

RESOLUTION NO. 10-682

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BLACK DIAMOND, KING COUNTY, WASHINGTON
AUTHORIZING THE MAYOR TO EXECUTE AMENDMENT
TO INTERLOCAL AGREEMENT BETWEEN KING COUNTY
AND THE CITY OF BLACK DIAMOND FOR JAIL
SERVICES**

WHEREAS, this agreement is made in accordance with the Interlocal Cooperation Act (RCW Chapter 39.34) and the City and County Jails Act (RCW Chapter 70.48); and

WHEREAS, the City of Black Diamond is a Jail Administration Group (JAG) City, along with thirty-six King County cities; and

WHEREAS, as a JAG City the City of Black Diamond along with other Contract Cities in King County entered into a Jail Service Agreement (JSA) with King County to house and provide jail services for Contract Cities misdemeanants; and

WHEREAS, the current agreement ends on December 31, 2012, which is the date that all city misdemeanants must be housed in alternate facilities unless other arraignments are made with King County; and

WHEREAS, due to the fact the new facility will not be completed before the current agreement ends, this agreement would extend the JSA through 2016;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, DOES RESOLVE AS FOLLOWS:**

Section 1. The Mayor is hereby authorized to execute amendment to the Interlocal Agreement between King County and the City of Black Diamond for Jail Services as substantially attached hereto as Exhibit A.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND,
WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15TH DAY OF APRIL,
2010.**

CITY OF BLACK DIAMOND:



Rebecca Olness, Mayor

Attest:


Brenda L. Martinez, City Clerk

Amendment to Interlocal Agreement Between King County and the City of Black Diamond for Jail Services

THIS AGREEMENT is dated effective as of the 1st day of May, 2010, and, with respect to the parties hereto, amends and restates the November 1, 2002 Original Agreement. The Parties to this Agreement are King County, a Washington municipal corporation and legal subdivision of the State of Washington (the "County") and the City of Black Diamond, a Washington municipal corporation (the "City").

This Agreement is made in accordance with the Interlocal Cooperation Act (RCW Chapter 39.34) and the City and County Jails Act (RCW Chapter 70.48).

In consideration of the promises, payments, covenants and agreements contained in this Agreement, the parties agree as follows:

1. Definitions: Unless the context clearly shows another usage is intended, the following terms shall have these meanings in this Agreement:
 - 1.1 "Booking" means registering, screening and examining inmates for confinement in the Jail; inventorying and safekeeping inmates' personal property; maintaining all computerized records of arrest; performing warrant checks; and all other activities associated with processing an inmate.
 - 1.2 "Business Day" means Monday through Friday, 8:00 a.m. until 5:00 p.m., except holidays and County-designated furlough days.
 - 1.3 "City Inmate" means a person booked into or housed in the Jail when a City charge is the principal basis for booking or confining that person. A City charge is the principal basis for booking or confining a person where one or more of the following applies, whether pre-trial or post-trial:
 - 1.3.1 The person is booked or confined by reason of committing or allegedly committing a misdemeanor or gross misdemeanor offense within the City's jurisdiction, whether filed under state law or city ordinance;
 - 1.3.2 The person is booked or confined by reason of a Court warrant issued either by the City's Municipal Court or other court when acting as the City's Municipal Court;
 - 1.3.3 The person is booked or confined by reason of a Court order issued either by the City's Municipal Court or other court when acting as the City's Municipal Court;
or,
 - 1.3.4 The person is booked or confined by reason of subsections 1.3.1 through 1.3.3 above, in combination with charges, investigation of charges, and/or warrants of other governments, and the booking or confinement by reason of subsections 1.3.1 through 1.3.3 above is determined to be the most serious charge in accordance with Exhibit I.
 - 1.3.5 A City charge is not the principal basis for confining a person where the person is booked or confined exclusively or in combination with other charges by reason of a felony charge or felony investigation.
 - 1.3.6 A City charge is not the principal basis for confining a person where the person is confined exclusively or in combination with other charges by reason of a

felony charge or felony investigation that has been reduced to a State misdemeanor or gross misdemeanor.

- 1.4 "Contract Cities" means cities that are signatory to the Original Agreement. The Contract Cities are listed in Exhibit VII.
- 1.5 "Continuity of Care Records" means an inmate's diagnosis, list of current medications, treatments, PPD (tuberculosis screening test) results and scheduled appointments or follow-ups.
- 1.6 "County Inmate" means any inmate that is not a City Inmate.
- 1.7 "Force Majeure" means war, civil unrest, and any natural event outside of the party's reasonable control, including fire, storm, flood, earthquake or other act of nature.
- 1.8 The first "Inmate Day" means confinement for more than six (6) hours measured from the time such inmate is first presented to and accepted by the Jail until the inmate is released, provided that an arrival on or after six (6) o'clock p.m. and continuing into the succeeding day shall be considered one day. The second and each subsequent Inmate Day means confinement for any portion of a calendar day after the first Inmate Day. For persons confined to the Jail for the purpose of mandatory DUI sentences, "Inmate Day" means confinement in accordance with Exhibit II.
- 1.9 "JAG" means the Jail Agreement Administration Group created pursuant to Section 10 of this Agreement.
- 1.10 "Jail" means a place primarily designed, staffed, and used for the housing of adults charged or convicted of a criminal offense; for the punishment, correction, and rehabilitation of offenders charged or convicted of a criminal offense; or for confinement during a criminal investigation or for civil detention to enforce a court order. Upon the date of the execution of the Original Agreement, Jail included the King County Correctional Facility, the detention facility at the Regional Justice Center, the North Rehabilitation Facility; and any Community Corrections Facility and/or Program, such as Work Release, Electronic Home Detention, Work Crews, Day Reporting, and Evening Reporting operated by the County directly or pursuant to contract.
- 1.11 During the Initial Fee Period, "Medical Inmate" means a City Inmate or County Inmate clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing the level of services provided in the Jail's infirmary or other medical facility that the County may choose to send a Medical Inmate. During the Revised Fee Period, a "Medical Inmate" means a City Inmate or County Inmate clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing the level of services provided in the Jail's infirmary. During both the Initial Fee Period and the Revised Fee Period, if an inmate is moved to the general population then the inmate is no longer considered a Medical Inmate.

