

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	AL	05/22/18	<div style="text-align: center;"> <b>RECEIVED</b>   <b>JUN 12 2018</b>   <b>WHATCOM COUNTY COUNCIL</b> </div>	06/19/18	Finance Committee
Division Head:				6/19/18	Council
Dept. Head:					
Prosecutor:	Jg	6/11/18			
Purchasing/Budget:	BB	6/11/18			
Executive:	TLS FOR S	6/11/18			

**TITLE OF DOCUMENT:**

Jail Facility Use Agreement

**ATTACHMENTS:**

Memo and Jail Facility Use Agreement

SEPA review required?	( ) Yes	( ) NO	Should Clerk schedule a hearing ?	( ) Yes	( ) NO
SEPA review completed?	( ) Yes	( ) NO	Requested Date:		

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Request authorization for the County Executive to enter into a new Jail Facility Use Agreement between Whatcom County and the City of Everson effective July 1, 2018.

**COMMITTEE ACTION:****COUNCIL ACTION:**

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).



## **MEMORANDUM**

**TO:** Whatcom County Council Members

**FROM:** Jack Louws, County Executive

**DATE:** June 19, 2018

**SUBJECT:** New Jail Facility Use Agreements with Cities

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We met with the Small Cities Partnership, including representatives from the City of Bellingham, and with the Whatcom County Police Chief Association and asked for comments on the new jail use facility agreement. Following that, Bellingham was the only jurisdiction that raised concerns with some parts of the agreement. We incorporated many of their comments and distributed the final version to all cities on May 7. The cities then sought and obtained approval of the agreement with their respective Councils.

We have those agreements in hand, and are asking for County Council approval to enter in to them with each city. The agreements run for a two-year term ending on June 30, 2020 and can then be renewed for up to three additional two year terms for a period of six additional years.

I recommend approval of the attached agreement with the City of Everson.

JL

# WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No.

201806004

Originating Department:	Executive Office (Sheriff)
Division/Program: (i.e. Dept. Division and Program)	Jail
Contract or Grant Administrator:	Executive/Sheriff
Contractor's / Agency Name:	City of Everson

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes ☐ No ☒  
 Yes ☒ No ☐ If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: \_\_\_\_\_

Does contract require Council Approval? Yes ☒ No ☐ If No, include WCC: \_\_\_\_\_  
 (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes ☐ No ☒ If yes, grantor agency contract number(s): \_\_\_\_\_ CFDA#: \_\_\_\_\_

Is this contract grant funded? Yes ☐ No ☒ If yes, Whatcom County grant contract number(s): \_\_\_\_\_

Is this contract the result of a RFP or Bid process? Contract \_\_\_\_\_  
 Yes ☐ No ☒ If yes, RFP and Bid number(s): \_\_\_\_\_ Cost Center: 118000

Is this agreement excluded from E-Verify? No ☐ Yes ☒ If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

- |   |  |
|---|--|
| <input type="checkbox"/> Professional services agreement for certified/licensed professional. | <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). |
| <input type="checkbox"/> Contract work is for less than \$100,000.                            | <input type="checkbox"/> Work related subcontract less than \$25,000.        |
| <input type="checkbox"/> Contract work is for less than 120 days.                             | <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.  |
| <input checked="" type="checkbox"/> Interlocal Agreement (between Governments).               |  |

Contract Amount:(sum of original contract amount and any prior amendments):  
 \$ Varies  
 This Amendment Amount:  
 \$ \_\_\_\_\_  
 Total Amended Amount:  
 \$ \_\_\_\_\_

Council approval required for; all property leases, contracts or bid awards **exceeding \$40,000**, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, **except when:**

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
3. Bid or award is for supplies.
4. Equipment is included in Exhibit "B" of the Budget Ordinance
5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

Summary of Scope: This agreement allows Whatcom County to provide Correctional Facilities as a place of confinement for the incarceration of one or more City inmates lawfully committed to custody and Correctional Facility services.

Term of Contract: Two year w/3 two year renewals	Expiration Date: June 30, 2020
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Contract Routing:	1. Prepared by: Twh	Date: 06/04/18
	2. Attorney signoff:	Date: 6/11/18
	3. AS Finance reviewed: _____	Date: _____
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

**INTERLOCAL JAIL FACILITY USE AGREEMENT FOR  
CORRECTIONAL SERVICES BETWEEN WHATCOM  
COUNTY AND THE CITY OF EVERSON**

INTERLOCAL AGREEMENT FOR CORRECTIONAL SERVICES BETWEEN WHATCOM COUNTY and the CITY OF EVERSON ("Agreement"), is made and entered into this \_\_\_\_ day of \_\_\_\_, 2018, by and between WHATCOM COUNTY, a political subdivision of the State of Washington ("County"), and the CITY OF EVERSON, a municipal corporation of the State of Washington ("City") and (County and City hereinafter referred to as the "Parties" or "Party"), pursuant to Chapter 39.34 RCW and Chapter 70.48 RCW.

