court and a City Court, the City shall be billed and pay for the proportionate share of the contracted facilities' per diem for the shared incarceration period, unless the contracted facility requires both jurisdictions to pay full per diems.

If circumstances require the County to reduce services, the Sheriff will hold City inmates until the time of the inmate's first court appearance or first review by a judicial officer. It shall be each city's responsibility to ensure that such hearings or reviews are held within 48 hours of booking. If the inmate is not released on personal recognizance or bail within twenty-four (24) hours of the first court appearance or review by a judicial officer, and cannot be transferred to the Work Center due to capacity or security/classification concerns, the City will accept the return of the inmate or arrange to have the inmate transferred out of the correctional facility within four (4) business days, or at a later time agreed to by the Sheriff. The City will provide the County a point of contact available 24 hours a day for receiving the required notifications.

The Sheriff may also notify the City that specific misdemeanor and gross misdemeanor inmates, regardless of pre or post-conviction status, need to be transferred due to special housing, care or management needs that cannot be accommodated within the County facilities. In this case, the transfer of the inmate needs to be accomplished as soon as reasonably possible, after notice is given.

4. **CAPACITY OPERATIONS.** The New Jail will be 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 time the Sheriff has determined the New Jail is at capacity, except as required by law, for the safety of the Whatcom County community or for the effective administration of justice to include those wanted in other jurisdictions. In the event the New Jail reaches capacity, the Parties shall in good faith pursue joint contracting for outsourcing or other alternative facilities, which cost will be included in the calculation of per diem rates and fees.
5. **DETERMINATION OF CASE STATUS.** The County 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, pursuant to determination of case status by the County 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 this Agreement. If the determination is made by the Prosecuting Attorney that a case should be referred to a municipality for review and possible charging as a gross misdemeanor or misdemeanor, such cases shall be referred to the appropriate City Attorney for review of filing in the Municipal Court with inmate services charged to the City. Any case originally charged by the Prosecutor as a felony and later adjudicated to a gross misdemeanor or misdemeanor shall not require compensation by the Cities. If a determination is made by the County 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.

6. **INMATES DEFINED**

- a. **City Inmate.** As used herein, "City Inmate" shall mean those Cities that are a party to this Agreement and have an inmate(s) charged in municipal courts of the Cities, those inmates arrested by a city law enforcement officer while held prior to being charged with a misdemeanor or to release without charges, or those inmates held by any City Court Order, warrant, or hold, 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, or as otherwise provided by law.
- 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. A County Inmate includes those inmates which the Sheriff is legally required to book and hold in custody.
- c. **Non-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 jurisdiction issuing the material witness warrant.

7. **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.

8. **BOOKING OF CITY INMATES.**

- a. **Documentation of Legal Basis for Confinement.** Absent proper documentation providing a legal basis for confining the City Inmate, the County will have no obligation to receive the City Inmate into custody. Proper documentation for purposes of this section means an arrest warrant, judicial Order of Commitment, other order of a court of competent jurisdiction, or a properly completed Probable Cause Affidavit, in a format prescribed by the Sheriff.
- b. **Administrative Booking.** Upon request by the arresting officer, City Prosecutor, City or County Court, and when not otherwise prohibited by statute, court rule or court order, the County shall administratively book, and as soon as practicable, release the City Inmate. The County further reserves the right to administratively book and release a City Inmate when, in the sole discretion of the Sheriff or designee, the County is unable to accept the City's Inmate for housing and when such action is not otherwise prohibited by statute, court rule or

court order, and may include jail population considerations. The County will make a good faith effort to notify the arresting officer prior to booking of the County's decision that it will release an inmate immediately after booking so the arresting officer may maintain the ability to pursue an option other than booking in the County's correctional facility.

