

**CITY OF BLAINE
REQUEST FOR COUNCIL ACTION
MEETING DATE:**

SUBJECT: Interlocal Agreement Whatcom County – City of Blaine Re: Jail

SUBMITTING DEPT: City Manager

PREPARED BY: Gary Tomsic

AGENDA LOCATION: Comments/Communications ☐, Consent ☐ Committee Reports ☐,
Unfinished Business ☐, New Business ☒ Public Hearing ☐, Standing Committees ☐

ATTACHMENTS: Copy of Interlocal Agreement

SUMMARY/BACKGROUND: Whatcom County is in the process of constructing a new jail facility for low risk offenders. This is a temporary facility that will in seven years or so be replaced by the construction of an new criminal justice facility. The interim facility is needed to address the long standing severe over-crowding problem at the current jail. The County voters approved a criminal justice sales tax increase (one-tenth of one percent) for the purposes of constructing both facilities. In the coarse of planning for this facility and the election, the cities raised the issue of how a new jail would increase our costs and that the new tax would not help cities off-set these costs. In response to this issue, the County came up with a voluntary plan which allows the cities to make a one-time cash contribution to the construction of the new intermim facilities. In exchange the County would credit the cities a certain amount annually toward their jail charges. In Blaine’s case, we are asked to contribute \$90,400 and in return we would receive \$244,307 credit. The credit is given annually between 2006-2014. The credit is 2.7:1 payback to the City.

This appears to be a good plan for the cities. The concerns that have been expressed have focused on how future daily jail costs are going to be controlled. The point is that increases in cost could eat up the credit. We met with the County recently and were assured that cost increases are built in the plan and they will be modest. We also requested and received an opportunity to review the cost information before new rates are established. The simple fact is that the increases will impact Blaine whether we participate in this program or not.

RECOMMENDATION: Approve the interlocal agreement and authorize the use of REET funds to pay the City of Blaine’s protion.

FISCAL ANALYSIS: The two REET Funds currently have balances of \$370,500 and \$463,708. The \$90,400 can be paid without jeopardizing the debt obligations of these two funds.

REVIEWED BY:

City Manager _____ Finance Dir. _____ City Clerk _____

COUNCIL ACTION:

☐ Approved ☐ Denied ☐ Tabled/Deferred ☐ Assigned to: _____

COUNCIL ACTION: _____

**INTERLOCAL AGREEMENT
WHATCOM COUNTY – CITY OF BLAINE**

THIS AGREEMENT, replaces Whatcom County Interlocal Agreement #200604008 between Whatcom County, a political subdivision of the State of Washington, hereinafter referred to as the "County", and the City of Blaine, a municipal corporation of the State of Washington, hereinafter referred to as the "City";

WITNESSETH THAT:

WHEREAS, the Interlocal Cooperation Act (RCW 39.34.180) has been amended effective January 1, 1997 to require each city to be responsible for the costs incident to prosecution, adjudication, and incarceration of gross misdemeanor and misdemeanor offenses that occur within its jurisdiction and that are committed by adults; and

WHEREAS, the City desires to utilize the services and/or the facilities of the Whatcom County Jail on a regular basis, for the purpose of incarcerating persons or utilizing jail alternative programs where the initial or appropriate final charge is a gross misdemeanor or misdemeanor offense committed by an adult within its jurisdiction and the person to be incarcerated is referred to the County Jail by City law enforcement officers or the Municipal Court Judge; and

WHEREAS, in order to accommodate a steadily increasing jail population, including those inmates from the various cities of Whatcom County, it is necessary for Whatcom County to construct a new jail facility, designated the Whatcom County Interim Jail and Alternative Corrections Center (hereinafter referred to as the "Corrections Center") in addition to its present jail space; and

WHEREAS, the City of Blaine has also recognized the need for a new interim jail facility to accommodate the growing need for jail space and has engaged with the County in planning for a new facility; and

WHEREAS, the new interim jail facility is intended to be a regional capital project, serving the cities and the unincorporated areas of Whatcom County; and