- 1.12 "Official Daily Population Count" is an official count of inmates in the custody of the Jail made at a point in time in a 24-hour period for, among other purposes, security and population management. It is not used for billing purposes.
- 1.13 "PARP" means the Population Alert and Reduction Plan attached as Exhibit IV.
- 1.14 During the Initial Fee Period, "Psychiatric Inmate" means a City Inmate or County Inmate clinically determined by the Seattle-King County Department of Public Health, or its successors charged with the same duties, as needing the level of services provided in the Jail's psychiatric housing units or other medical facility that the County may choose to send a Psychiatric Inmate. If an inmate is moved to the general population then the inmate is no longer considered a Psychiatric Inmate. During the Revised Fee Period, "Psychiatric Inmate" means either an Acute Psychiatric Inmate or a Non-Acute Psychiatric Inmate, as defined below:
 - 1.14.1 An "Acute Psychiatric Inmate" is an inmate clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing the level of services provided in the Jail's acute psychiatric housing units (as further described in Exhibit III, Attachment III-2). If an Inmate is moved to housing outside the Jail's acute psychiatric housing units then the Inmate is no longer considered an Acute Psychiatric Inmate.
 - 1.14.2 A "Non-Acute Psychiatric Inmate" is an inmate clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing Psychiatric Care Services (as further described in Exhibit III, Attachment III-2) and housed outside the Jail's acute psychiatric housing units.
- 1.15 "Agreement" means the Interlocal Agreement by and Between King County and the City for Jail Services in 2002 as amended by the Amendment.
- 1.16 "Amendment" means this Amendment to the Interlocal Agreement by and Between King County and the City for Jail Services in 2002.
- 1.17 Amendment JAG" means the Amendment Jail Administration Group created pursuant to Section 10.
- 1.18 "DAJD" means the King County Department of Adult and Juvenile Detention or its successor agency.
- 1.19 "Extension Cities" means the City and other cities that are signatory to this Amendment or to an agreement in substantially identical form to this Amendment.
- 1.20 "Extension Period" means the calendar years 2013 through 2016.
- 1.21 "Non-Extension Cities" means Contract Cities that are not Extension Cities.

- 1.22 “Extension City Inmate” means a City Inmate that is the responsibility of an Extension City.
- 1.23 “Initial Fee Period” means the period from the effective date of the Original Agreement until the commencement of the Revised Fee Period.
- 1.24 “Revised Fee Period” means the period from and after the date the Revised Fees and Charges are first imposed on the City, (which date is June 1, 2010, for the City of Seattle and November 1, 2010 for all other Extension Cities) through the expiration of this Agreement on December 31, 2016 or its earlier termination.
- 1.25 “Revised Fees and Charges” are the Fees and Charges imposed during the Revised Fee Period as described in Section 3 and Exhibit III.B.
- 1.26 “Surcharge” means any of the following special charges, defined at Exhibit III.B.3 and further described in Attachment III-2: Infirmary Care Surcharge; Non-Acute Psychiatric Care Surcharge; Acute Psychiatric Care Surcharge; 1:1 Guarding Surcharge.
- 1.27 “Offsite Medical Care Charges” means those pass through charges for treatment of a City Inmate where that inmate is clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing a level of services provided from offsite medical institutions, as further defined in Exhibit III.B.4 and Attachment III-2. An Inmate may receive Offsite Medical Care that triggers an Offsite Medical Care Charge without being otherwise classified as a Medical or Psychiatric Inmate (e.g., some inmates held in the general population receive offsite medical care that will result in Offsite Medical Care Charges being incurred).
- 1.28 “Original Agreement” means the interlocal agreement for jail services between King County and the City as originally executed between the County and the City effective November 1, 2002. The Contract Cities each signed a separate agreement with the County in form substantially similar to the Original Agreement.
- 1.29 “WER Charge” is the daily housing charge incurred for City Inmates housed in the Work and Education and Release program as further described in Exhibit III.B.
2. Jail and Health Services. The County shall accept City Inmates for confinement in the Jail, except as provided in Sections 4.5 and 11 of this Agreement. The County shall also furnish the City with Jail facilities, booking, transportation among County facilities, as determined necessary in the County’s sole discretion, including the various Jail facilities, Harborview Medical Center and Western State Hospital, and custodial services, and personnel for the confinement of City Inmates at least equal to those the County provides for confinement of County Inmates. However, the County reserves the right to operate specific programs and/or facilities exclusively for County Inmates. The County shall furnish to City Inmates all Jail medical, dental and other health care services required to be provided pursuant to federal or state law. Also, the County shall make every reasonable effort to release a City Inmate as expeditiously as possible after the County has received notification of a court order to release.