- c. **Health Care Clearance.** The County shall have the right to refuse to accept any inmate from the City who, in the judgment of the County, has a current medical, mental health or dental condition, which may adversely affect the safety of the individual, the safety of other inmates, the safe operations of the County Jail, or is beyond the operational or physical plant limitations of the Facility. The County may require written clearance from the local hospital prior to booking, the cost of which will not be the responsibility of the County. Additionally, the County will have no obligation to receive into custody or retain custody of a City Inmate when, in the opinion of Corrections or Community medical or mental health staff the City Inmate is not medically and/or psychiatrically able to be housed in the Jail, and/or needs medical and/or psychiatric attention that would require treatment at a hospital or other type of health care facility. The County will notify the City in these instances so that the City can arrange other housing. At all times, the Sheriff or designee shall have final authority to determine whether a City Inmate is medically and/or psychiatrically fit for the County's Jail.

9. **TRANSFER OF CUSTODY.** The City shall provide or arrange for transportation and security of its inmates to and from the Jail for initial booking and to all court appearances held in its municipal court. Cities may contract with the County to provide custody and/or transportation services for outside court appearances, except when (a) the County determines, in its sole discretion, that emergency transportation is necessary in order to secure medical or health care and/or psychiatric evaluation or treatment, or (b) the County determines, in its sole discretion, that transportation is required to support the orderly operation of the Jail.

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 Sheriff or his designee, subject to applicable law. For the purposes of this Agreement, "Custody" shall be defined as the point in time at which Jail staff accepts actual 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.

10. **CITY ACCESS TO INMATES.** All City law enforcement officers and City 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.

11. **POSTING OF BAIL.** The County agrees to assist the Cities with respect to processing bail, performance bail, and/or bail bonds posted by inmates. 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. When an inmate is released from County custody, regardless of court or probation conditions placed on an inmate by the City and regardless of where the inmate is released, transported or housed by the City, the County shall bear no responsibility or liability whatsoever for the inmate, including but not limited to, the inmate's mental, physical, or health care, the inmate's conduct or behavior, or the inmate's court obligations.

12. **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.

A City Inmate may be terminated from a Jail Alternative Program if: (a) the City municipal court or other judicial agency order the City Inmate terminated from the Program or otherwise amends its earlier order; (b) the County determines, in its sole discretion, that the City Inmate is no longer eligible for the Program. Upon termination from a Program, a City Inmate already in the custody of the County shall be confined in the Correctional facility to serve the remainder of his or her term of confinement, however, the inmate's status remains subject to the other provisions of this Agreement. If the City Inmate is not yet in the County's custody at termination, he or she will be the immediate responsibility of the City for all purposes, including, but not limited to, the duty to apprehend.

13. **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 release of the City Inmate shall be by order of the court which may include completion of sentence, posting bond, placement on or to serve jail alternatives, or otherwise by necessity, agreement of the Parties, reduction of jail population, or transfer to another facility.

The Sheriff may in his or her discretion transfer inmates to another facility as necessary to effectively operate the Jail.

14. **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 Cities 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.

PART III - COST METHODOLOGIES, FORMULAS, AND SERVICE STANDARDS

1. **CHARGES FOR SERVICES.** The Parties to this Agreement shall pay the County the established per diem rates, booking charge and fees for services provided as set forth in this Agreement. 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 rate and booking charge 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 per diem rates, booking charges 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. This formula does not include any non-routine or extraordinary medical costs. Disputes as to the appropriate fees for service will be subject to the Venue and Dispute Resolution provision set forth in this Agreement.
2. Unless set forth elsewhere in this Agreement, the Parties will be notified by the County by June 30 of each year of the estimated per diem rates, booking charges 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 per diem rates, booking charges and fees. The rates, charges 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 each fiscal 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. The booking charge shall be the same to the Parties of this Agreement 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. The Parties will only incur a booking charge for persons booked into the County jail and immediately released. The Parties will incur both the booking charge, as permitted by law, and a partial or full day per diem charge for persons who are booked into the jail and held in the facility. If an offender is being booked on charges from multiple local jurisdictions, the booking charge will be split evenly between those jurisdictions, as permitted by law.