WHEREAS, the City intends to provide funding to Whatcom County towards the capital construction costs of the facility in order to acquire the right to use a portion of the capacity of the facility; and

WHEREAS, the City has added the interim jail facility to the City's Capital Facilities Plan in the recent update and has included it in the City's 2006 adopted budget;

WHEREAS, the initial cost of building the Corrections Center is projected to be at least \$10.2 million, plus additional startup costs approximating \$1.2 million, with the cost of operating the facility thereafter estimated to be in excess of \$2 million per year; and

WHEREAS, the larger portion of the cost of constructing this Corrections Center that is scheduled to go into service in the latter part of 2006, will be borne by the County; and

WHEREAS, the County and cities of the County have discussed and agreed upon the concept of the cities each contributing a portion of the balance of the cost of constructing the Corrections Center in exchange for credits to be applied by the County against the charges for the cities' respective uses of the jail through the year 2014; and

WHEREAS, this concept has been proffered to the cities by the County not only as a funding mechanism for Corrections Center construction but also as a means for the cities to each make the transition from a budgetary standpoint to again utilize available jail space, and their choice to participate in this program is strictly voluntary; and

WHEREAS, in light of the differences between the cities in both population levels and jail utilization rates, it has been necessary to determine a fair amount of contribution and corresponding credit for each of the participating cities; and

WHEREAS, the total contribution from the cities toward the cost of Corrections Center construction at this time is expected to be approximately \$2.26 million; and

WHEREAS, the Corrections Center is scheduled to be utilized through 2014, by which time another new jail facility is expected to replace it and accommodate a significant number of inmates beyond the number accommodated by the current facilities; and

WHEREAS, the credit to be given the respective cities for their contributions to costs of jail construction will be granted to them from the point at which the new facility goes into service (late 2006) through 2014 and is expected to total slightly over \$6.11 million, and will be applied by the County to reduce the amount otherwise owing by each city for the cost of using jail space in the County jail facilities; and

WHEREAS, the parties hereto also desire to include within this agreement the procedures for determining the costs associated with housing inmates within the jail, for billing those costs, and for payment by the City to the County for the portion of the costs that remain after application of the proper credit against the total bill;

WHEREAS, this agreement will in effect supplement, amend, and replace the existing agreement between the County and the City pertaining to provision of and payment for jail services;

NOW, THEREFORE, the County and City agree as follows:

Section 1. PURPOSE OF AGREEMENT. This agreement shall finalize and memorialize the arrangement between the County and the City whereby the City shall contribute to the County by September 1, 2006 a sum of money in the amount set forth below in Section 4, and the County shall in exchange therefor provide to the City a portion of the jail capacity to be measured in bed days. The County shall in fulfillment of this obligation provide a credit to the City to be applied against its bill for its use of inmate services. It shall also serve as the basis for the County's provision of jail services to the City, along with a determination of standards, costs, and payments for those services provided to the City by the County.

Section 2. DURATION OF AGREEMENT. This agreement shall be effective September 1, 2006, whatever the date of execution, and shall continue through December 31, 2014, or until the agreement is terminated according to the provisions for termination contained herein.

Section 3. PARTY CONTACTS. The County's contact for this agreement shall be the Chief of Corrections. The City's contact shall be Municipal Court Administrator .

Section 4. CITY'S CONTRIBUTION. The City shall, no later than September 1, 2006, pay to the County in cash, negotiable instrument, or other equivalent form of value acceptable to the County the amount of [\$1,681,440 – Bellingham] [\$90,400 – Blaine] [\$51,980 – Everson/Nooksack] [\$228,260 – Ferndale] [\$158,200 – Lynden] [\$49,720 – Sumas] which shall be for the purpose of contributing to the cost of constructing the Corrections Center, and shall be applied as the County deems appropriate.

Section 4a. CHARGES FOR SERVICES. The City shall pay the County for the services provided under this Agreement as set forth in Addendum A to the Agreement, provided that, if any jurisdiction is granted a more favorable rate for any or all of the services provided under this Agreement, except during a transition period, or as a result of specific and unique settlement or necessary contract or fee adjustment, the City shall also receive the more favorable rate. Charges for services rendered shall be verified as they accrue, and will be paid within thirty (30) days of each month's final invoice.