3. City Compensation. The City will pay the County a booking fee and a maintenance charge as follows:
 - 3.1 Booking Fee. The booking fee shall be assessed for the booking of City Inmates by or on behalf of the City into the Jail. The booking fee shall be as provided in Exhibit III. During the Revised Fee Period, two different booking fees will be available to the City on the terms and conditions described in Exhibit III.B. The effective date of each annual adjustment for booking fee(s) will be January 1st. In both the Initial Fee Period and the Revised Fee Period:
 - 3.1.1. The County will maintain its program of contacting the City after booking a City Inmate in order to give notice that the City Inmate has been booked and to provide the opportunity for release to the City if the City so desires. Such action will take place as soon as reasonably possible but no later than the next business day after booking and will result in no maintenance charges if the City Inmate is released to the City within six hours of booking. The parties agree that the issue of providing earlier notice to the Contract Cities of booking of City Inmates shall be immediately referred to JAG for resolution.
 - 3.1.2. The County will maintain its program to notify the City of the status of its inmates in cases where confinement is the result of multiple warrants from two or more jurisdictions. This program will allow the City to take custody of a City Inmate if it so desires after the other jurisdictional warrants are resolved and thereby prevent unnecessary maintenance charges.
 - 3.2 Maintenance Charge. The maintenance charge shall be assessed for a City Inmate for each Inmate Day. The effective date of each annual adjustment will be January 1st. During the Initial Fee Period, the maintenance charge shall be as provided in Exhibit III.A. Also during the Initial Fee Period, the City will be billed the daily maintenance charge for Medical and Psychiatric Inmates, except as provided for in Section 11.7 of this Agreement. During the Revised Fee Period, the maintenance charge shall be assessed for a City Inmate for each Inmate Day as provided in Exhibit III.B. During the Revised Fee Period, the City may qualify for a WER Charge in lieu of the maintenance charge as described in Exhibit III.B.3.
 - 3.3 Surcharges and Offsite Medical Charges. During the Revised Fee Period, in addition to the booking fee, maintenance charge and WER charge, the City will be charged for Offsite Medical Charges and Surcharges as detailed in Exhibit III.B.
 - 3.3.1 Proposed Notice of Certain Surcharges. The County intends to provide or make available to the City timely information of occurrences when a City Inmate is *admitted* to Harborview or other offsite medical institution, or is receiving infirmary care or psychiatric care that will subject a City to Surcharges. Information provided or made available will be based on information known to DAJD at the time (since billing status of an Inmate may be changed retroactively based on new information or other factors). The County intends to provide or make available this information within 2 business days following the day in

which the chargeable event occurs and will make good faith efforts to provide information sooner if practicable. The County will make good faith efforts to try to institute a means to inform the City within 24 hours of the admittance of a City Inmate to Harborview or other offsite medical institution. The County's failure to provide or make available information or develop quicker means to provide information to the City as detailed above shall not excuse the City from financial responsibility for related Offsite Medical Charges or Surcharges, and shall not be a basis for imposing financial responsibility for related Offsite Medical Charges or Surcharges on the County.

- 3.4 Proportional Billing. The parties intend to develop a system of proportional billing which will divide the costs of incarceration between two or more jurisdictions where multiple jurisdictions have a hold on a City Inmate. The parties agree to negotiate, in good faith, in an attempt to develop such a system.

4. Billing and Dispute Resolution Procedures.

- 4.1 The County shall transmit billings to the City monthly. Within forty-five (45) days after receipt, the City shall pay the full amount billed or withhold a portion thereof and provide the County written notice specifying the total amount withheld and the grounds for withholding such amount, together with payment of the remainder of the amount billed (if any amount remains). Notwithstanding the foregoing, during the Revised Fee Period, the County shall bill the City for Offsite Medical Charges as such charges are periodically received by the County from third party medical institutions or other offsite medical providers. This may or may not occur on a monthly basis. Such Offsite Medical Charges shall be due within such time and subject to such withholding and dispute resolution procedures as otherwise provided in this Section 4.

- 4.2 Withholding of any amount billed or alleging that any party is in violation of any provision of this Agreement shall constitute a dispute, which shall be resolved as follows:

- 4.2.1 The County shall respond in writing to billing disputes within 60-days of receipt of such disputes by the DAJD billing offices. To ensure the soonest start to the 60-day timeline, the City should send billing disputes directly to the DAJD billing office rather than any other County office or officer. The DAJD billing office address as of the date of this Amendment is:

KC DAJD
Attn: Finance – Inmate Billing
500 5th Avenue
Seattle, WA 98104 FAX Number: 206-296-0570

- 4.2.2 Thereafter, the County and the City shall attempt to resolve the dispute by negotiation. If such negotiation is unsuccessful, either party may refer the dispute to JAG for resolution. For disputes involving fees and charges incurred

during the Revised Fee Period or otherwise solely arising under the terms and conditions of the Amendment, the dispute shall be referred to the Amendment JAG. In the event JAG or Amendment JAG, as applicable, is unable to resolve the dispute within 30-days of referral, either party may appeal. All appeals shall be referred to the Chief Executive Officer of the City, or designee, and the County Executive, or designee, for settlement. If not resolved by them within thirty (30) days of the referral, the Chief Executive Officer and the County Executive by mutual written consent may seek arbitration or mediation of the matter. Each party shall pay one-half of the arbitrator's or mediator's fees and expenses. If mutual written consent to apply for the appointment of an arbitrator or mediator is not reached, or the dispute is not resolved through arbitration or mediation, either party may seek court action to decide the dispute. If either party prevails in a court action to enforce any provision of this Agreement, it shall be awarded reasonable attorney's fees to be based on hourly rates for attorneys of comparable experience in the community.

- 4.3 Any amount withheld from a billing, which is determined to be owed to the County pursuant to the dispute resolution procedure described herein, shall be paid by the City within thirty (30) days of the date of the negotiated resolution or appeal determination.
- 4.4 Any undisputed billing amount not paid by the City within sixty (60) days of receipt of the billing, and any amounts found to be owing to the County as a result of the billing dispute resolution procedure that are not paid within thirty (30) days of resolution, shall be conclusively established as a lawful debt owed to the County by the City, shall be binding on the parties and shall not be subject to legal question either directly or collaterally. This provision shall not limit a City's ability to challenge or dispute any billings that have been paid by the City.
- 4.5 If the City fails to pay a billing within 45-days of receipt, the County will notify the City of its failure to pay and the City shall have ten (10) days to cure non-payment. In the event the City fails to cure its nonpayment, the City shall be deemed to have voluntarily waived its right to house City Inmates in the Jail and, at the County's request, will remove City Inmates already housed in the Jail within thirty (30) days. Thereafter, the County, at its sole discretion, may accept no further City Inmates until all outstanding bills are paid.
- 4.6 The County may charge an interest rate equal to the interest rate on the monthly County investment earnings on any undisputed billing amount not paid by the City within forty-five (45) days of receipt of the billing, and any amounts found to be owing to the County as a result of the billing dispute resolution procedure.
- 4.7 Each party may examine the other's books and records to verify charges. If an examination reveals an improper charge, the next billing statement will be adjusted appropriately. Disputes on matters related to this Agreement which are revealed by an audit shall be resolved pursuant to Section 4.2.