**RECITALS**

- A. The County currently maintains and operates Correctional Facilities known as the Whatcom County Jail and the Whatcom County Jail Work Center (JWC) (hereinafter the Jail and JWC may be referred to as "Correctional Facility" or "Facilities"). In order to assist other jurisdictions, the County from time to time will enter into Interlocal Agreements to confine in its Correctional Facilities persons from other jurisdictions.
- B. The County and City each have the statutory power and authority to maintain and operate Correctional Facilities and to confine inmates therein.
- C. The City desires to confine persons who have been arrested, detained or convicted by the City for criminal offenses ("City Inmate") and the County is willing to furnish its Correctional Facilities, services, and personnel in exchange for payment from the City for fees and costs, as provided in this Agreement.
- D. The Parties recognize the Correctional Facilities require additional capacity and an improved infrastructure in order to safely incarcerate the number of inmates for the City, County and other contracting jurisdictions.
- E. The Parties recognize that at times during the period of this Agreement, major repairs and modifications to the Correctional Facilities are anticipated to occur. It is further anticipated this work will affect the capacity of these Facilities and the cost of services.
- F. The Parties recognize that the County may contract with other jurisdictions including the Lummi Nation and Nooksack Tribe of Washington to book and detain their inmates.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the respective terms and conditions set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and City agree to the following:

**1. Purpose of Agreement.** This Agreement is authorized by and entered into pursuant to Chapter 39.34 RCW and Chapter 70.48 RCW. The purpose and intent of this Agreement is for the County and the

City to work together efficiently and effectively in order for the County to provide the City with Correctional Facilities as a place of confinement for the incarceration of one or more City Inmates lawfully committed to custody and Correctional Facilities services ("services"), as defined in Section 4, and set forth under the rules and conditions in the applicable Sheriff's Office and County policies, procedures, rules and regulations, this Agreement and any attachments hereto.

**2. Effective Date and Duration.** This Agreement shall be effective when duly executed by the Parties. This Agreement shall begin on July 1, 2018, and remain in effect through June 30, 2020, unless earlier terminated pursuant to other provisions in this Agreement or by written mutual agreement. The term of this Agreement may be extended or renewed for up to three (3) additional two (2) year terms for a total of six (6) additional years, provided that each Party's rights or obligations at the end of each contract period are contingent upon local legislative appropriation of necessary funds to provide services contained in this Agreement in accordance with applicable law.

**3. Administrators.** Each Party to this Agreement shall designate their own administrator(s) ("Administrator(s)"), who may be designated by title or position to oversee and administer such Party's participation in this Agreement. The Parties' initial Administrators shall be the following individuals:

**County's Administrators:**

County Executive, Jack Louws  
(or designee)  
311 Grand Ave, Courthouse  
Bellingham, WA 98225  
360-778-5200

Whatcom County Sheriff, Bill Elfo  
(or designee)  
311 Grand Ave. -Public Safety Building  
Bellingham, Washington 98225  
360-778-6600

**City's Administrator:**

Mayor, John Perry  
PO Box 315  
Everson, WA 98247  
360-966-3411

Chief of Police, Daniel MacPhee  
PO Box 315  
Everson, WA 98247  
360-966-4212

**3.1 Change of Administrator(s).** Either Party may change its Administrator(s) at any time by delivering written notice of such Party's new Administrator(s) to the other Party.

**4. Scope of Services.** As described in Section 4 and subject to the terms and conditions provided in this Agreement, the County agrees to provide City Inmate services for gross-misdemeanor and misdemeanor cases initiated by the City for those offenses alleged to have been committed by adults within the City. The County will hold such City Inmates until such time as they are lawfully discharged from custody pursuant to law, the terms of a judicial order of commitment, or transferred to another (non-Whatcom) correctional facility and/or returned to the custody of the City.

**4.1 Assignment.** The County shall provide at least thirty (30) days prior notice to the City 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 persons or entity to which it intends to assign or delegate.

**4.2 Basic Services.** The County shall provide Correctional Facilities services to the City subject to the terms and conditions set forth in this Agreement. The County, in its sole discretion, may decline to accept or retain custody of a City Inmate for any of the reasons identified in this Agreement. The County shall notify the arresting officer, the City's judicial branch or the City's law enforcement agency of the non-acceptance and provide the reason(s) for the non-acceptance. The County shall also notify the City's law

enforcement agency of any population control measures that may result in an inability to accept City Inmates. Acceptance of City Inmates into the Correctional Facilities shall be conditioned upon the terms and conditions set forth in this Agreement.

**4.3 Reducing Jail Services.** The County shall provide City Inmate services consistent with the standards contained in this Agreement. If circumstances require the County to reduce services to the City and to other contracting jurisdictions, such reduction in services shall be made uniformly among the contracting Cities and other contracting jurisdictions for gross-misdemeanors and misdemeanors. The County shall provide reasonable notice to contracting Cities and other contracting jurisdictions of its intention to reduce service levels in the Correctional Facilities or correction programs, unless specific circumstances require more immediate action. The uniform reduction in services provided herein shall not apply to felony cases and inmates, except as expressly provided in this Agreement. The need for 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, construction and repairs occurring or anticipated to occur within the jail, behavioral and security concerns regarding the inmate population, and other factors judged by the Sheriff to be relevant. In the case of such a reduction, the City shall contract with or provide arrangements for inmate housing services and the transportation of City Inmates to another jail facility other than Whatcom County to include a jail facility that will directly accept inmates from officers following arrest.

The County shall provide reasonable notice to the City of its intention to reduce service levels in the Correctional Facilities or any correction programs. Reductions shall be made first by prioritizing the housing of inmates for which the County is legally responsible and obligated to detain and house. In an effort to avoid reduced booking and inmate holding services for the City and other contracting jurisdictions for gross-misdemeanor and misdemeanor inmates, the Sheriff will first consider reviewing the classification status for all appropriate inmates for possible transfer to any other county correctional facility (including jail alternative programs). The Sheriff will also require the Washington Department of Corrections to transfer inmates that the Sheriff is not legally required to detain to another facility in order to reduce the need to transfer City or tribal pre-trial inmates.

If the above described measures do not reduce the Facilities population to the extent needed to safely operate the Facilities, the Sheriff will further consider the transfer or removal of post-conviction or sentenced inmates under the following conditions:

1. Inmates that do not have pending pre-trial charges in other courts within Whatcom County;
2. Inmates not participating in the Inmate Worker program; and
3. Inmates not participating in jail alternative programs.