The preliminary per diem cost for each correction program shall be established by the County based on the projected budget for providing each program area during the contract year. The preliminary projection for each corrections program shall be provided to the City for budget purposes no later than May 31 each year. The preliminary per diem for corrections programs will be increased or decreased according to the final budget figures for the corrections programs adopted by the County Council for each contract year, and provided to the City within sixty (60) days of final adoption.

Section 5. CAPACITY PROVIDED. In exchange for its contribution of \$90,400 towards construction of the new jail facility, received by the County in cash, negotiable instrument, or other form satisfactory to the County by September 1, 2006, the County shall provide to the City a vested right to a portion of the capacity of the regional jail facility for the City's inmate population. The parties intend that the value of the City's use of the facility will be commensurate with the City's capital contribution, and that the value will be provided in the form of a credit granted by

the County against the invoice for the cost of the city's use of inmate services as set forth in Section 5a, below.

Section 5a. CREDIT PROVIDED. In exchange for its contribution of \$90,400 toward the construction of the new jail facility, received by the County in cash, negotiable instrument, or other form satisfactory to the County by September 1, 2006, the County shall grant the City credits each year from 2006 through 2014 in the following amounts:

	<u>Bellingham</u>	<u>Blaine</u>	<u>Everson/Nooksack</u>	<u>Ferndale</u>	<u>Lynden</u>	<u>Sumas</u>
2006:	\$123,206	\$ 6,624	\$ 3,809	\$16,726	\$11,592	\$3,643
2007:	\$497,754	\$26,671	\$15,388	\$67,571	\$46,382	\$14,719
2008:	\$517,664	\$27,831	\$16,003	\$70,274	\$48,705	\$15,307
2009:	\$538,371	\$28,944	\$16,643	\$73,085	\$50,653	\$15,919
2010:	\$559,906	\$30,102	\$17,309	\$76,008	\$52,679	\$16,556
2011:	\$582,302	\$31,306	\$18,001	\$79,048	\$54,786	\$17,218
2012:	\$605,594	\$32,558	\$18,721	\$82,210	\$56,977	\$17,907
2013:	\$629,818	\$33,860	\$19,470	\$85,498	\$59,256	\$18,623
2014:	\$491,258	\$26,411	\$15,187	\$66,689	\$46,220	\$14,526

The amount to be credited each year, as reflected above, shall be deducted from the County's charge(s) to the City for the City's jail usage for each billing period. One-twelfth of the total for each year shall be available for credit in each month for eligible services, and in case any of the credit is unused in a particular month, it may be carried over to the next month, and be available for credit that next month. In case that the amount of the credit available exceeds the amount charged for that year, the unused portion of the credit shall carry forward to the following year, and shall be added to the ordinary credit for the year in determining the available amount of credit each month. In case the City has not used up all of its credit by the end of 2014, the credit shall nonetheless be cancelled and the County shall owe the City no additional money or service for the remaining unused credit.

Section 5b. SERVICES PROVIDED. The County agrees to provide inmate services for gross misdemeanor or misdemeanor cases initiated by the City and referred to the County for those offenses alleged to have been committed by adults within the City.

The County shall provide inmate services consistent with the standards contained in Addendum A. If circumstances require the County to reduce services to all jurisdictions, including unincorporated Whatcom County, such reduction in services shall be made uniformly and the County shall provide reasonable notice to the City of its intention to reduce service levels in any correction program. Wherever possible, the County will provide a minimum of thirty (30) days' notice of such reductions unless specific circumstances require more immediate action.

Section 6. DETERMINATION OF CASE STATUS. The Prosecuting Attorney shall have the sole authority to determine which felony arrest cases submitted by the City shall be charged as felonies and which as gross misdemeanors or misdemeanors. The City shall not be responsible for any case charged as a felony by the Prosecutor, except nothing in this contract prevents the County from seeking reimbursement for felony medical costs prior to sentencing as provided in RCW 70.48.130. The City asserts and retains all of its rights under RCW 39.34.180.