5. Term. This Agreement shall commence on November 1, 2002 and shall supersede all previous contracts and agreements between the parties relating to the Jail and jail services. This Agreement shall extend to December 31, 2016.
6. Termination. Either party may initiate a process to terminate this Agreement as follows:
 - 6.1 Ten-Day Notice of Intent to Terminate. Any party wishing to terminate this Agreement shall issue a written notice of intent to terminate, not less than ten (10) days prior to issuing a ninety (90) day termination notice under Section 6.2 of this Agreement. Upon receipt of the written notice of intent to terminate, the parties will meet to confer on whether there are steps that the non-terminating party can take in order to avoid a ninety (90) day termination notice under section 6.2 of this Agreement.
 - 6.2 Ninety-Day Termination Notice. After the ten (10) day period has run under Section 6.1 of this Agreement, the party desiring to terminate this Agreement may provide the other party ninety (90) days written termination notice, as provided in RCW 70.48.090.
7. [Section number reserved].
8. Indemnification.
 - 8.1 The County shall indemnify and hold harmless the City and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent action or omission of the County, its officers, agents, and employees, or any of them. In the event that any suit based upon such a claim, action, loss, or damage is brought against the City, the County shall defend the same at its sole cost and expense; provided, that, the City retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or jointly against the City and the County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.
 - 8.2 The City shall indemnify and hold harmless the County and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent act or omission of the City, its officers, agents, and employees, or any of them. In the event that any suit based upon such a claim, action, loss, or damage is brought against the County, the City shall defend the same at its sole cost and expense; provided that the County retains the right to participate in said suit if any principle of governmental or public laws is involved; and if final judgment be rendered against the County, and its officers, agents, and employees, or any of them, or jointly against the County and the City and their respective officers, agents, and employees, or any of them, the City shall satisfy the same.
 - 8.3 In executing this agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility, which arises in whole or

in part from the existence or effect of City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.

8.4 The terms of Section 8 "Indemnification" shall survive the termination or expiration of this Agreement.

9. Most Favored Treatment. The County represents and assures the City that no other city or town has or will receive more favored treatment under a contract with the County covering the Jail or jail services. If advantages are provided inmates of another city or town, like advantages shall be extended to City Inmates; and if lower rates are provided in any contract with another city or town, such reduced charges shall be extended to the City under this Agreement. This Section shall not apply to a) temporary service contracts twelve months' or less in duration; provided that such temporary service contracts shall not cause the City to pay more in maintenance charges and booking fees than the City would have paid without such a temporary service contract; b) reciprocal bed use agreements; c) any agreement among the County and any city or town related to additional jail capacity at a new or expanded Jail; and d) any agreements for services among the County and any city or town for additional services not provided for in this Agreement.

Notwithstanding anything in this section to the contrary, the City of Seattle has by separate agreement waived its rights under this section with respect to the date on which the City of Seattle will begin paying rates and charges per the Revised Rates described in Exhibit III.B. Other than the waiver described in the preceding sentence, the parties agree that this Section 9 is otherwise not triggered by execution of the Amendment.

10. Jail Agreement Administration Group (JAG). JAG is hereby established to work together to assure the effective implementation of this Agreement and resolve any Agreement or PARP administration, implementation or interpretation issues including, without limitation, issues related to inmate transportation, alternative and community correction programs, coordination with the courts and law enforcement, mental health, drug and alcohol treatment, Agreement interpretation, any capital expenditure charge or budget included in the maintenance fee, referrals of disputes under Section 4 and issues related to the expedient transfer of City Inmates into or out of alternative facilities within or outside of King County. JAG shall also negotiate any re-opener of the provisions described in Section 7 of this Agreement. JAG shall be initially established by November 1, 2002.

The committee shall be composed of eight persons as follows:

County Executive Representative	(1)
City of Seattle Representative	(1)
City of Bellevue Representative	(1)
Director of the Department of Adult and Juvenile Detention	(1)
Suburban Cities Representatives	(4)

The City of Seattle representative will be appointed by the Mayor of Seattle. The City of Bellevue representative will be appointed by the City Manager. The Suburban Cities Association (SCA) shall select four (4) representatives through a process defined by the SCA. The Mayor of Mayor/Council cities or the City Manager of Council/Manager cities shall appoint the representative of each city selected by the SCA. Notice of the city representatives and any changes thereto shall be provided to the County Executive. The Committee shall meet at least quarterly. A Chair shall be selected from among the members.

For issues arising solely under this Amendment that are otherwise within the same scope of issues that are the purview of the JAG, there is created an Amendment JAG which shall serve the function of the JAG as described herein. The Amendment JAG shall be composed of up to seven persons as follows:

County Executive Representative	(1)
Director of the Department of Adult and Juvenile Detention	(1)
City of Seattle Representative	(1)
Extension City Representatives:	(one per city, not to exceed 4 in total)

The extension cities will determine who their representatives are to the Amendment JAG. The parties agree that Amendment JAG has no authority to make a final decision with regard to any matter related to the Agreement and Amendment. If any Extension City, or the County, is not satisfied with status of a matter after discussion in the Amendment JAG, that party retains all rights to seek further legal redress as provided for the Agreement and Amendment.