- d. All rates will include a capital replacement fee 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 in a capital replacement account or subaccount. These funds will be used to acquire, repair or renovate the jail's component systems.
- e. All services provided to entities not a Party to this Agreement will be charged the established per diem rates, booking charges and fees, and a capital replacement fee, as permitted by law. Entities not a Party to the Agreement may be charged an additional capital construction fee, as permitted by law. The revenue resulting from the capital construction fee will be separately accounted for and will be collected by the County and used for County jail related expenses.
- f. 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.
- g. 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 detailed revenue and expense report that accounts for and supports all the rates and fees charged under this Agreement.

3. **Per Diem Rates.** Per diem rates for the Parties to this Agreement will be charged 1/3rd day increments of a full 24 hour period.

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 1/3rd day increments for persons incarcerated in the County jail on City gross misdemeanor or misdemeanor charges or warrant. Persons incarcerated on felony charges will be the responsibility of the County, with the following exceptions:

- a. 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.
- b. If the offender also has misdemeanor or gross misdemeanor warrants or charges, those will be noted in the inmate's booking record. The per diem cost for these

charges will be the proportionate percentage share of the per diem for the term of the pre-trial incarceration period.

- c. If a City charge is concurrent to a Whatcom County Court or another local jurisdiction's gross misdemeanor or misdemeanor charge, the City shall be billed the proportionate share of the per diem for the shared incarceration period.
- d. If the City charge is ordered to be consecutive to a Whatcom County Court or another local jurisdiction's charges, the City will pay the full per diem for the length of the sentence.

5. **Alternative Jail Programs/Per Diem** – In addition to criteria for assessing per diem charges set forth above, the City will be charged for Alternative Jail Programs as follows:

- a. If an offender is participating in Whatcom County's **Work Release Program** the City 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.

6. **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 applicable, release date for each corrections program, with adjustments made for any temporary releases that may occur within the time frame of the specific incarceration.

7. **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 all legal requirements.

8. **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.

9. **EARLY RELEASE CREDIT.** The County will grant early release credits to City Inmates in accordance with Chapter 9.94A RCW and County Sheriff's Office policies and procedures.
10. **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. 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.
 - a. The County is not responsible for the cost of services delivered to City misdemeanor or gross misdemeanor inmates outside of the facility, or for non-routine services provided by outside medical practitioners within the facility. The City shall be responsible for the costs of any and all emergent or necessary medical or health care, dental and psychiatric treatment provided outside of the County Correctional Facilities or non-routine services or medication provided to the misdemeanor or gross misdemeanor inmate inside the jail. Payment for emergency, exceptional or non-routine necessary medical or health care for City gross misdemeanor or misdemeanor inmates 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 inmates, held on the City's case, who incur emergency, exceptional or non-routine necessary medical or health care costs, as set forth in RCW 70.48.130. The County shall notify the City within a reasonable period of time, when the County becomes aware that an inmate being held on the City's charges or awaiting sentencing on a City felony charge is in need of emergency, exceptional, or non-routine necessary medical or health care or when the inmate has been transported for emergency care. Any decision to release a pretrial City felon, City pre-trial detainee, or City inmate, will rest with the City, the Prosecuting Attorney and/or City Attorney, and/or the Court. Included in the cost of extraordinary medical costs will be the costs to transport and/or provide a guard detail if the inmate is not released by the Court.
 - b. 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 inmates 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 medical or health care shall include all practitioner-ordered health care or medical services delivered to City inmates 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.