If the determination is made by the Prosecutor that a case is a gross misdemeanor or misdemeanor, such cases shall be referred to the City Attorney for filing in the Municipal Court with inmate services charged to the city. Any case originally charged by the Prosecutor as a felony and later plea bargained or adjudicated to a gross misdemeanor or misdemeanor, shall not require compensation by the City.

Section 7. BILLING INFORMATION. The County shall provide the City with an itemized monthly billing report for each service area. The dates used in computing the fees shall be the initiation and release date for each corrections program. The report listing shall include name of offender, booking number, date and time; charge, court code, disposition and date of same; citation/warrant numbers of cases, days served, and related costs. Reports shall be provided to the City's designee no later than the 20th day of the month following service. The City's designee shall be allowed read-only access to the County's automated law and justice computer records, case files and billing records for the purpose of verification of billings.

Section 8. ASSIGNMENT. The County shall provide at least 30 days' 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 party to whom it intends to assign or delegate.

Section 9. HOLD HARMLESS. The County shall indemnify the City, its officers, employees, and agents, and hold them harmless from any and all claims, suits, actions, loss, or damage resulting from or arising out of the services provided under this Agreement or the negligence or intentional act or omission of the County, its officers, agents, and employees, in performing or failing to perform said services.

The City shall indemnify and hold harmless the County, its officers, employees, and agents for all claims, suits, actions, loss, or damage resulting from or arising out of the negligence or intentional wrongful act or omission of the City in the apprehension, arrest, detention, or release of adult prisoners delivered to the County for incarceration or detention.

Section 10. RELATIONSHIP OF THE CITY AND THE COUNTY. The City and the County intend that a City/Independent Contractor relationship will be created by this Agreement. No agent, employee, servant, or representative of the County shall be deemed to be an employee, agent, servant, or representative of the City for any purpose. Nor shall any agent, employee, servant, or representative of the City be deemed to be an employee, agent, servant, or representative of the County for any purpose.

Section 10a. COUNTY RESPONSIBLE FOR JAIL OPERATIONS. The City and County intend that the County have the sole responsibility for the operation of the jail and that nothing in this agreement is intended to create any governance of the jail facility by the participating cities. The term "regional jail" as used herein is not intended to be used as defined in RCW 70.48.095. It is further understood by the parties that the County shall be solely responsible for operational decisions regarding the appropriate level of security and housing of all inmates.

Section 11. MODIFICATION AND TERMINATION. This Agreement may be modified in writing by mutual agreement of the City and the County. Preliminary proposals for modifications requiring legislative budget authorization and affecting a successive yearly budget shall be submitted to the respective parties' contact on or before May 31 of each year. The preliminary cost per case/per diem will be increased or decreased according to the final budget figures for the service areas adopted by the County Council for the contract year.

Either the City or the County may terminate this Agreement for subsequent years upon a minimum of 120 days' written notice to the other party of its intent to

terminate. Termination shall be deemed to be effective only after formal action of the terminating party's legislative body. The legislative action must take place prior to September 1 in order to be effective for the following year. If it does not, then the effective date of termination will be on December 31 of the following year. The termination date will be at midnight on December 31 of that year.

If this Agreement is terminated by the City for reasons other than the County's breach prior to the completion of the term of the Agreement, then the City shall forfeit reimbursement by the County for the remaining credit otherwise owing to the City. If the County terminates this Agreement for reasons other than the City's breach prior to the completion of the term of the Agreement, then the County will compensate the City for the remaining credit owed the City (the total amount of the original credit less the amount of the credit applied against the City's bill throughout the effective life of the Agreement).

Either the City or the County may terminate this Agreement upon a breach by the other party, provided the party seeking to terminate the Agreement shall provide at least thirty (30) days' written notice and an opportunity to cure to the other party. Upon termination, the City shall be obligated to pay for only those services previously rendered that remain unpaid or for services rendered thereafter for defendants booked or incarcerated prior to the date of withdrawal or termination.