11. Jail Capacity. The parties understand that the number of beds available in King County may not meet the demands for those beds in the future. The following items attempt to address the needs of the local criminal justice system for adequate secure bed space and the County's ability to prevent excessive and unmanageable crowding conditions within capacity.
 - 11.1 PARP. The parties agree to make a good-faith effort to cooperatively implement all provisions of the PARP. Additionally, King County agrees to be bound to the Population Alert Notification section of the PARP with the caveat that King County will not be held to the Population Alert Notification section of the PARP in the event of force majeure or computer or telecommunications failure. The parties have also prepared a Table set forth in Exhibit V. This Exhibit represents a good faith effort by the parties to estimate Jail bed demand and supply for the years 2002 through 2005. However, the King County supply scenarios contained in Exhibit V are not binding on the County.
 - 11.2 Capacity for City Inmates. When necessary, King County will double bunk the Regional Justice Center up to 65% to accommodate City Inmates. The parties understand that the County's commitment to double bunk up to 65% at the Regional Justice Center to accommodate City Inmates means that the County will not set a budgetary constraint that will prevent the County from performing under the terms of this Agreement.

- 11.3 The Contract Cities agree to the following population reduction schedule for the aggregate number of City Inmates.
- A) By December 31, 2003, at the time of the Jail's Official Daily Population Count the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 380.
 - B) By December 31, 2004, at the time of the Jail's Official Daily Population Count, the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 250.
 - C) By July 1, 2005, at the time of the Jail's Official Daily Population Count, the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 220.
 - D) By December 31, 2012, at the time of the Jail's Official Daily Population Count, the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 0, with the exception that inmates whose status has changed to City Inmate will not be included in the calculation of the aggregate number of City Inmates if the inmate is removed from the Jail within 72-hours of such change in status; provided that this subsection (D) shall not apply to Extension Cities.

For the purpose of determining the aggregate number of City Inmates only, and not for billing purposes, inmates held on multiple warrants by the County which include one or more city warrants in addition to a County and/or state warrant and City Inmates that have been booked into the Jail and the Contract Cities have not been notified of such booking shall not be considered a City Inmate. Also, City Inmates housed in the Jail pursuant to a reciprocal bed-use agreement will not be considered City Inmates for the purpose of determining the aggregate number of City Inmates.

- 11.4 The City agrees to be bound by the population reduction schedule listed in Section 11.3. Accordingly, in the event the aggregate City Inmate population:
- A) Exceeds 380 on any given day from December 31, 2003, through December 31, 2004; or
 - B) Exceeds 250 on any given day from December 31, 2004, through June 30, 2005; or
 - C) Exceeds 220 on any given day from July 1, 2005 to December 31, 2012; or
 - D) Exceeds 0 on any given day after January 1, 2013, except as provided in Sections 11.3 and 11.5.1;

then the County will have the right to take the actions outlined in Section 11.5.

- 11.5 The County will notify the Contract Cities by phone or electronic mail, if the Contract Cities have exceeded the population reduction schedule described in Sections 11.3 and

11.4. The County may then decide to continue to house City Inmates in excess of the population reduction schedule listed in Sections 11.3 and 11.4. Alternatively, the County may refuse to accept bookings from the City until such time as the aggregate number of City Inmates is reduced below the population reduction schedule listed in Sections 11.3 and 11.4. If the aggregate number of City Inmates is reduced below the population reduction schedule listed in Sections 11.3 and 11.4, through removal of City Inmates from the Jail, then the County will be obligated to accept new City bookings. The notification required by the first sentence of this Section, will be made to the person designated in Section 13.10 of this Agreement, and will inform the City whether the County intends to continue to house City Inmates in excess of the population reduction schedule listed in Sections 11.3 and 11.4, or whether the County will refuse to accept bookings from the City until such time as the aggregate number of City Inmates is reduced below the population reduction schedule listed in Sections 11.3 and 11.4.

11.5.1 The Extension Cities are not required to reduce the aggregate number of Extension City Inmates to 0 by December 31, 2012. Rather, the Extension Cities agree to the following:

- A) By December 31, 2012, at the time of the Jail's Official Daily Population Count the Extension Cities agree to reduce the aggregate number of Extension City Inmates in the Jail to 330.
- B) By December 31, 2014, at the time of the Jail's Official Daily Population Count, the Extension Cities agree to reduce the aggregate number of Extension City Inmates in the Jail to 250.
- C) By December 31, 2016, at the time of the Jail's Official Daily Population Count, the Extension Cities agree to reduce the aggregate number of Extension City Inmates in the Jail to 0, with the exception that inmates whose status has changed to City Inmate will not be included in the calculation of the aggregate number of Extension City Inmates if the inmate is removed from the Jail within 72-hours of such change in status.

For the purpose of determining the aggregate number of Extension City Inmates only, and not for billing purposes, inmates held on multiple warrants by the County which include one or more city warrants in addition to a County and/or state warrant and City Inmates that have been booked into the Jail and the Extension Cities have not been notified of such booking shall not be considered an Extension City Inmate. Also, Extension City Inmates housed in the Jail pursuant to a reciprocal bed-use agreement will not be considered Extension City Inmates for the purpose of determining the aggregate number of Extension City Inmates.

11.5.2 The City agrees to be bound by the population reduction schedule listed in Section 11.5.1. Accordingly, in the event the aggregate Extension City Inmate population:

- A) Exceeds 330 on any given day from December 31, 2012, through December 31, 2014; or
- B) Exceeds 250 on any given day from January 1, 2015, through December 31, 2016; or
- C) Exceeds 0 on any given day after January 1, 2017, except as provided in Section 11.5.1;

then the County will have the right to take the actions outlined in Section 11.5.3.