Subject to contractual authority and available funding, the Sheriff may also consider transferring County Inmates who have no pending criminal cases in Whatcom County to another out-of-county facility, reducing the need for the City Inmates and other contracting jurisdictions to transfer "pre-trial" inmates. This transfer will be to a correctional facility outside of Whatcom County.

In cooperation with Sheriff's Office staff, the City and other contracting jurisdictions will identify inmates held on their charges for transport to a contracted out-of-county facility. If Whatcom County is housing City Inmates who have dispositioned charges in a Whatcom County court and a City contracting jurisdiction's court, and both entities are contracting with the same out-of-county facility, upon mutual agreement by both Parties, the City Inmates may be transferred to an out-of-county facility, and each jurisdiction shall be billed and pay for the proportionate share of the contracted facilities' per diem and costs for the inmates' incarceration period.

If circumstances require the County to reduce services further and require the transport of pre-trial

inmates, the Sheriff shall hold all City gross-misdemeanor and misdemeanor inmates until the City Inmate's first court appearance or first review by a judicial officer. It shall be the City's responsibility to ensure that such hearing or review is held within 48 hours of booking. If a City Inmate is not released on personal recognizance or bail within 24 hours of the first court appearance or review by a judicial officer, and cannot be transferred to the JWC due to capacity or security/classification concerns, the City will arrange to have the inmate transferred out of the Whatcom County Correctional Facility within 48 hours following the first appearance or judicial review, or at a later time agreed to by the Sheriff. In the event of an emergency, the Sheriff may require the inmate to be moved as soon as reasonably possible. The City will provide the County a point of contact, available 24 hours a day, for receiving the notifications. The County agrees to allow City Inmates who have been transferred to another facility to return to the County Correctional Facility for trial or other necessary court appearances. Such inmates will be subject to transport back to the contracted facility as soon as reasonably possible, unless otherwise agreed.

In the event a City Inmate cannot be placed on the alternative facility transportation, it will be up to the City to arrange alternative transportation. If an inmate is deemed medically unstable for transport by the Jail Health Care staff, the inmate may remain at the Jail until such time as the inmate is stable for travel, released by court order, or transferred to another facility/hospital.

In an effort to control jail population and to minimize jail utilization and the interruption of regular law enforcement practices, all jurisdictions are encouraged to consider the following methods as alternatives to incarceration during pre-trial and post-conviction phases, including, but not limited to:

1. Issuing citations in lieu of physical arrest or referring 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;
2. Referring or transporting eligible persons to behavioral health or other diversion and alternative programs and/or facilities, as permitted by law.

#### **4.4 Jail Population Control Measures**

To help ensure community safety and the ability for law enforcement to book City Inmates, and if it becomes necessary to impose booking restrictions as part of broader population control measures, the Sheriff will, to the extent permissible by law, uniformly apply such restrictions between those arrested by the City, County and State law enforcement agencies. The continued facilitation of booking and holding arrested persons following initial arrest will remain a priority and take precedence over reducing the need to transfer pre-trial inmates.

If booking restrictions are imposed, arrests for felony charges, misdemeanor assault, domestic violence charges and violations, and DUI or similar impaired driving charges will be given priority for booking. To the extent practicable, the Sheriff's Office will continue to allow exceptions to any booking restrictions imposed, based on the criteria developed by the Sheriff's Office in the interest of public safety. If an inmate is booked by the City, the inmate will be booked on all charges, including gross misdemeanor and misdemeanor charges.

The Sheriff will work closely with the City and all contracting jurisdictions when providing notice of the need to reduce the jail population and when seeking the swift removal of City Inmates from the Facilities. Prior to implementing booking restrictions with respect to the City, the County will make a good faith effort to seek the removal of all other non-county inmates consistent with its Agreements with other jurisdictions and applicable law.

For those City Inmates who have been identified by the City for removal or transport, the County will

allow law enforcement/transport officers to enter the booking area inside the Facilities to receive custody of the City Inmates for transport or removal. The City's employee or contractors, who have received clearance to enter inside the jail pursuant to Sheriff's Office Policy, will be allowed entry. Clearances granted for the purpose described above may be cancelled or suspended by the Sheriff at any time due to emergency or other security-related circumstance deemed necessary by the Sheriff.

Notwithstanding the above provisions, the Sheriff retains the right and discretion to take more immediate action to reduce the jail population if the Sheriff determines such action is required. Such action may include, but is not limited to, advising the City of the need to maintain security, health and safety in the Facilities and shortening the time period for transfer after first appearance and/or implementation of booking restrictions. The City specifically recognizes the potential need to implement booking restrictions in the event of overcrowding, the failure or unreliability of facility systems or infrastructure, combined with an inability to swiftly remove a sufficient number of inmates, whether or not the inmates are in pre-trial or post-conviction status.

The Sheriff may also notify the City that specific gross-misdemeanor, misdemeanor or tribal 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.

Under the terms and conditions of this Agreement and as permitted by law, once a City Inmate is released from County custody, regardless of any court or probation conditions placed on an inmate 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 City Inmate, including but not limited to, the City Inmate's mental, physical, or health care needs, the City Inmate's conduct or behavior, or the City Inmate's court obligations. If a City Inmate is subsequently re-booked into the Whatcom County Jail on a City matter, the County's duties and responsibilities per this Agreement go back into effect during the time the City Inmate is in County custody.

