

## CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Clark County Sheriff's Office

**DATE:** October 23, 2018

**REQUESTED ACTION:** Approve the Interstate Mutual Law Enforcement Assistance Agreement between the Clark County Sheriff's Office and Multnomah County Sheriff's Office, and authorize the County Manager to sign.

Consent     Hearing     County Manager

### BACKGROUND

For many years, a master-Interlocal agreement existed between all of the Portland Metro area law enforcement agencies. An Oregon judge determined the agreement was not effective and that each individual agency needs an agreement with every other individual agency. The purpose of this Agreement is to provide the duly certified deputy sheriffs of both agencies the authority to legally perform the duties of law enforcement personnel within the other agency's jurisdiction. This reciprocal cross jurisdictional authority is necessary to allow sworn law enforcement personnel to legally perform duties which may be necessary to protect life and property and investigate crimes.

### COUNCIL POLICY IMPLICATIONS

None

### ADMINISTRATIVE POLICY IMPLICATIONS

None

### COMMUNITY OUTREACH

None

### BUDGET IMPLICATIONS

YES	NO	
	X	Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.


### BUDGET DETAILS

Local Fund Dollar Amount	None
Grant Fund Dollar Amount	None
Account	General Fund
Company Name	N/A

**DISTRIBUTION:**

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>

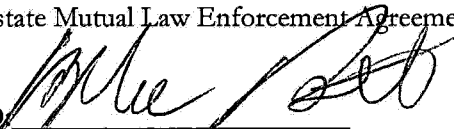
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John Chapman  
Chief Criminal Deputy

  
Michael Cooke  
Clark County Undersheriff

Attachments:

Interstate Mutual Law Enforcement Agreement

  
APPROVED:  
Clark County, Washington  
Clark County Council

DATE: 11-24-18

SR# 172-18

APPROVED:   
Shawn Hennessee, County Manager

DATE: 11-24-18



## BUDGET IMPACT ATTACHMENT

### Part I: Narrative Explanation

I.A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information

### Part II: Estimated Revenues

Fund #/Title	Current Year		Next Year		Years beyond 2019	
	GF	Total	GF	Total	GF	Total
<b>Total</b>						

II. A – Describe the type of revenue (grant, fees, etc.)

### Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	Current Year		Next Year		Years beyond 2019	
		GF	Total	GF	Total	GF	Total
<b>Total</b>							

III. B – Expenditure by object category

Fund #/Title	Current Year		Next Year		Years beyond 2019	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual (Internal Services)						
Supplies/Equipment						
Travel/Training						
Overtime						
Capital Outlays						
Inter-Agency Transfers						
Debt Service						
<b>Total</b>						

**INTERSTATE MUTUAL LAW ENFORCEMENT ASSISTANCE AGREEMENT**  
**BETWEEN**  
**MULTNOMAH COUNTY, OREGON AND CLARK COUNTY, WASHINGTON**

**I. Parties:**

This Interstate Mutual Law Enforcement Assistance Agreement (Agreement) is entered into by Multnomah County, a home rule county and political subdivision of the State of Oregon, acting by and through the Multnomah County Sheriff's Office (hereinafter MCSO), and Clark County, a home rule county and political subdivision of the State of Washington, acting by and through the Clark County Sheriff's Office (hereinafter CCSO), and collectively referred to as "the Parties."

**II. Purpose:**

The purpose of this Agreement is to provide the duly certified deputy sheriffs of the Parties with authority to legally perform the duties of law enforcement personnel within the other agency's jurisdiction. This reciprocal cross jurisdictional authority is necessary to allow sworn law enforcement personnel to legally perform duties which may be necessary to protect life and property and investigate crimes. The authority granted under the terms of this Agreement is not limited to mutual aid scenarios arising out of unforeseen events or catastrophes.

**III. Duration:**

This Agreement is effective upon authorization and signature by both parties. The term of this Agreement shall be for a period of five (5) years from the date of the last signature or when the term of office of the Sheriff of either participating jurisdiction ends, whichever is sooner. In the event of a Sheriff's term expiring, this Agreement is effective for a grace period of one-hundred twenty (120) days from the date of the Sheriff's term expiring, to allow the parties to reach an agreement. This Agreement may be renewed for an additional term upon written agreement of the Parties.

