

INTERLOCAL JAIL FACILITY USE AGREEMENT

This Jail Facility Use Agreement ("Agreement") is by and between Asotin County ("County"); the City of Asotin ("Asotin"); and the City of Clarkston ("Clarkston"), pursuant to RCW Chapters 70.48 and 39.34.

RECITALS

- A. The County and its Sheriff are charged by State law with the operation and maintenance of the Asotin County Jail and related correctional facilities ("Jail"), the costs of which are independently accounted for in the "Public Safety Jail Fund" further described below.
- B. The existing Jail ("Existing Jail") requires additional capacity in order to safely incarcerate the combined volume of city and county inmates expected over the course of the next thirty years. The city government parties to this Agreement ("Cities") desire to continue use of the Jail for detention of city inmates.
- C. The County intends to build, own and operate a new Jail consisting of approximately 140 beds at a cost of approximately \$12,000,000 ("New Jail"), to service the needs of the community for the foreseeable future.
- D. The parties agree that the community and its taxpayers are best served by a cooperative, collective approach to public infrastructure, including the New Jail, through joint planning and financing, to maximize efficiency and promote economies of scale.
- E. On 08/05/2019, the Asotin County Board of Commissioners adopted Resolution No. 19-24, which found that the Existing Jail could not meet the demand of the combined volume of City and County inmates. The Resolution placed a proposition before Asotin County voters that, if passed, would authorize an additional sales and use tax at the rate of 0.3% to be used for the construction, maintenance, operation of jail facilities, for police and fire protection, and as described in Part 1, Section 3 and Section 4 of this Agreement, all pursuant to RCW 82.14.450.
- F. On 08/05/2019, the parties entered a Provisional Agreement ("Provisional Agreement"), providing that Asotin County would propose a ballot measure to the voters to authorize a 0.3% sales tax pursuant to RCW 82.14.450, a copy of which statute, in its form as of the date of this Agreement, is attached hereto as Exhibit A ("Sales Tax Measure"), intended to service limited tax general obligation bonds to be issued by Asotin County for the construction of the New Jail, together with and refunding bonds which may be issued by Asotin County to refund the original bonds ("Bonds"), jail operations, and other public safety requirements as permitted by law. The Provisional Agreement envisions the negotiation and execution of a definitive, long-term interlocal agreement to globally address jail financing and operational matters.
- G. The parties to this Agreement are willing to make financial concessions in order to

obtain access to the Jail. Subject to the terms and conditions herein, the County agrees to make the Jail available for the confinement of City inmates.

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

AGREEMENT

1. NEW INTERLOCAL AGREEMENT.

This Agreement shall become effective when all parties set forth above have duly executed this Agreement and the conditions set forth in paragraph 2 have occurred. Until the New Jail is open, the existing Jail Use agreements between and among the parties (or between any of the parties) shall remain in force and effect pursuant to the terms thereof. Consistent with paragraph 2 below, the County will provide prompt written notice to the parties notifying the parties that this Agreement is operative and in effect. Once the New Jail is open, this agreement shall entirely replace and supersede any and all previous agreements between the parties regarding use of the Jail, including the Provisional Agreement.

2. SALES TAX MEASURE AND EFFECTIVE DATE OF AGREEMENT.

The County has placed the Sales Tax Measure on the November 2019 election ballot.

- a. In the event the Sales Tax Measure fails to pass at the November 2019 election, the Sales Tax Measure will be placed on the ballot for the next appropriate election. In the event that the Sales Tax Measure fails to pass at either election,
 - i. This Agreement shall be immediately null and void without further action by the parties;
 - ii. The existing jail use agreements between the parties shall remain in effect pursuant to the terms thereof;
 - iii. And the County, before seeking to place an additional sales tax proposition on the ballot pursuant to RCW 82.14.450, shall afford the parties hereto ten (10) days' written notice prior to taking legislative action to place such sales tax measure on the ballot. In the event the Sales Tax Measure passes at either election, this Agreement will become fully effective and immediately binding on the parties on the date the election is certified by the Asotin County Auditor ("Effective Date"), consistent with its terms, without further action or consent by the parties hereto.

PART 1 - JAIL FINANCING

3. JAIL FUNDING SOURCES.

Upon voter approval of the Sales Tax Measure, the parties agree that all funds derived therefrom will be paid to Asotin County by the Washington State Department of Revenue, exclusively to (1) service the Bonds; (2) costs associated with construction, operations, maintenance, staffing, improvements, additions and other such costs of the New Jail, and (3) cover increased costs associated with operation of the New Jail as necessary in the future.

Asotin County agrees to place all such funds in the Public Safety Jail Fund established below in Section 5. The parties will prepare and submit a joint letter to the State Department of Revenue expressing support for the distribution formula and allowable uses set forth in this section.