**4.5 Control of Correctional Facilities and Effect of Ordinance, Policies, Procedures, Rules and Regulations.** County Correctional Facilities will be administered by the County in accordance with the law, ordinances, policies, procedures, rules and regulations of the Sheriff's Office 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 Correctional Facilities. The City and City Inmates shall be subject to County laws and ordinances, relating to Correctional Facility operations including any emergency security rules imposed by the Sheriff and/or the County Administrator(s), and those Sheriff's Office policies, procedures, rules and regulations relating to Correctional Facility operations, provided that nothing in this Agreement shall be construed as creating, modifying, or expanding any duty on the part of the County except as specifically provided herein. Nothing in this Agreement shall be interpreted as a delegation by the City, its judicial or law enforcement agencies, to the County as a duty to oversee City Inmates except as provided in this Agreement and as follows:

- a. Obligation to Abide by Policies and Procedures. The City, its officers, employees and agents shall follow all applicable Sheriff's Office Correctional Facility policies and procedures.
- b. Operational Control. The City acknowledges the County's operational control of the jail and alternate jail programs and agrees that City Inmates committed to the Whatcom County Jail and alternative jail programs are subject to the same lawful rules and



regulations required of other inmates incarcerated therein.

- c. Equal Treatment. Except where provided elsewhere in this Agreement, the County agrees to furnish its Facilities and personnel for confinement of City Inmates and other services described in this Agreement in the same manner and extent as the County furnishes for the confinement of its own gross-misdemeanor or misdemeanor inmates, provided the County shall meet or exceed all legal requirements.

#### **4.6 Inmates Defined.**

- a. City Inmate. As used herein, "City Inmate" shall mean inmates who are arrested and detained by a city law enforcement officer, and charged with a gross-misdemeanor and/or misdemeanor offense in a Municipal Court of the City, or released without charges, or originally booked for a felony offense, which felony charge is declined for felony charging and the case is referred to the appropriate City Attorney for review of filing in the Municipal Court.
- b. County Inmate. As used herein, "County Inmate" shall mean inmates who are arrested and detained by the Whatcom County Sheriff, and charged with a gross-misdemeanor and/or misdemeanor offense in Whatcom County District Court, and held prior to charging or released without charges, or originally arrested for a felony offense, which is reduced to a gross-misdemeanor or misdemeanor offense and referred to the appropriate County Prosecuting Attorney for filing in the Whatcom County District Court, charged in Whatcom County Superior Court or are held on a non-city magistrate warrant. A County Inmate includes those inmates which the Sheriff is legally required to book and hold in custody.
- c. Third-Party Inmate. For the purposes of this Agreement, "Third-Party Inmate" shall include inmates who are committed to a Correctional Facility by other entities, such as tribal, state, and federal agencies who are not a party to this Agreement.
- d. Material Witnesses Held in the Correctional Facility. Inmate incarceration days arising from a material witness warrant shall be allocated and charged to the jurisdiction issuing the material witness warrant.

**4.7 City Access to City Inmates.** All City law enforcement officers and defense attorneys (or authorized agents) shall have the right to interview confined City Inmates at any time subject to Correctional Facility security rules, emergency declarations, orders and regulations. Available interview rooms and appropriate communication technology may be used by city law enforcement officers and defense attorneys. Nothing in this Agreement obligates the County to install technology not currently available within the Correctional Facilities.

**4.8 Transport of City Inmates.** The City shall provide or arrange for transportation and security of City Inmates to and from the Correctional Facility for initial booking and to all court appearances held in its municipal court. The City may contract with the County to provide custody or transportation services for outside court appearances, except when (1) 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 (2) the County determines, in its sole discretion, that transportation is required to support the orderly operation of the Correctional Facility. In those instances where medical transports

are needed for a City Inmate, actual transportation costs will be included as part of the medical billing to the City.

**4.9 Access to Court.** The County shall provide the City with access to the Facility's in-house courtroom for hearings involving incarcerated inmates. The County will provide an internal escort within the Facility and security within the courtroom. The City may also access the County video court system for the City court hearings provided:

- a. The City's system is compatible with the existing County system;
- b. Any interfaces, either hardware or software, necessary for the City to access the system will conform with County security protocols and be paid for by the City;
- c. Times of access will be coordinated with County Jail personnel and cannot interfere with use by either District or Superior Courts; and
- d. The City shall have no claim if any County or Jail Video or Audio Court System becomes inoperable or temporarily dysfunctional.

**4.10 Booking an Inmate.**

- 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, court order from another 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 or the City Court, and when not otherwise prohibited by law, court rule or court order, the County shall administratively book and release the City Inmate as soon as practicable. The County further reserves the right to administratively book and release, as soon as practicable, a City Inmate when, in the sole discretion of the Sheriff or designee, the County is unable to accept the City Inmate for housing or when such action is not otherwise prohibited by statute, court rule or court order. The County will make a good faith effort to notify the arresting officer of the County's decision that it will release an inmate immediately after booking so the arresting officer may pursue an option other than booking in the County Correctional Facility.
- c. Health Care Clearance. The County shall have the right to refuse acceptance of any City Inmate 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 Correctional Facility, or is beyond the operational or physical limitations of the Facilities. The County may require written clearance from the local hospital prior to booking, the cost of which will be the responsibility of the City. Additionally, the County has no obligation to receive into custody or retain custody of a City Inmate when, in the opinion of Correctional Facility staff or community medical or mental health staff the City Inmate is not medically or psychiatrically able to be housed in the Correctional Facility, or needs medical 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 transport and housing. At all times, the Sheriff or designee shall have final authority to determine whether a City Inmate is medically or psychiatrically fit for the County's Correctional Facilities.

- d. If a booked City Inmate requires immediate hospital or emergency treatment, the County will have the inmate transported to the local hospital and a county correctional officer will remain with the inmate until such time as follows: 1. The inmate receives treatment and is discharge from the emergency room, or 2. The inmate is admitted to the hospital or other health care facility, or 3. A temporary medical release has been obtained from a City Judicial Officer. The costs of these non-routine services will be included as part of the medical billing to the City.