The termination of this Agreement shall not impose a requirement on the County to provide for funding or services otherwise required by this Agreement that relate to City arrests or defendants sentenced after the effective date of termination.

Upon termination, at the City's option, the County shall continue to provide services to completion for inmates housed or alternative services in progress. The City shall compensate the County for all services rendered at the immediately preceding contract rate.

Section 12. DISPUTES BETWEEN THE CITY AND THE COUNTY. Should a dispute arise as to the administration of this agreement between the City and the County, such dispute shall be progressively resolved in the following manner:

1. Through negotiations between the City and the County's respective contacts.
2. Through negotiations between the Mayor and the County Executive; or
3. In the event that the City and the County do not reach agreement within 90 days of commencing negotiations, the matter will be submitted to binding arbitration.

Nothing in this section shall deny any rights established in Section 11.

The City and the County may mutually agree to extend the negotiation period. If the City and the County cannot agree upon the selection of an impartial arbitrator within fourteen days of a written request for arbitration by either the City or the County, the arbitrator shall be selected as provided in the Superior Court Mandatory Arbitration Rules by a judge of the Superior Court of Skagit County. The arbitration shall be conducted pursuant to the Superior Court Mandatory Arbitration Rules.

Section 13. PROPERTY AND EQUIPMENT. The ownership of all property and equipment utilized in association with applicable City cases shall remain with the original owner unless specifically and mutually agreed to by both the City and the County to this Agreement.

Section 14. GENERAL TERMS. This Agreement contains terms and conditions agreed upon by the City and the County. The City and the County 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 either the City or the County unless such change or addition is in writing, executed by both the City and the County.

The City and the County agree that during the performance of this Agreement no person shall, on the basis of race, creed, national origin, sex, marital status, age, religion, ethnicity, or the presence of any sensory, mental or physical handicap, be excluded from services which are within the scope of this agreement and within the reasonable ability of the County to provide. Neither the City nor the County shall discriminate against any employee or applicant for employment for the above reasons; provided, the prohibition against discrimination in employment because of handicap shall not apply if the particular disability, with reasonable accommodation, prevents the proper performance of the work involved.

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

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

ADDENDUM A – 2006

COST METHODOLOGIES, FORMULAS, AND SERVICE STANDARDS

As set forth in Section 4a of this Agreement, the City will be notified by May 31 of each year of the projected rates or fees to be charged in the next year, and of the formula used for the calculations. Any subsequent adjustments will comply with the terms of Section 4a of the Agreement.

1. Booking Charge – A booking fee shall be charged to the City for each person booked into the jail in the amount of \$50.00. The booking charge will also apply when other law enforcement agencies arrest and book persons into the jail on City's charges and/or warrants. Persons booked into the County jail and released will only incur the booking fee. Persons who are booked into the jail and processed into the facility will incur both the booking charge and a partial or full day per diem charge. The County will make every effort to collect a \$50.00 co-payment from each person booked into the jail for incarceration. The County will apply all proceeds from this co-payment fee to reduce the operational cost of the jail.

2. Jail Per Diem – City cost per diem for 2006 for all City prisoners incarcerated in County facilities for gross misdemeanor or misdemeanor offenses will be \$65.00 per initial bed day, with each day thereafter broken into quarter day charges, based on \$65.00 for a full 24 hours or a pro rata amount based on quarter day increments.

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

City will be charged per diem on a per day (quarter day) basis for persons incarcerated in the County jail on City gross misdemeanor or misdemeanor charges or warrants.

Persons incarcerated on felony charges will be the responsibility of the County, except nothing in this contract prevents the County from seeking reimbursement for felony medical costs prior to sentencing as provided in RCW 70.48.130. The City asserts and retains all of its rights under RCW 39.34.180. Persons originally incarcerated for a felony level violation that is declined by the County Prosecutor and returned to the City Attorney will be the City's responsibility from

the date of booking. Any case originally charged by the Prosecutor as a felony and later plea-bargained or adjudicated to a gross misdemeanor or misdemeanor, shall not require compensation by the City.