**IV. Legal Authorities:**

**A. Oregon Statutory Provisions**

1. ORS § 190.110 provides that a unit of local government enter into a written agreement with a unit of local government of another state for the performance of any or all functions and activities that a party to the agreement has the authority to perform.
2. ORS § 190.420 provides that any power or powers, privilege or authority exercised or capable of exercise by an Oregon public agency may be exercised and enjoyed jointly with any public

agency in another state to the extent that the laws of the other state permit such exercise or enjoyment.

3. ORS § 190.472 provides that a full time fully compensated police officer commissioned by a unit of local government of the state of Washington may exercise any authority that the officer's commission vests in the officer throughout the territorial boundaries of Oregon if the officer is acting pursuant to a mutual law enforcement assistance agreement between law enforcement agencies of Oregon and its contiguous states.

B. Washington Statutory Provisions

1. RCW § 39.34.030 provides that any power or powers, privilege or authority exercised or capable of exercise by a Washington public agency may, by agreement, be exercised and enjoyed jointly with any other public agency in any other state to the extent that the laws of such state permit such joint exercise or enjoyment.
2. RCW § 10.93.130 provides that Washington law enforcement agencies may, pursuant to the provisions of RCW Chapter 39.34, contract with any law enforcement agency of Oregon or its political subdivisions to provide mutual law enforcement assistance.
3. RCW § 10.93.070(2) provides in relevant part that a general authority Washington peace officer may enforce traffic and criminal laws throughout the territorial bounds of Washington upon the prior written consent of the sheriff or chief of police in whose primary territorial jurisdiction the exercise of the powers occurs.
4. RCW § 10.93.030(5) defines the term "Specially Commissioned Washington Peace Officer" as any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under this chapter as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specially commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon or Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho. A reserve peace officer is an individual who is an officer of a Washington law enforcement agency who does not serve such agency on a full-time basis but who, when called by the agency into active service, is fully commissioned on the same basis as full-time peace officers to enforce the criminal laws of the state.
5. RCW § 10.93.090 provides that a specially commissioned Washington Peace Officer may exercise any authority which the special commission vests in the officer pursuant to a Mutual Law Enforcement Assistance Agreement.

**V. Terms of the Agreement:**

1. The Parties agree that the full time, fully compensated, and commissioned law enforcement deputies of either party may, without restriction or limitation, exercise any authority that the deputy's commission vests in them throughout the primary geographic or territorial jurisdiction of the other party, provided that such deputy:
  - a. provide notice of their presence and activities to the other party via telephone, radio, or in person communication with the designated authorized representative as set forth in this Agreement if such prior notice can be provided without jeopardizing the safety of involved personnel or the law enforcement objective;
  - b. as soon as practicable under the circumstances, report any arrest, search, seizure or use of force that results from the exercise of this authority to the other party's designated authorized representative, as required by ORS § 190.474 and RCW § 10.93.030.
2. The Parties agree that full time, fully compensated, and commissioned deputies of MCSO who are responding to any request for service by CCSO or otherwise engaged in an investigation, pursuit, arrest or for any other law enforcement purpose in the State of Washington, shall be automatically commissioned by the Clark County Sheriff by virtue of this Agreement.
3. The Parties agree that all MCSO deputies that are automatically commissioned by the Clark County Sheriff by virtue of this Agreement, shall be Oregon peace officers in good standing who meet or exceed all education and training standards of the Oregon Department of Public Safety Standards and Training; that they will faithfully execute the constitution and laws of the United States and of the State of Washington and certify that they have received a copy of the Confessions, Search, Seizure and Arrest Guide by the Washington Association of Prosecuting Attorneys.
4. The Parties agree that in the event an MCSO deputy is reassigned, retires, suspended or otherwise leaves the employ of MCSO, that particular MCSO deputy's cross-commission with CCSO will be immediately revoked. The Parties agree that MCSO will promptly notify CCSO when an MCSO deputy has been reassigned, retired, suspended or has left his/her employment with MCSO.
5. The Parties further agree to provide aid or assistance to each other in the form of personnel, equipment and/or supplies when events occur that overwhelm or exceed the operational capacity of one of the Parties as determined by the Sheriff of the requesting party.
  - a. A party receiving a request for aid shall provide such aid to its fullest ability without compromising its ability to maintain an adequate level of service in its own jurisdiction.