- 11.5.3 The County will notify the Extension Cities by phone or electronic mail, if the Extension Cities have exceeded the population reduction schedule described in Sections 11.5.1 and 11.5.2. The County may then decide to continue to house Extension City Inmates in excess of the population reduction schedule listed in Sections 11.5.1 and 11.5.2. Alternatively, the County may refuse to accept bookings from the City until such time as the aggregate number of Extension City Inmates is reduced below the population reduction schedule listed in Sections 11.5.1 and 11.5.2. If the aggregate number of Extension City Inmates is reduced below the population reduction schedule listed in Sections 11.5.1 and 11.5.2, through removal of Extension City Inmates from the Jail, then the County will be obligated to accept new City bookings. The notification required by the first sentence of this Section 11.5.3, will be made to the person designated in Section 13.11 of this Agreement, and will inform the City whether the County intends to continue to house Extension City Inmates in excess of the population reduction schedule listed in Sections 11.5.1 and 11.5.2, or whether the County will refuse to accept bookings from the City until such time as the aggregate number of Extension City Inmates is reduced below the population reduction schedule listed in Sections 11.5.1 and 11.5.2.
- 11.5.4 The parties agree to confer not less than quarterly during the Extension Period (2013-2016) to determine in good faith whether any of the beds reserved for Extension City Inmates are not likely to be needed by those cities in the near term and may thus be reassigned to third parties (including, but not limited to the state department of corrections) on a short term basis (30 day minimum). The purpose of this provision is to maximize county revenue recovery without impacting the Extension Cities' ability to access needed beds.
- 11.5.5 The County will review inmate population information and forecasts periodically during the Extension Period and increase the maximum number of beds available to cities as the County determines is reasonably practicable.
- 11.5.6 During the extension period Extension Cities can collectively access up to a maximum of 15 Work and Education Release (WER) beds, subject to availability, on a first come, first serve basis; provided further that these beds will not be held in reserve for the Extension Cities.

- 11.6 The Jail's capacity limit for Medical Inmates is twenty-six (26). The Jail's capacity limit for Psychiatric Inmates is one hundred fifty one (151). For the purpose of this Section the Medical and Psychiatric Inmate population will be determined following the definitions in Sections 1.11 and 1.14 at the time of the Jail's Official Daily Population Count.
- 11.7 When the Jail has reached its capacity limit for either Medical or Psychiatric Inmates as set forth in Section 11.6, the County will notify the City by phone or electronic mail. Such notification will be made to the person designated in Section 13.11 of this Agreement. At the time this notification is made the County may request that the City take custody of a sufficient number of its Medical or Psychiatric Inmates to reduce the number of Medical or Psychiatric Inmates to the capacity limits detailed in Section 11.6, or the County may inform the City that it is willing to continue to house these inmates. During the Initial Fee Period, the premium maintenance day charge in Exhibit III may only be charged when 1) the capacity limit is exceeded, 2) additional staff are assigned and compensated to serve these excess Medical or Psychiatric Inmates, 3) additional medical or psychiatric bed capacity is created, and 4) notice is provided as detailed above in this Section. The premium maintenance day charge is not applicable in the Revised Fee Period.
- 11.8 County requests under Section 11.7 will be made as follows. The billable City with the most recent City Inmate admitted as Medical or Psychiatric Inmate will be asked to take custody of that inmate. During the Initial Fee Period, this process will be repeated until such time as the Medical and Psychiatric populations are reduced below capacity limits, or the Jail is willing to continue to house these inmates at the premium maintenance day charge as detailed in Exhibit III. During the Revised Fee Period, this process will be repeated until such time as the Medical and Psychiatric populations are reduced to below capacity limits, or the Jail is willing to continue to house these inmates.
- 11.9 If the County, pursuant to Sections 11.7 and 11.8, requests that the City take custody of Medical or Psychiatric Inmates, the City shall comply with the County's request. The City may take custody of its¹ Medical or Psychiatric Inmates by picking them up within 24-hours of the County's request, or by notifying the County, within 24-hours of the County's request, that the City would like the County to deliver the inmates to the City's designated drop-off location or a backup location previously provided to the County². If

¹ Within eight (8)-hours of the County's request, the City may provide the County with the names of other Medical Inmates to substitute for the Medical Inmates identified for pick-up by the County. In the event the City identifies substitute Medical Inmates that are City Inmates, the provisions of Section 11 will continue to apply. In the event the City identifies substitute Medical Inmates that are the responsibility of a different City (Substitute City), the Substitute City will be responsible for picking-up the substitute Medical Inmates within 24-hours of the initial request for pick-up. In the event the Substitute City fails to pick-up its Medical Inmates within 24-hours of initial notification to the City, the County will deliver the Medical Inmates named in the original notification to the City's designated drop-off location or backup location. The substitution procedures outlined in this footnote will also apply to Psychiatric Inmates.

² The City's designated drop off location and backup location must be either a facility in the direct control of the City or a facility that is contractually obligated, consistent with the terms of this Agreement, to act as the City's

the City has not picked-up the Medical or Psychiatric Inmate within 24-hours of the County's request, or the City has requested that the County take the Medical or Psychiatric Inmate to the designated drop-off location or backup location, the County will deliver the Medical or Psychiatric Inmate to the City's designated drop-off location or backup location. In either case, the City's designated drop-off location or backup location must accept delivery from the County, and must be available to do so seven days a week, twenty-four hours a day. In all cases, the County shall provide the receiving entity with Continuity of Care Records, in a sealed envelope, at the time custody is transferred. The City will ensure that the City and the receiving entity comply with all applicable confidentiality laws and rules. Similarly, the City will ensure that Continuity of Care Records are provided to the County at the time custody of a City Inmate receiving the level of care consistent with a Medical or Psychiatric Inmate is transferred to the County.