**4.11 Determination of Case Status.** The County Prosecuting Attorney shall have the sole authority to determine which felony arrest cases submitted by the City shall be charged as felonies or referred to the City for review as gross-misdemeanors or misdemeanors charges. The City shall not be responsible for any case charged as a felony, pursuant to the determination of case status by the County Prosecuting Attorney. The City will be responsible for all costs of non-routine services provided by outside medical providers administered prior to sentencing for felony inmates arrested by the City law enforcement officers. If the determination is made by the County Prosecuting Attorney that a case should be referred to the City for review and possible charging as a gross-misdemeanor or misdemeanor, such cases shall be referred to the appropriate City Attorney in the Municipal Court, with all inmate services charged to the City from the point of booking. Any case originally charged by the County Prosecutor as a felony and later adjudicated to a gross-misdemeanor or misdemeanor shall not require compensation by the City except as otherwise specified in this Agreement. 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, unless otherwise specified in this Agreement.

**4.12 Jail Alternative Programs.** City Inmates qualified to be eligible for Jail Alternative Programs ("Programs") by the sentencing Judge may be permitted to participate in these Programs at the discretion of the Sheriff or designee. Such programs may include but are not limited to In-Custody and Out-of-Custody Work Crews, Work or School Release and Electronic Home Monitoring/Detention. The County will make Programs available to City Inmates based on the same criteria and extent they are made available to County Inmates.

A City Inmate may be terminated from a Jail Alternative Program if: (1) the city municipal court enters an order terminating the City Inmate from the Program or otherwise amends an earlier order, or (2) 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 in the custody of the County shall be confined in the Correctional Facility to serve the remainder of their term of confinement. However, the inmate's status remains subject to the other provisions of this Agreement, including Section 4.2. If the City Inmate is not 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.

**4.13 Release of Inmates.** The County will facilitate the release of City Inmates who have completed their sentences, posted bond or bail, or who have been released by the city court. The County will make reasonable attempts to notify the City when their inmates are released from custody via one of the following methods:

- a. Notice of Time Served: Used when an inmate has completed a sentence by the city court.
- b. Posting of Bail/Bond: The County agrees to process 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.
- c. Personal Recognizance (PR): If a City Inmate is released, but a PR form is not completed by the City Court, the County will route a copy of the County PR form to the Municipal Court in a timely manner or request that the City provide a City PR document immediately.

**4.14 Earned Early Release.** 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.

**4.15 City Inmate Incarceration Status Records.** In order to facilitate the management of the jail population, the County will provide the City with real-time access to the relevant Sheriff's Office records management system, so the City may determine the following:

- a. The names and booking data of City Inmates held at the Main Jail on city charges or sentences, including the amount of accrued credit for time served on the current charge(s);
- b. The names and booking data of City Inmates held at the JWC on city charges or sentences, including the amount of accrued credit for time served on the current charges (along with which City Inmates are participating in jail alternative programs). This information will be attached to inmate records, accessible by the City; and
- c. The total inmate population(s) and location.

**4.16 Form of Records.** The County agrees to maintain a system of record keeping relative to the booking and confinement of City Inmates in such style and manner equivalent to County records pertaining to County Inmates.

**4.17 City Access to Records.** Records of services provided to City Inmates shall be available for review by the City, unless their release is expressly prohibited by any applicable law including the confidentiality of medical records (including the federal Health Insurance Portability and Accountability Act, "HIPAA"). The Parties may enter business associate agreements under HIPAA as necessary to implement the intent of this Agreement.

**4.18 Correctional Facility Bed-Day Utilization Reporting.** The County shall report, at least quarterly, to the City the actual number of inmate days utilized by each Party in the previous quarter, and the total number of actual inmate days. This report may take the form of a master quarterly report, with all contract agency use figures being included on the same report.

**5. Per Diem, Costs and Billing.** The County will notify the City by August 15th of every year of the estimated booking fee, per diem, rates, and fees to be charged in the next year. This estimate is not binding on the County, but will be the best estimate provided based on the information available at that date. Per Diem, rates and fees will be for in-custody jail per diem (bed day charges), out-of-custody Work Crew, and Electronic Home Detention or other alternative programs. The final booking fee, per diem, rates, and fees may also include a capital replacement charge to fund the replacement of infrastructure and component systems of the Correctional Facilities. The daily capital replacement charge

will be billed as outlined for per diem. These costs will be determined following adoption of the County Budget by the County Council, and established in the Whatcom County Unified Fee Schedule. The Unified Fee Schedule will set forth these costs for that year and will be provided to the City with the first monthly statement in the new year. The applicable charges for custody of the inmates as well as the basis for adjustments in the charges will be presented at the County Council hearings for the adoption of the County Budget. The Unified Fee schedule is available on the County's website and is incorporated herein by reference. Failure by the County to notify the City by August 15<sup>th</sup> will not prohibit the County from establishing new costs as described above. The per diem, rates and fees from July 1, 2018 through December 31, 2018 will be established through Executive authority as per the attached Exhibit A; 2018 Jail Per Diem Fee Schedule.

**5.1 In Custody Jail Per Diem.** An In-Custody Facilities per diem cost shall be charged to the City, for each City Inmate. The City will be charged pursuant to the following terms:

- a. The City will be charged per diem in one-third (1/3) day increments for persons incarcerated in the Facilities on city gross-misdemeanor or misdemeanor charges, warrants, or for any other City Inmate incarceration purposes. 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,
- b. Persons originally incarcerated for a felony offense that is declined by the County Prosecutor and returned to the City Attorney shall be the City's responsibility from the date and time of booking. Any case originally charged by the County Prosecutor as a felony and later adjudicated to a gross-misdemeanor or misdemeanor, shall not require compensation by the City.
- c. If a city or tribal charge is concurrent to either county court or another city, tribal or contracting jurisdiction charge, each entity will equally share the per diem for the shared incarceration period. The City shall not be charged for per diem costs related to inmates on which the City has no hold.