4. **SALES TAX MEASURE FUNDS TO BE USED EXCLUSIVELY FOR NEW JAIL.** It is the clear intent of the Parties to this agreement that all such funds derived from the Sales Tax Measure shall be used exclusively for the construction, operations, maintenance, staffing, improvements, additions and other such costs solely for the New Jail. The parties agree funds received from the Sales Tax Measure shall not be used for other Asotin County or Municipal Police and Fire Protection not directly associated with the New Jail.

5. PUBLIC SAFETY JAIL FUND.

Asotin County agrees to establish a Capital Projects Fund to account for the construction of the New Jail. The Public Safety Jail Fund shall consist of "Total Revenues," defined as (1) bond revenues; (2) the direct funding by the County set out in paragraph 5(a) below; and (3) the revenue received from the countywide Sales Tax Measure; and (4) all other revenues derived from or associated with the Jail operations. Operational expenses of the Jail will be paid by the Public Safety Jail Fund. Notwithstanding any other provision of this Agreement, the first priority for payment from the Public Safety Jail Fund shall be Bond Payments.

- a. Direct Funding by County. Asotin County agrees to place into the Public Safety Jail Fund for the New Jail an amount not less than \$1.7 million, which shall adjust each following year in accordance with an annual review of CPI West Region formula, beginning 01/01/2020 from revenue sources separate from the revenue generated by the Sales Tax Measure.
- b. The parties acknowledge that the County intends to issue the Bonds in reliance upon the commitments and agreements of the parties reflected in this Agreement. The Bonds, when issued, will have a term not to exceed thirty (30) years, and may be refinanced by the County, without limitation, for the purpose of debt service savings so long as the term is not extended. All references to Bond Payments include any refunding bonds that may be issued to refinance the Bonds initially issued. In the event the Department of Revenue determines that it is not able or willing to distribute the Sales Tax Measure revenues as set forth herein, the parties agree to work cooperatively to achieve the intended revenue distribution.
- c. The net proceeds derived by the County from the sale of the Bonds shall be deposited into the Capital Projects Fund and used only for expenses related to the construction of the New Jail. Once the project is complete, any remaining bond proceeds will be used only as allowed by the bond documents.

6. JAIL FINANCE COMMITTEE.

There is hereby established a Finance Committee, charged with oversight of Jail finances, as set forth below.

- a. Composition. The Jail Finance Committee is comprised of five members, which shall include one representative from Asotin County, one representative from the City of Clarkston, one representative from the City of Asotin, one representative from the Asotin County Sheriff's Office or designee, and one at-large member.
- i. The four appointed members of the Jail Finance Committee shall, within one-hundred twenty (120) days of the Effective Date of this Agreement, propose and select by vote the fifth at-large Jail Finance Committee member to serve for a period of thirty-six (36) months from selection.
 - ii. Preference for the fifth at-large member shall be given to representatives of parties to this agreement or to parties contracting with Asotin County to house inmates at the New Jail.
 - iii. From amongst the five Jail Finance Committee Members, the members shall propose and select by vote a Jail Finance Committee Chair. The Chair may be reaffirmed or a new Chair may be selected by the five appointed members of the Jail Finance Committee. Any member of the Jail Finance Committee may propose a Chair. The Chair shall be selected by affirmative vote of a simple majority of the Jail Finance Committee. In the event the Jail Finance Committee is unable to agree on a Chair within one- hundred twenty (120) days of the Effective Date of this agreement, the Presiding Judge, Asotin County Superior Court, shall make the selection from the slate of candidates proposed by the Jail Finance Committee, on application of any member of the Jail Finance Committee.
 - iv. Each party shall have absolute discretion to select their representative(s) and/or alternates to the Jail Finance Committee. The executive of each party to this Agreement will promptly inform the other parties in writing of their designated representatives. The intent of this Agreement is for the parties to designate representatives with technical and subject matter expertise as necessary to exercise sound business judgment and advance the purposes of the Jail Finance Committee as set forth herein.
 - v. For the purposes of this Agreement, without creating any third-party beneficiary to this Agreement, Asotin County shall be considered the representative of the entire population and entities within Asotin County (other than the population within the municipal limits of the Cities party to this Agreement), tribal entities, and unincorporated Asotin County.
- b. Authority. The following matters shall be submitted to the Jail Finance Committee for deliberation and decision.