- c. Any failure or error by the County to provide the City with proper notification of extraordinary, non-routine necessary medical or health care, emergency care, dental and/or mental health services described in this Agreement, delivered to a City Inmate shall in no way excuse full, complete and timely payment by the City under this Agreement.
- d. **Invoicing for Extraordinary, Non-Routine, Necessary Medical or Health Care, Emergency Care, Mental Health and Dental Services.** The County shall invoice the City for all costs incurred for extraordinary or non-routine necessary medical, health, or emergency care, dental, or mental health services to City Inmates, including, but not limited to, durable medical equipment, ambulance fees, medical, dental, and mental health services provided outside the Correctional facility specialized equipment or extraordinary medications essential to the inmates health such as chemotherapy, anti-viral or biologic medications. Extraordinary Medical Costs do not include routine medical examinations, tests, procedures performed at the Correctional facility by Correctional facility staff or contractors or routine medications. The County will facilitate use of a City inmate's 3rd party medical insurance whenever possible. If there is coverage, the County will credit amounts received from the City Inmate's own health insurance and applicable public assistance to the City's bill. Credit amounts may show up on billings subsequent to the time of service, due to processing timelines by both the provider and the 3rd party payer.
- e. **Payment.** The City shall remain liable for complete and timely payment of all amounts invoiced. Invoices may be sent monthly, quarterly or on any other schedule that is mutually convenient to the parties. Where complete payment is not tendered within thirty (30) days of the invoice date, the County may charge interest on the outstanding balance at a rate equal to the interest rate on the monthly County investment earnings. Should the City wish to dispute the amount of a particular invoice, it will (a) make complete and timely payment on the outstanding balance, and (b) deliver written notice of the dispute to the County within thirty (30) days of the invoice date. Failure to properly notify the County of any disputed amounts within thirty (30) days of the invoice shall constitute an acceptance by the City of all charges contained therein. Within fifteen (15) days of timely receipt of payment and the City's written notice of dispute, the County shall review the disputed invoice. Should the County resolve the dispute in favor of the City, the disputed amounts will be credited towards the City's next billing cycle, PROVIDED, HOWEVER, that upon termination of this Agreement, the County shall pay out to the City any such credited amounts. The Cities shall not withhold payment of any amount billed, regardless of whether the City has provided timely written notice of a disputed invoice.
- f. **Review and maintenance of records.** Each party may examine the other party's books and records to verify charges and to audit the amounts charged under this Agreement. If the City elects to conduct an audit, the audit may be conducted under the supervision of the County Administration. The County shall maintain accurate time and accounting records related to the Services for a period of three (3) years

following final payment.

PARTIV-GENERAL TERMS

1. INDEMNIFICATION.

- a. **Indemnification.** To the extent of its comparative liability, each Party agrees to indemnify, defend and hold the other Party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, reasonable attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

To the extent of its comparative liability, each Party agrees to indemnify, defend and hold the other Party, its elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, reasonable attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which are alleged or proven to be caused by an act or omission, negligent or otherwise, of its elected and appointed officials, employees, agents or volunteers.

The parties agree all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

- b. **Waiver under Washington Industrial Insurance Act.** The foregoing indemnity is specifically intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, Chapter 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them. The terms of the Indemnification provisions shall survive the termination or expiration of this Agreement.
- c. **Liability Related to Ordinances, Policies, Rules and Regulations.** In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, policies, rules or regulations. Nor shall the County be liable or responsible for any claims of conduct or actions by the City, City Courts, or law enforcement, including, but not limited to claims of unlawful arrest, excessive force, unlawful imprisonment, unconstitutional deprivation, negligence, errors, omissions or misconduct. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, policy, rule or regulation

is at issue, or in which there is an allegation of City Court, City Prosecutor or Law Enforcement action as described above, the City shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and reasonable attorney's fees.

In executing this Agreement, the City does not assume liability or responsibility for or in any way release the County from any liability or responsibility which arises in whole or in part from the existence or effect of County ordinances, policies, rules or regulations. Nor shall the City be liable or responsible for any claims of conduct or actions by the County, County Courts, or law enforcement, including, but not limited to claims of unlawful arrest, excessive force, unlawful imprisonment, unconstitutional deprivation, negligence, errors, omissions or misconduct. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such County ordinance, policy, rule or regulation is at issue, or in which there is an allegation of County Court, County Prosecutor or Law Enforcement action as described above, the County shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the County, the City, or both, the County shall satisfy the same, including all chargeable costs and reasonable attorney's fees.