- 11.10 The County will transport Medical or Psychiatric Inmates to a designated drop-off location or backup location within King County, Washington without charge. The City will pay all transportation costs for Medical or Psychiatric Inmates taken to a designated drop off location or backup location outside of King County, Washington. In no case will the County be obligated to transport a Medical or Psychiatric Inmate out-of-state.
12. Transfer of Property. The parties agree that prior to July 1, 2004 the County will convey, pursuant to the terms of the Land Transfer Agreement attached as Exhibit VI, to the City of Bellevue, Washington, to hold on behalf of all Contract Cities, as third party beneficiaries, certain real property located at 1440 116th Avenue N.E. and 1412 116th Avenue N.E., Bellevue, Washington (Property). The Contract Cities may at their sole discretion enter into an agreement with other King County cities for the purpose of providing for the disposition of the Property. The Property will be used to contribute to the cost of building secure capacity, or contracting for secure capacity, and, at the sole discretion of the Contract Cities, building or contracting for alternative corrections facilities, sufficient to enable the Contract Cities to meet the final step (occurring on December 31, 2012) of the population reduction schedule as detailed in Sections 11.3 and 11.4 of this Agreement. The parties understand that the Property may be sold or traded and the proceeds and/or land acquired from such sale or trade used for the purposes detailed in the preceding sentence. The parties further agree that in the event the cities do not build secure capacity, or contract for secure capacity, and, at the sole discretion of the Contract Cities build or contract for alternative corrections facilities, sufficient to enable the Contract Cities to meet the final step (occurring on December 31, 2012) of the population reduction schedule as detailed in Sections 11.3 and 11.4 of this Agreement the City of Bellevue shall transfer title to the Property back to the County if such Property has not been sold; or if such Property has been sold, pay the County an amount equal to the net sale price of the Property, plus investment interest earned; or if the Property has been traded, pay the County the appraised value of the Property at the time of the trade, as determined by an MIA appraiser selected by mutual agreement of King County and the City of Bellevue, plus investment interest earned. This section shall survive any termination of this Agreement prior to December 31, 2016.

designated drop-off location or backup location. The City may change their designated drop off location or backup location by notifying the County, in writing, of the change.

- 12.1 The deadline of December 31, 2012, in the paragraph above is extended to December 31, 2016 for Extension Cities only. As of the date of this Amendment, the Property has been sold and the proceeds (the "Property Proceeds") distributed to cities per the allocation in Exhibit VIII, attached.
- 12.2 The County waives any right it may have otherwise asserted, under this Amendment or the Original Agreement or the Land Transfer Agreement between Bellevue and the County, to seek recovery of Property Proceeds from any City to which Property Proceeds have been allocated that has in good faith expended the Property Proceeds for the purposes prescribed in this Section. Except as otherwise expressly provided below, in the event any City receiving Property Proceeds expends such proceeds for purposes inconsistent with this Section, the County shall only seek to recover those misspent Property Proceeds.
- 12.3 With respect to Property Proceeds allocated to the City that remain unexpended as of December 31, 2016:
- 12.3.1 If the City has removed all its Inmates from the County jail facilities by January 1, 2017, the County waives the right to recover Property Proceeds remaining unexpended as of December 31, 2016, unless such Property Proceeds are later spent for purposes inconsistent with the purposes prescribed in Section 12.
- 12.3.2 If the City fails to remove its inmates from County jail facilities by January 1, 2017, in addition to other rights and remedies it may have, the County may seek recovery of those Property Proceeds allocated to the City, which were unexpended as of December 31, 2016.
- 12.4 The parties agree that nothing in any provision of this Agreement shall be interpreted to allow the Extension Cities to use the proceeds from the sale of the Property to subsidize any payments owed to the County under the terms of the Agreement or Amendment. The parties further agree that the intent of this Section 12 is to provide financial assistance to cities to contribute to the cost of building secure capacity, or contracting for secure capacity, and, at the sole discretion of the Extension Cities, building or contracting for alternative corrections facilities, sufficient to enable the Extension Cities to meet the final step (occurring on December 31, 2016) of the population reduction schedule as detailed in Section 11.5.2 of this Agreement.
- 12.5 The parties agree that, for the purposes of this Section 12, "alternative corrections facilities" means facilities in which work release, electronic home detention, work crews, day reporting, evening reporting or other community programs are operated by the Contract Cities or Extension Cities. This definition of "alternative corrections facilities" is not intended to alter in any way the definition of "Jail" found in section 1.10 of the Agreement.

13. General Provisions.

13.1 Other Facilities. This Agreement reserves in each party the power to establish a temporary holding facility during a riot, civil disobedience or natural disaster, to establish group homes or other care or rehabilitation facilities in furtherance of a social service program, to temporarily transfer inmates to alternative detention facilities in order to respond to jail overcrowding, and to comply with a final order of a federal court or a state court of record for the care and treatment of inmates.

13.2 Grants. Both parties shall cooperate and assist each other toward procuring grants or financial assistance from the United States, the State of Washington, and private benefactors for the Jail, the care and rehabilitation of inmates, and the reduction of costs of operating and maintaining Jail facilities.

13.3 [Section number reserved].

13.4 Severability. If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby.

13.5 Remedies. No waiver of any right under this Agreement shall be effective unless made in writing by the authorized representative of the party to be bound thereby. Failure to insist upon full performance of any one or several occasions does not constitute consent to or waiver of any later non-performance nor does payment of a billing or continued performance after notice of a deficiency in performance constitute an acquiescence thereto. The parties are entitled to all remedies in law or equity.

13.6 Exhibits. This Agreement consists of several pages plus the following attached exhibits, which are incorporated herein by reference as fully set forth:

Exhibit I	Method of Determining Billable Charge and Agency
Exhibit II	Exception to Billing Procedure
Exhibit III	Maintenance Charge, Premium Maintenance Charge, Booking Fee, Surcharges and Offsite Medical Charges
Exhibit IV	Population Alert and Reduction Plan
Exhibit V	Comparison of Estimated King County Jail Bed Demand and Supply 2002 to 2005 Table
Exhibit VI	Land Transfer Agreement
Exhibit VII	List of Cities
Exhibit VIII	Distribution of Property Proceeds
Exhibit IX	2008 City Average Daily Population

13.7 Not Binding on Future Agreements. This Agreement does not bind the parties as to the terms, fees, or rate formulas to be included in any future jail services agreements.

13.8 Entire Agreement. This Agreement as amended represents the entire understanding of the parties and supersedes any oral representations that are inconsistent with or modify its terms and conditions.