- i. Establish bed rates and booking fee rates. The initial fee shall be set at the respective rates and fees established as of the date of the initial signing of this agreement and shall remain in effect until the Jail Finance Committee establishes new rates and fees. The County shall not pay booking fees. The rate shall not change more than once annually.
 - ii. Review preliminary annual Jail budget including any administrative charges.
 - iii. Review operating costs and establish resultant bed rates and booking fees.
 - iv. The Jail Finance Committee shall have opportunity to review and approve any Significant Financial Decision involving the Public Safety Jail Fund, to be presented during budget or if needed an emergency amendment. For the purposes of this Agreement, "Significant Financial Decision" is defined as any single financial obligation or transaction of the Public Safety Jail Fund that exceeds ten percent (10%) of the annual Public Safety Jail Fund budget, exclusive of salaries and benefits. Any decision to issue refunding bonds that will not extend the term of the debt when there are Bond Payment savings shall not be considered a Significant Financial Decision.
 - v. Upon reaching Capacity, the Jail Finance Committee shall promptly commence planning activities aimed at addressing the anticipated jail space requirement. For the purposes of this Agreement, "Capacity" is when the Jail average daily population is at or above 85% of the available number of beds for a continuous twelve (12) month period.
 - vi. When Capacity is reached, the Jail Finance Committee shall work with the Asotin County Sheriff and Asotin County Jail Commander to ensure jail space is made available to parties to this Agreement on an equal priority basis.
 - vii. At least five (5) years prior to the expiration of this Agreement, the Finance Committee will initiate discussion of specific terms and conditions under which this Agreement could be renewed or modified.
- c. Powers Not Enumerated. Any authority regarding the Jail not specifically enumerated herein and assigned to the Jail Finance Committee shall be retained by Asotin County. The Jail Finance Committee shall not be considered as a separate legal entity. The members of the Jail Finance Committee shall obtain all necessary legal and professional advice from the municipal entity they represent. Reasonable administrative expenses of the Jail Finance Committee shall be paid by the Public Safety Jail Fund.
- d. Meetings. The Jail Finance Committee shall meet at least two (2) times per calendar year, or more frequently as otherwise required to adequately deliberate upon and decide matters delegated to the Jail Finance Committee herein. The

Jail Finance Committee shall meet within fourteen (14) days of a request by a simple majority of the members.

- e. Procedures. The Jail Finance Committee shall establish and publish internal rules, procedures for its meetings and operations, consistent with this Agreement, the Open Public Meetings Act, RCW Chapter 42.30, the Public Records Act, RCW Chapter 42.56, and other applicable laws. Minutes shall be kept of each meeting, and made publicly available by, at minimum, prompt publication on the Asotin County government website.
- f. Jail Finance Committee Voting. A quorum shall consist of three (3) or more members of the Jail Finance Committee. All decisions of the Jail Finance Committee envisioned by this Agreement shall be done by majority vote, and immediately reduced to writing and furnished to the County.

PART 2- JAIL OPERATIONS

7. CONTROL OF JAIL.

The Cities acknowledge the County's statutory responsibility, ownership, and operational control over the Jail. The Jail will be administered by the County in accordance with the ordinances, policies, procedures, rules, and regulations of the County (including any emergency security rules imposed by the Sheriff), and in accordance with the rules and regulations of any agency of the State of Washington empowered to make rules governing the administration of county corrections facilities. The Cities hereby consent and agree that inmates committed to the 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.

8. INMATES DEFINED.

- a. City Inmate. As used herein, "City Inmate" shall mean those inmates originally charged in municipal courts of the Cities, and those inmates arrested by a city law enforcement officer while subject to an investigative hold.
- b. County Inmate. As used herein, "County Inmate" shall mean those inmates originally charged in Asotin County District Court on gross misdemeanor and misdemeanor offenses, and persons arrested for, or once charged with, any felony offense charged in Asotin County Superior Court, or held by magistrate warrant.
- c. Third Party Inmates. For the purposes of this Agreement, County Inmate and City Inmate shall not include those inmates who are committed to the Jail by entities that pay a contract rate to house their inmates in the Jail, or other inmates arrested by state and federal agencies.

9. ARREST WARRANT OR CITATION.

City law enforcement officers placing inmates in the Jail shall, in every instance, furnish an

arrest warrant, probable cause affidavit, citation or other charging document to the County jailer on duty at the time.

10. TRANSFER OF CUSTODY.

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

11. TRANSPORTATION.

Each party to this Agreement shall be solely responsible for transportation of its inmates the New Jail. In the event the County determines, in its sole discretion, that emergency transportation is necessary in order to secure medical treatment for a City Inmate, the County shall provide such transportation and the responsible City shall reimburse the costs thereof. Cities may contract with the Sheriff to provide custody and/or transportation services for court appearances.