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

4. Alternative Jail Programs/Per Diem – The City will be charged for **Alternative Jail Programs** as follows:

A. If offenders are held in Whatcom County's **Offsite Work Release Facility**, the 2006 per diem rate is \$57.00 per bed day for work release inmates. Billing to the City for these participants will be based on this 2006 per diem rate. Any funds collected from the offender will be credited to the City.

B. If an offender qualifies for **Electronic Home Detention**, billing to the City for these offenders participating will be based on the 2006 per diem rate of \$27.00. Any funds collected from the offender will be credited to the City.

C. If an offender is participating in the **One-Day Offender Program**, the offender will bear the complete \$55.00 per diem cost of the program. If an offender is indigent, and unable to pay per diem fees for the One-Day Offender Program, the City will be responsible for the per diem cost.

D. If an offender is participating in the **Out of Custody Work Crew Program**, billing to the City for these participants will be based on the 2006 per diem rate of \$59.00. Should the County bill the offenders for participating in this program, the funds collected from the offender will be credited to the City.

E. If an offender is participating in the **In Custody Work Crew Program**, billing to the City for these participants will be based on the 2006 per diem rate of \$65.00. Should the County bill the offenders for participating in this program, the funds collected from the offender will be credited to the City.

F. All participants must first be authorized by the sentencing judge to apply for alternative jail programs, and the Chief of Corrections or her designee must approve the terms and conditions of the programs for the Whatcom County Jail.

G. If a City charge is concurrent to either Superior Court or another jurisdiction's gross misdemeanor or misdemeanor charge, the City shall be billed the proportionate percentage share of the 2006 per diem for the shared incarceration period.

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

6. Operational control – The City acknowledges the County's operational control of the jail and alternate jail programs and agrees that City offenders committed to the Whatcom County Jail and alternative jail programs will be subject to the same lawful rules and regulations required of other offenders incarcerated therein.

7. Health Care – The County shall be responsible for providing routine health care. Such health care will include those health care services routinely delivered at normal cost by County staff, contracted physicians or nursing staff and delivered within the facility. The County is not responsible for services delivered to offenders outside of the facility. Payment for emergency, exceptional or non-routine necessary health care for City gross misdemeanor or misdemeanor offenders shall be made by the City upon written invoice by the County or upon such other terms as City and the County may agree in writing. The County will additionally bill the City for pre-sentence felony offenders, held on the City's case, who incur emergency, exceptional or non-routine necessary medical costs, as set forth in RCW 70.48.130. The County will notify the City as soon as it becomes aware that an inmate being held on the City's charges is in need of emergency, exceptional or non-routine necessary medical care, and work with the City to investigate the possibility of release from custody. Additionally, the County agrees to utilize all agreements with medical practitioners and organizations to mitigate any medical costs, and seek out any and all eligible third party reimbursement for medical costs, prior to billing the City.

Non-routine necessary health care shall include all physician-ordered health care or medical services delivered to City offenders outside of the facility, or specialized care provided by non-contract health care providers in or out of the facility.

The County agrees to pursue third party payment for emergency, exceptional or non-routine necessary health care in the same manner and to the same extent as the County does for offenders held on its own charges. No third party beneficiary contract or contract of insurance is intended by this contract.

IN WITNESS WHEREOF, the parties have executed this Addendum this ____ day of _____, 2006.

WHATCOM COUNTY:

Approved as to form:

Prosecuting Attorney Date

Approved:

Accepted for Whatcom County:

Pete Kremen, Whatcom County Executive

STATE OF WASHINGTON)

) ss

COUNTY OF WHATCOM)

On this ____ day of _____, 2006, before me personally appeared Pete Kremen, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of
Washington, residing at _____. My
commission expires _____.

CITY OF BLAINE:

EXECUTED this ____ day of _____, 2006, for the CITY OF
BLAINE:

Richard Myers, Mayor

Accepted for City of Blaine:

Gary R. Tomsic

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this ____ day of _____, 2006, before me personally appeared Gary R. Tomsic, to
me known to be the City Manager of Blaine and who executed the above instrument
and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of
Washington, residing at _____. My
commission expires _____.