**5.2 Booking Fee.** A booking fee shall be charged to the City, for each person booked into the Correctional Facility on the City's charges or warrants. This will include inmates returned to the County Correctional Facility from an alternative facility for hearings and/or trial and/or order of the City Court. City Inmates booked into the jail and released within eight (8) hours will only incur the booking fee. City Inmates who are booked into the Correctional Facility and held in the Facility will incur both the booking fee and a per diem charge accruing in one-third (1/3) day increments. If an inmate is booked on charges from multiple local entities, the booking fee will be split evenly between those jurisdictions.

In those instances where the City court requests that an inmate be brought to the in-house Facility's courtroom on a charge that is not reflected in the inmate's current booking record, the inmate will be escorted to court and the case heard by the City court, and any new charge(s), will be added to the inmate's booking record. If the inmate is already being held on a City charge, there will be no change to the per diem, but an additional booking fee will be charged. The additional booking fee will be shared equally with any other jurisdiction(s) on the inmate's current booking. If the inmate was not being held on a City charge, per diem will begin on the date the new charge(s) are entered if the City Inmate is held in custody on the City charge. Per diems and booking fees will be pro-rated as described in this Agreement.

**5.3 Alternative Jail Programs/Per Diem.** Jail Per Diem costs for In-Custody Work Release and Work Crew, Electronic Home Detention and Out of Custody Work Crew shall also be charged to the City, for each City Inmate. The City will be charged for Alternative Jail Programs as follows:

- a. In-Custody Work Release: If a City Inmate participates in Whatcom County's Work Release Program the City will be charged the In Custody per diem rate per bed day for work release inmates. Any funds collected from the inmate will be credited to the City.
- b. In-Custody Work Crew: If a City Inmate participates in the In Custody Work Crew Program the City will be charged the In Custody per diem rate per bed day for work crew inmates. Any funds collected from the inmate will be credited to the City.
- c. Electronic Home Detention/Monitoring: If a City Inmate qualifies for County Electronic Home Detention/Monitoring, billing to the City for these participating inmates will be based on the Electronic Home Detention/Monitoring per diem rate. Any funds collected from the inmate will be credited to the City.
- d. Out of Custody Work Crew: If a City Inmate participates in the Out-of-Custody Work Crew Program, billing to the City for these participating inmates will be based on the Out of Custody Work Crew per diem rate. Any funds collected from the inmate will be credited to the City.
- e. The above-described provisions will also apply to any other alternative day release of the City Inmate, such as school release.

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.

If a city charge is concurrent to either Superior Court, another jurisdiction's gross-misdemeanor or misdemeanor charge or another contracting jurisdiction, such as tribal court, the City shall be billed the proportionate percentage share of the current year per diem for the shared incarceration period.

**5.4 Health Care Costs.** All medical charges invoiced to the City shall be in compliance with Washington State law. All City 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, this 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 Facilities.

- a. The County is not responsible for the cost of services delivered to City 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 Facilities or non-routine services or medication provided to the City Inmate inside the Facility. Payment for emergency, exceptional or non-routine necessary medical or healthcare

for City gross-misdemeanor or misdemeanor inmates shall be made by the City upon written invoice by the County or such other terms as City and the County may agree upon in writing. The County will additionally bill the City for pre-sentence felony inmates, held on City cases, who incur emergency, exceptional or non-routine necessary medical or health care costs. The County shall notify the City within a reasonable period of time, when the County becomes aware that an inmate being held on City charges or awaiting sentencing on 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 pre-trial City felon, City pre-trial detainee, or City Inmate for this reason 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. This may include payments to other Corrections Agencies if the inmate is hospitalized in an out of area hospital and 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 extent as 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 healthcare shall include all practitioner-ordered healthcare or medical services delivered to City inmates outside of the Facilities, specialized care provided by non-contract health care providers in or out of the Facilities, 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 healthcare, emergency care, dental and/or mental health services described under Section 5, delivered to a City Inmate shall in no way excuse full, complete and timely payment by the City under this Agreement.

**5.5 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 Facilities, 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 Facilities by Facility staff or contractors or routine medications. The County will facilitate use of a City Inmate's third party medical insurance whenever possible. If coverage is available, the County will bill the City Inmate's health insurance and/or applicable public assistance and credit the City. Credit amounts may show up on billings subsequent to the time of service, due to processing timelines by both the provider and the third party payer.

**5.6 Payment.** The City shall remain liable for complete and timely payment of all amounts invoiced. Invoices may be sent monthly, quarterly or any other schedule mutually agreed upon by 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 (1) make complete and timely payment on the outstanding balance, and (2) 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, that upon termination of this Agreement, the County shall pay the City any such credited amounts. Withholding payment of any amount billed, regardless of whether the City has provided timely written notice of a disputed invoice, will constitute a default under this Agreement.

**5.7 Review and Records Maintenance.** Each Party, at its own expense, may examine the other Party's relevant books and records to verify charges and may conduct an audit to determine if billing errors have been made. The County shall maintain accurate time and accounting records related to the services for a period of three (3) years following final payment.

**6. Indemnification/Hold Harmless.** 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, 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 the Party, its elected and appointed officials, employees, agents or volunteers.

A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss or expense for personal injury, for any bodily injury, sickness, disease or death or for any damage to or destruction of any property (including the loss of use resulting therefrom) is caused by the sole act or omission of the other Party.

In the event of any concurrent act or omission of the Parties, negligent or otherwise, these indemnity provisions shall be valid and enforceable only to the extent of each Party's comparative liability.