12. MEDICAL CARE AND COSTS.

All inmates shall receive such medical and dental treatment when emergent and necessary to safeguard their health while in custody as required by law. Medical costs shall be allocated per state law or by subsequent agreement. The Public Safety Jail Fund will absorb medical costs from injuries to inmates once in Custody.

13. CITY ACCESS TO INMATES.

All City law enforcement officers and defense attorneys shall have the right to interview City Inmates at any time inside the confines of the Jail, subject to Jail security rules and regulations. Interview rooms will be made available to City law enforcement officers as available.

14. POSTING OF BAIL.

The County agrees to act as agent for City Inmates with respect to bail bonds. The County will deliver bail bonds or monies to the Municipal Court in a timely manner.

15. INMATE WORKERS.

At the discretion of the Sheriff, City Inmates may be permitted to work outside the Jail when serving out a sentence. Such City Inmates may be directed to perform work on municipal property, including City Hall or the County Courthouse. City Inmates assigned to work as trustees on the public property of the City may be released to the City's Chief of Police or their agent, upon initiated receipts, and during such period shall be the sole responsibility of the Chief of Police.

16. RELEASE OF CITY INMATE FROM COUNTY JAIL.

No City Inmate confined in the Jail shall be released therefrom, except by order of the court in

those matters in which said courts have jurisdiction. The Sheriff may in his or her discretion transfer inmates to another facility as necessary to effectively operate the Jail.

17. RECORD KEEPING.

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

18. INDEMNIFICATION.

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

19. TERM.

This Agreement shall be effective for the life of the Bonds, which shall not be more than 30 years in duration from the date of their issuance. This Agreement shall not automatically terminate, but shall be terminable by any party to this Agreement on one (1) year's written notice to each of the

other parties to this Agreement. The County shall give written notice ("Bond Maturity Notice") to the Parties one year prior to the Bond Maturity (i.e. the date on which the principal amount of all bonds will be paid in full). The County will not extend or renegotiate the initial Bonds beyond their original term without the consent of the parties, but may refund the Bonds without the consent of the parties when the term will not be extended and there will be Bond Payments savings. Upon receiving the Bond Maturity Notice the Parties shall meet and confer regarding the use of revenues from the Sales Tax Measure, continuation of this Agreement, and continued use of the Jail by the parties hereto.

20. SURVIVAL.

The provisions of paragraphs 17, Record Keeping, 18, Indemnification, and 20, Survival shall survive the termination or expiration of this Agreement.

21. 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 done consistent with this Agreement. This paragraph establishes the sole and exclusive remedy for disputes arising under this Agreement, except as otherwise set forth herein. In the event of any dispute arising under this Agreement, the parties shall, as a material condition precedent to any suit under this Agreement, provide formal written notice of the dispute to the other party, and engage in formal mediation using a mutually agreed upon mediator. If the parties are unable to agree on a mediator within fifteen (15) days of written notice, either party may bring suit in Asotin County Superior Court for the sole purpose of seeking appointment of a mediator. If the parties are unable to resolve their differences within thirty (30) days after mediation, venue and jurisdiction for any action arising under this Agreement shall lie in the Courts of Asotin County, Washington. In the event of any dispute arising under this Agreement, the Court shall award attorney fees, costs, expert witness fees, mediation costs, and all other costs related to the dispute to the prevailing party.

22. 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.

23. 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 end the terms and conditions of this Agreement are declared severable.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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 the parties hereto. 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.

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.

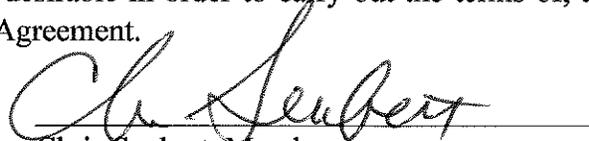
ASOTIN COUNTY



Brian Shinn, Chairman



Jim Jeffords, Vice Chair



Chris Seubert, Member

ATTEST:



Vivian Bly, Clerk of the Board

Date: August 5, 2017

APPROVED AS TO FORM:

BN

Benjamin Nichols, Prosecuting Attorney
WSOA# 23006

Steve Austin, City Clerk

Date: 7/23/19

APPROVED AS TO FORM:

Todd Richardson, City Attorney

CITY OF ASOTIN

Vikki Bonfield

Vikki Bonfield, Mayor

ATTEST:

Tiffany Rogers

Tiffany Rogers, City Clerk / Treasurer

Date: 7/23/19

APPROVED AS TO FORM:

J. Richards

Jane E Richards, City Attorney

CITY OF CLARKSON

Monika Lawrence

Monika Lawrence, Mayor

ATTEST:

INTERLOCAL JAIL FACILITY USE AGREEMENT BETWEEN ASOTIN COUNTY, CITIES OF ASOTIN AND CLARKSON