- d. **Insurance.** Each Party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and /or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying part to the indemnified party(s). Each Party shall provide the other with a certificate of insurance or letter of self-insurance annually as the case may be. All insurance obligations shall be on a per occurrence basis.

2. **EXPIRATION OF AGREEMENT.** After December 20, 2048, the provisions in this Agreement regarding payments and financing of the New Jail by the Parties, and as defined as the Total Capital Cost for Project in this Agreement, shall terminate. The provisions of this Agreement relating to financing the New Jail by the Parties are not subject to termination pursuant to RCW 70.48.090. All other provisions, in this Agreement, including services, charges, rates and fees, and terms not related to financing of the Total Capital Cost for Project, shall remain in effect per the Agreement and shall only be terminable by on one (1) year's written notice to each of the other Parties to this Agreement or pursuant to RCW 70.48.090. If the County determines at a later date that an expansion or additional Jail facilities are necessary, beyond what is defined as the New Jail in this Agreement, then the costs and fees associated with the additional facilities will be subject to a new or amended Agreement between the County and Cities. If Cities are unwilling or unable to financially participate in their pro-rata share in the expansion of the facility, the Cities capacity and services will be limited to their pro-rata share of the facility pre-expansion. Any Party that breaches the terms and provisions of the jail financing provisions in this Agreement will be liable for actual damages.
3. **MODIFICATION.** This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all Parties.

4. **SURVIVAL.** Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration of this Agreement and continue in full force and effect.
5. **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, or other financing options, so long as the County uses the sales tax revenue consistent with the law and this Agreement. This paragraph establishes the sole and exclusive remedy for disputes arising under this Agreement, except as otherwise set forth herein. If any dispute arises as to the administration, including duties, rights, defaults, obligations, 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, unless otherwise agreed by the Parties. The arbitration shall be conducted pursuant to the Superior Court Mandatory Arbitration Rules. Each Party shall pay all their own costs and fees of arbitration regardless of the results of arbitration. The Parties will share equally in the Arbitrator's fee.

6. **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.
7. **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.
8. **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.

9. **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.
10. **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.
11. **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.
12. **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.
13. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document executed with the same formalities as required for this Agreement and signed by the party against whom such modification is sought to be enforced.
14. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Skagit County, unless agreed otherwise by the Parties.
15. **NO WAIVER.** A party's forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.

16. **SAVINGS.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Agreement and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Agreement affected shall be curtailed and limited only the extent necessary to bring it within legal requirements.
17. **FORCE MAJEURE.** In the event either party's performance of any of the provisions of this Agreement become impossible due to circumstances beyond that party's control, including without limitation, force majeure, strikes, embargoes, shortages of labor or materials, governmental regulations, acts of God, war or other strife, that party will be excused from performing such obligations until such time as the Force Majeure event has ended and all facilities and operations have been repaired and/or restored.
18. **PARTIES AGREEMENT.** The Parties agree to aid and assist the other in accomplishing the objectives of this Agreement.
19. **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.
20. **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 _____, 2017.

Approved as to form:

County Civil Prosecuting Attorney

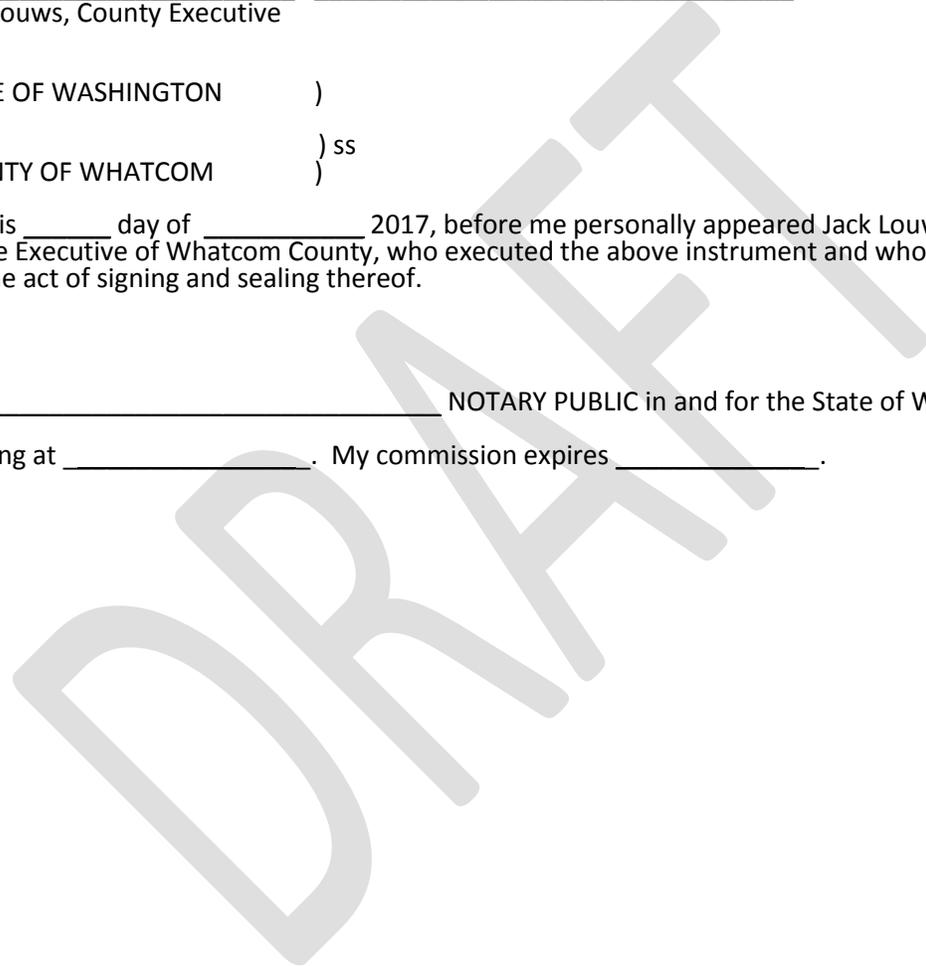
Executed this ____ day of _____, 2017 for WHATCOM COUNTY.

Jack Louws, County Executive

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this ____ day of _____ 2017, 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

DRAFT

CITY OF BLAINE

Harry Robinson, Mayor

Attest:

Finance Director

Approved as to form:

Office of the City Attorney

DRAFT

CITY OF EVERSON

John Perry, Mayor

Attest:

Finance Director

Approved as to form:

Office of the City Attorney

DRAFT

CITY OF FERNDALE

Gary Jensen, Mayor

Attest:

Finance Director

Approved as to form:

Office of the City Attorney

DRAFT

CITY OF NOOKSACK

James Ackerman, Mayor

Attest:

Finance Director

Approved as to form:

Office of the City Attorney

DRAFT

CITY OF SUMAS

Bob Bromley, Mayor

Attest:

Finance Director

Approved as to form:

Office of the City Attorney

DRAFT

EXHIBIT A

DRAFT

EXHIBIT B

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 D
Whatcom County
New Jail Project
Final Total Capital Cost
Adjusted Payment Schedule

Beginning January 20th,2019, City payments to the County for Total Capital Costs will be credited to an account maintained by the County for each city. Cities will earn interest on a monthly basis computed at the average rate earned on the Whatcom County Investment pool. Cities accounts will accumulate based on payments and interest earned.