The Parties agree to maintain a consolidated defense to claims made against them and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated. If any claim is resolved by voluntary settlement and the Parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration. Each Party will pay their own attorney's fees and costs for arbitration but the Parties shall share equally in the arbitrator's costs and fees.

**6.1 Insurance.** Each Party shall obtain and maintain insurance coverage in minimum liability limits of five million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) in the aggregate, by an insurance carrier and/or self-insurance for their own liabilities from damage to property and injuries to persons arising out of its activities associated with this Agreement. The maintenance of, or lack thereof, of insurance and/or self-insurance shall not limit the liability of the indemnifying Party to the indemnified Party(s). Upon request, each Party shall annually provide and attach to this Agreement, or an extension to this Agreement, a certificate of insurance or letter of self-insurance.

**6.2 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 to 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.

**7. Liability Related to City Ordinances, Policies, Rules and Regulations.** In executing this Agreement, the Parties do not assume liability or responsibility of the other Party which arises in whole or in part from the existence or effect of the other Party's ordinances, policies, rules or regulations. Nor shall any Party be liable or responsible for any claims of conduct or actions by the other Party, the other Party's 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 Party's ordinance, policy, rule or regulation is at issue, or Party's court, Party's Prosecutor or the Party's law enforcement agency as described above, each Party shall defend themselves at their own expense, and if judgment is entered or damages are awarded against any Party, each Party shall pay their proportionate share of any damages, liability, costs, and fees awarded to the injured third party. If any claim is resolved by voluntary settlement and the Parties cannot agree upon apportionment of damages and defense costs, they shall submit apportionment to binding arbitration, with each Party paying their own costs and fees for arbitration.

## **8. Default and Disputes and Remedies.**

**Default.** If either Party fails to perform any act or obligation required to be performed by this Agreement, the other Party shall deliver written notice of such failure to the non-performing party. The non-performing party shall have fifteen (15) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default ("Default") under this Agreement; provided, if the non-performance is an act that could not reasonably be cured within said fifteen (15) day period, then the non-performing party shall not be in Default if it commences cure within said fifteen (15) day period and thereafter diligently pursues cure to completion.

**Dispute.** Should a dispute arise as to the application, compensation, enforcement or interpretation of this Agreement between the City and the County, such Dispute or Default described above, shall be progressively resolved in the following manner:

1. Through good faith and reasonable negotiations between the City and the County's respective contacts;
2. Through good faith and reasonable negotiations between the Mayor and the County Executive or Administrators;
3. In the event the City and the County do not reach an agreement within 90 days of commencing negotiations, the matter will be submitted to non-binding mediation or, if agreed by the Parties, forego mediation and proceed directly to binding arbitration. The arbitrator may be selected by agreement of the Parties under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, and conducted in Bellingham, WA., or if agreement is not reached, conducted through JAMS (mediation and arbitration services) in Seattle, WA., or as otherwise agreed in writing by the Parties. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. All fees and expenses for mediation

or arbitration shall be borne by the Parties equally; however, each Party shall bear the expense of its own counsel, experts, witnesses, fees, attorney's fees, and costs for preparation and presentation of evidence; and

4. The Parties may mutually agree to extend the negotiation period. If the parties cannot agree upon the selection of an impartial arbitrator within fourteen days of a written request for arbitration by either Party, the arbitrator shall be selected as provided in the Superior Court Mandatory Arbitration Rules by a judge of the Superior Court of Skagit County or JAMS. The arbitration shall be conducted pursuant to the Superior Court Mandatory Arbitration Rules.
5. It is agreed between the Parties that no attorney fees or costs shall be awarded to the prevailing Party under these provisions.

Nothing in this section shall deny any rights established elsewhere in this Agreement.

In addition, if the City fails to make payment on an outstanding invoice within the time to cure and the City has not disputed the invoice as provided in this Agreement, the City shall have no further right under this Agreement to deliver custody to or otherwise house City Inmates at the Correctional Facility and at the County's request, remove all City Inmates from the Correctional Facility within fourteen (14) days of notice. The City shall be responsible for transporting and arranging an alternate correctional facility to house City Inmates. Thereafter, the County may, in its sole discretion, accept city inmates to the Correctional Facility if all outstanding invoices are paid. Interest on balances not paid within 45 days of billing shall be computed at 1% of the unpaid balance per month.

**9. Early Termination by the County.** Except as provided in Section 8.3 below, the County may terminate this Agreement at any time, with or without cause, upon ninety (90) days advance written notice to the City and the Washington State Office of Financial Management. The Notice shall state the grounds for termination and the specific plans for accommodating the affected jail population.

**9.1 Early Termination by the City.** The City may terminate this Agreement at any time, with or without cause, upon ninety (90) days advance written notice to the County and the Washington State Office of Financial Management. The Notice shall state the grounds for termination and the specific plans for accommodating the affected jail population.

**9.2 Early Termination by the County for Lack of Funding.** This Agreement is contingent upon governmental funding and local legislative appropriations. In the event that funding from any source is withdrawn, reduced, limited, or not appropriated after the effective date of this Agreement, this Agreement may be terminated by the County immediately by delivering written notice to the City. The termination notice shall specify the date on which the Agreement shall terminate.

**9.3 Calculation of Costs Due Upon Early Termination.** Upon early termination of this Agreement as provided in Section 8, the City shall pay the County for all services performed up to the date of termination. The County shall notify the City within thirty (30) days of the date of termination of all remaining costs. No payment shall be made by the City for any expense incurred or services performed following the effective date of termination unless authorized in writing by the City.