- 13.9 Modifications. All provisions of this Agreement may be modified and amended with the mutual written consent of the parties hereto.
- 13.10 Force Majeure. In the event either party's performance of any of the provisions of this Agreement become impossible due to Force Majeure, 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.
- 13.11 Notices. Except as otherwise provided in this Agreement, any notice required to be provided under the terms of this Agreement, shall be delivered by certified mail, return receipt requested or by personal service to the following person:

For the City:

Chief Jamey Kiblinger
Black Diamond Police Department
PO Box 399
Black Diamond, WA 98010

For the County:

Director
King County Department of Adult and Juvenile Detention
500 5th Avenue
Seattle, WA 98104

- 13.12 [Section number reserved].
- 13.13 Council Approval. The parties' obligations under this Agreement are subject to official City or County Council approval.
- 13.14 Information. The parties further agree to share data and information for the purpose of assisting the Contract Cities in the planning and construction of secure capacity, contracting for secure capacity or alternative correction facilities.
14. Terms to Implement Amendment.
- 14.1. Amendment Offered and Minimum ADP Required. The County will offer this Amendment to the cities listed in Exhibit VII. Such offer is open to those cities until May 1, 2010 or such later date as may be approved by King County. The County's offer is a conditional offer that may be withdrawn if the Amendment is not executed on or prior to May 1, 2010 by cities which in 2008 cumulatively housed not less than 70% of the total 2008 Cities Average Daily Population (ADP) (a 2008 ADP of 199.49) in the

County jail system. 2008 ADP for each Contract City, to be used to determine the total ADP of cities executing this amendment, is set forth in Exhibit IX.

- 14.2. Effective Date. The effective date of this Amendment is May 1, 2010.
- 14.3. Latecomers. Any Contract City not party to this Amendment which seeks jail services from the County during the period from January 1, 2012 through December 31, 2016 must reach agreement as to the terms of such "latecomer contract" through negotiation with the County, and any latecomer contract as so negotiated shall be subject to the concurrence (meaning a statement of willingness to allow the County and the city to enter into such contract) of all Extension Cities. In recognition of the risks assumed and costs incurred by both the County and the Extension Cities as a result of entering into this Amendment, any such latecomer contract will include a latecomers charge as further defined below.
- 14.3.1 Except as provided in Section 3.2 below, the latecomers charge shall equal 400% of the cumulative increase in surcharge revenue that the County *would have received from the latecomer city* had that city signed this Amendment effective May 1, 2010, based on the latecomer city's *actual jail usage under the Original Agreement* over the period from November 1, 2010 through December 31, 2012 or the date the latecomer agreement takes effect, whichever is earlier. The calculation of the latecomers charge shall thus *exclude* consideration of booking fee, maintenance charge and WER charge revenues that would have been incurred, but shall *include* all other services provided by the County that would have resulted in imposition of surcharges to the latecomer city had the latecomer city signed this Amendment effective May 1, 2010 (e.g., Infirmery Care Surcharge, Acute Psychiatric Care Surcharge, Non-Acute Psychiatric Care Surcharge, and 1:1 Guarding Surcharge). *In addition*, any Offsite Medical Charges that were incurred by the County on behalf of the latecomer city after May 1, 2010, will be added to the latecomer penalty but shall not be subject to the 400% multiplier.
- 14.3.2 Notwithstanding the foregoing, the latecomer charge will be 250% of the cumulative surcharge revenue increase calculated per Section 3.1 above if the Extension Cities signatory to this Amendment together represent not less than 75% of the 2008 Cities Average Daily Population (ADP) (a 2008 ADP of 213.74). 2008 ADP for each Contract City, to be used to determine the whether this lower 250% fee increase is applicable, is set forth at Exhibit IX. In addition, any Offsite Medical Charges that were incurred by the County on behalf of the latecomer city after May 1, 2010, will be added to the latecomer penalty but shall not be subject to the 250% multiplier.
- 14.3.3 The latecomer charge will be budgeted as DAJD revenue and applied to reduce costs on a one-time basis for the County and all Extension Cities. Proceeds of the latecomer charge will be allocated between the County and the Extension Cities based on the ratio of County responsible inmate ADP to the Extension Cities aggregate responsible inmate ADP for the immediately preceding calendar

year, with each Extension City receiving a pro rata share of the total Extension Cities allocation based on its ADP for the immediately preceding calendar year.

- 14.4. City Efforts Towards Additional/Future Detention Capacity. The City confirms that it is engaged in planning to finance and construct or otherwise secure additional jail capacity to be available to the City, or to the City and other parties, by the end of the term of this Agreement. Also, if the City had an Average Daily Population of 2 or more in 2008 at King County facilities, the City has entered or will enter into a contract or contracts with third parties for jail bed capacity for City misdemeanor offenders, or will add capacity to its own jail facilities, in order to supplement the jail bed capacity available to the City for the entire term of this Agreement.
- 14.5. Filing. As provided by RCW 39.34.040, this Amendment shall be filed with the King County Department of Records and Elections.
- 14.6. Council Approval. The parties' obligations under this Amendment are subject to official City and City Council approval of the Amendment.
- 14.7. Assignment/Subcontracting. The City may not assign or subcontract any portion of this Amendment or transfer or assign any claim arising pursuant to this Amendment.
- 14.8. Severability. If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby.
- 14.9. No-Third Party Beneficiaries. There are no third-party beneficiaries to this Amendment. No person or entity other than a party to this Amendment shall have any rights hereunder or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Amendment.
- 14.10. Execution in Counterparts. This Amendment and any amendments thereto, shall be executed on behalf of each Party by its duly authorized representative and pursuant to an appropriate motion, resolution or ordinance. The Amendment may be executed in any

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number of counterparts, each of which shall be an original, but those counterparts will constitute one and the same instrument.

King County

City of Black Diamond



Dow Constantine
King County Executive

Rebecca Olness
Mayor

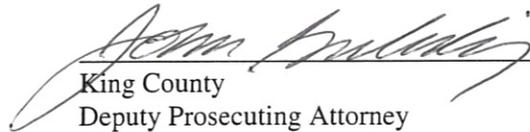
4-16-10

Date

Date

Approved as to Form:

Approved as to Form:



King County
Deputy Prosecuting Attorney

City Attorney

5/18/10
Date

Date