Once the Jail is complete and Total Jail Capital Costs are known, the balance of each cities account will be deducted from their proportionate share of the Jail Total Capital Cost, the resulting balance remaining will be amortized over the months remaining until December 20, 2048, at the All In True Interest Cost rate of bonds used to finance the new Jail. Example of adjusted payment schedule attached to this Exhibit below;

Whatcom County, Washington
Exhibit D - Continued

Current Payment Structure

<u>Date</u>	<u>Monthly Payment</u>
1/1/2019	\$563,267
2/1/2019	\$563,267
3/1/2019	\$563,267
4/1/2019	\$563,267
5/1/2019	\$563,267
6/1/2019	\$563,267
7/1/2019	\$563,267
8/1/2019	\$563,267
9/1/2019	\$563,267
10/1/2019	\$563,267
11/1/2019	\$563,267
12/1/2019	\$563,267
1/1/2020	\$563,267
2/1/2020	\$563,267
3/1/2020	\$563,267
4/1/2020	\$563,267
5/1/2020	\$563,267
6/1/2020	\$563,267
7/1/2020	\$563,267
8/1/2020	\$563,267
8/1/2047	\$563,267
9/1/2047	\$563,267
10/1/2047	\$563,267
11/1/2047	\$563,267
12/1/2047	\$563,267
1/1/2048	\$563,267
2/1/2048	\$563,267
3/1/2048	\$563,267
4/1/2048	\$563,267
5/1/2048	\$563,267
6/1/2048	\$563,267
7/1/2048	\$563,267
8/1/2048	\$563,267
9/1/2048	\$563,267
10/1/2048	\$563,267
11/1/2048	\$563,267
12/1/2048	\$563,267

Initial Assumption	
Project Size	\$110,100,000
Interest Rate	4.50%
Payments Commence	1/1/2019
Monthly Payment (PMT)	\$563,267
Payments Cease	12/1/2048
Total P&I through 2049	\$202,776,266.23

The chart above represents the current payment structure based on \$110,100,000 at 4.50% for 30 years. The monthly payment is 1/12 of an annual payment. Payments commence 01/01/2019 and proceed through 12/1/2048.

Total: \$202,776,266

Whatcom County, Washington
Exhibit D - Continued

Sample if Total Costs and Total Interest Cost Decrease

Sample Payment Structure: If Total Costs are Known Today	
Project Size	\$109,700,000
Interest Rate	4.00%
Payments Commence	1/1/2019
Monthly Payment	\$528,663
Total P&I	\$190,318,856

The chart above displays a monthly payment if the total cost of the project was known at 1/1/2019, and those payments were made through 12/1/2048. The chart below shows the current payment structure until the true-up date, at which time a new payment is calculated to match the total Principal and Interest payments that would have been required if costs were originally known.

Sample: True-Up of Payments			
Project Size	\$109,700,000		
Interest Rate	4.00%		
Payments Commence	1/1/2019		
Initial Monthly Payments Through True-Up Date	\$563,267	30	\$16,898,010
True Up Date	6/1/2021		
New Payment after Total Cost True-Up	\$525,518	330	\$173,420,846
New Payment Cease	12/1/2048		
Total P&I	=		\$190,318,856

The new payment is calculated by subtracting payments already made through the true up date from new Total P&I and dividing by the remaining months.

Sample if Total Costs and Total Interest Cost Increase

Sample Payment Structure: If Total Costs are Known Today	
Project Size	\$125,000,000
Interest Rate	5.00%
Payments Commence	1/1/2019
Monthly Payment	\$731,829
Total P&I	\$263,458,312

The chart above displays a monthly payment if the total cost of the project was known at 01/01/2019 and those payments were made through 12/1/2048. The chart below shows the current payment structure until the true-up date, at which time a new payment is calculated to match the total Principal and Interest payments that would have been required if costs were originally known.

Sample: True-Up of Payments			
Project Size	\$125,000,000		
Interest Rate	5.00%		
Payments Commence	1/1/2019		
Initial Monthly Payments Through True-Up Date	\$563,267	30	\$16,898,010
True Up Date	6/1/2021		
New Payment after Total Cost True-Up	\$747,152	330	\$246,560,302
New Payment Cease	12/1/2048		
Total P&I	=		\$263,458,312

The new payment is calculated by subtracting payments already made through the true up date from new Total P&I and dividing by the remaining months.