**10. Notices.** All notices required to be given by any Party to the other Party under this Agreement shall be in writing and shall be delivered either in person, by United States first-class mail, or electronically (via e-mail) to the applicable Administrator(s) or the Administrator's designee. Notice delivered in person shall be deemed given when received by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator(s), or their designee, at the addresses set forth in Section 3 of this Agreement. Notice

delivered by email shall be deemed given as of the date and time received by the recipient.

## **11. Miscellaneous Provisions.**

**11.1 Compliance with Laws.** In the performance of its obligations under this Agreement, Parties shall comply with all applicable federal, state, local laws, rules and regulations.

**11.2 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral and/or written agreements between the Parties regarding the subject matter contained herein.

**11.3 Conflicts between Attachments and Text.** Should any conflicts exist between any attached exhibit or schedule, and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

**11.4 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 Skagit County Superior Court, unless agreed otherwise in writing by the Parties, in the State of Washington.

**11.5 Interpretation.** This Agreement and each of the terms and conditions are deemed to have been explicitly negotiated by the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

**11.6 Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

**11.7 Savings.** Nothing in this Agreement shall be construed 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 to the extent necessary to bring it within legal requirements.

**11.8 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.

**11.9 No Assignment.** Except as provided in Section 4.1, this Agreement shall not be assigned, either in whole or in part, by either Party without the express written consent of the other Party, which may be granted or withheld in such Party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

**11.10 Warranty of Authority.** Each of the signatories hereto warrants and represents that he/she is competent and authorized to enter into this Agreement as an Administrator(s) on behalf of the Party for whom he or she purports to represent within this Agreement.

**11.11 Independent Contractor.** The County will perform all Services under this Agreement as an independent contractor and not as an agent, employee, or servant of the City. The County shall be solely responsible for control, supervision, direction and discipline of its personnel, who shall be employees and agents of the County and not the City. The County has the express right to direct and control the County's activities in providing the Services in accordance with the specifications set out in this Agreement. The City shall only have the right to ensure performance.

**11.12 No Joint Venture.** Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the Parties.

**11.13 No Separate Entity Necessary.** The Parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

**11.14 Ownership of Property.** Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either Party in connection with its performance under this Agreement will remain the sole property of such Party, and the other Party shall have no interest therein.

**11.15 No Third Party Beneficiaries.** This Agreement and each and every provision hereof are for the sole benefit of the Parties. No other persons or Parties shall be deemed to have any rights in, under or to this Agreement.

**11.16 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.

**11.17 This is an Integrated Agreement.** Neither Party has relied on any representation other than those expressly set forth herein in entering into this Agreement.

**11.18 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, understand its meaning and effect, and agree to enter into this Agreement with full knowledge of its terms and conditions. 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 and executed by both Parties.

**11.19 Compliance with the Law.** The Parties agree that during the performance of this Agreement

they shall abide by all Federal, State and local laws, 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.

If new law or legally binding precedent under RCW 70.48.130 is directly applicable to any term or condition in this Agreement, which makes such term or condition in this Agreement unlawful, the contract shall be amended in writing and signed by the Parties. However, if any term or condition is allowed to have been negotiated by the Parties in this Interlocal Agreement, the negotiated term or condition shall remain in full force and effect and be binding on the Parties. Retroactivity shall not apply.

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

**11.21 Establishment of Stakeholder Committee and Composition.** The Parties to this Agreement shall participate in Finance and Operations Stakeholder Committee on an annual basis, or as needed, to discuss matters and make recommendations related to Jail finances and operations. The Committee shall consist of the police chiefs from all contracting City jurisdictions or a person selected by the Chief Executive Officer from the contracting City jurisdiction; the Sheriff; the Chief Corrections Deputy and the County Executive. The Committee shall meet annually on or around July 31<sup>st</sup>, to coincide with the Parties' budget processes. The Committee may present any recommendations to the County Council, the Sheriff and the County Executive.

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

**11.23 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.

**11.24 Agreement Contact.** The County's initial contact for this Agreement shall be the County's designated Administrator(s). The City's initial contact shall be the City's designated Administrator(s) as named in Section 3.0 of this Agreement. The Parties to this Agreement may designate new contacts by providing written notice to all the other Parties.

**11.25 Modifications.** Either Party may request changes in this Agreement. Any and all agreed modifications, to be valid and binding upon either Party, shall be in writing and signed by both Parties.

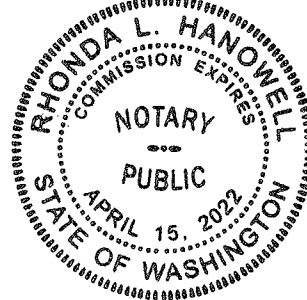
**11.26 Filing.** This Agreement shall be filed with the Whatcom County Auditor's Office, or posted on the County's website.



**CITY OF EVERSON:**

EXECUTED this 23<sup>rd</sup> day of May, 2018. For the CITY OF EVERSON

[Signature]  
Mayor



STATE OF WASHINGTON    )  
  ) ss  
COUNTY OF WHATCOM    )

On this 23<sup>rd</sup> day of May, 2018, before me personally appeared John Perry, to me known to be the Mayor of the City of Everson, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Rhonda L. Hanowell

NOTARY PUBLIC in and for the State of  
Washington, residing at Everson.  
My commission expires 4-15-2022.

**ATTEST:**

[Signature]  
Finance Director

Approved as to form:

[Signature]  
Office of the City Attorney

Departmental Approval:

[Signature]  
Chief of Police

**Exhibit A**

<b>2018 Jail Per Diem Fee Schedule</b>	
<b>July 1, 2018 - December 31, 2018</b>	
<b>Program</b>	<b>Rate</b>
In Custody - Base Rate	\$ 116
Capital Replacement	\$ 13
Booking Fee	\$ 116
Out of Custody Work Crew	\$ 50
Electronic Home Detention	\$ 73