The Parties do not intend to create an enforceable obligation to assist, and the decision of a party as to its ability to contribute aid or assistance of any kind shall be final.

- b. To seek aid under this Agreement, the Sheriff or the Sheriff's designee should direct a request via in person or telephone communication to the designated authorized representative of the other party.
6. Indemnification and Contribution: It is the intent of the Parties that personnel of one party responding to the request for assistance of the other, shall not be "agents" of the requesting party for purposes of the Oregon Tort Claims Act (ORS § 30.260 et seq.), and that responding personnel remain under the command and control of their own chain of command and subject to the policies and procedures of the agency that employs them.
- a. The Parties agree that each agency shall be liable for the actions of their respective employees when engaging in law enforcement activities in the territorial or geographic jurisdiction of the other party under this Agreement, and that under no circumstances shall one party be vicariously liable for the actions of the other irrespective of any judicial decision to the contrary.
  - b. In the event a lawsuit or legal action results from the policy, direction, act or omission of one of the Parties, that party shall defend and indemnify the other party as provided below.
    - i. Multnomah County Held Harmless: Subject to the limits of the Washington Constitution, Clark County shall indemnify and hold harmless Multnomah 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 any reason of or arising out of any act or omission of Clark County, CCSO, its officers, and employees, or any of them relating to or arising out of performing any act pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damages is brought against Multnomah County, Clark County shall defend the same at its sole cost and expense, provided that Multnomah County reserves the right to participate in said suit with counsel of its own choosing and at its sole expense.
    - ii. Clark County Held Harmless: Subject to the limits of the Oregon Tort Claims Act (ORS § 30.260 et seq.) and the Oregon Constitution, Multnomah County shall indemnify and hold harmless Clark County and its officers, and employees, or any of them from any all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any act or omission of Multnomah County, MCSO, its officers, agents, and employees, or any of them relating to or arising out of performing any act pursuant to this

Agreement. In the event that any suit based upon such a claim, action, loss, or damages is brought against Clark County, Multnomah County shall defend the same at its sole cost and expense, provided that Clark County reserves the right to participate in said suit with counsel of its own choosing and at its sole expense.

- iii. With respect to a claim or suit by a third party for which Multnomah County is jointly liable with Clark County (or would be if joined in the third party's lawsuit) Multnomah County shall contribute to the amount of damages (including attorney's fees), judgments, and amounts paid in settlement actually and reasonably incurred and paid or payable by Clark County in such proportion as is appropriate to reflect the relative fault of Multnomah County on the one hand and of Clark County on the other hand in connection with the events which resulted in such expenses, judgment, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of each party shall be determined by reference to, among other things, the Parties' relative intent in this Agreement, knowledge, access to information and opportunity to correct or prevent circumstances resulting in such expenses, judgments or settlement amounts. Multnomah County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if Multnomah County had sole liability in the proceeding.
  
- iv. With respect to a claim or suit by a third party claim for which Clark County is jointly liable with Multnomah County Clark County (or would be if joined in the third party's lawsuit) shall contribute to the amount of expenses (including attorney's fees), judgments, and amounts paid in settlement actually and reasonably incurred and paid or payable by Multnomah County in such proportion as is appropriate to reflect the relative fault of Clark County on the one hand and of Multnomah County on the other hand in connection with the events which resulted in such expenses, judgment, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of each party shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent circumstances resulting in such expenses, judgments or settlement amounts. Clark County's contribution amount in any instance is capped to the same extent it would have been capped under Washington law if Clark County had sole liability in the proceeding.

- 7. **Notice:** For all notice and contact purposes specified in this Agreement the designated authorized representatives of each party are as follows:




- a. For MCSO: Bureau of Emergencies Communication (BOEC) and ask to speak with an on duty supervisor; or if currently working on an investigation or other law enforcement purpose with MCSO, then communication with the MCSO Commander or Sergeant involved in the investigation is sufficient.
  - b. For CCSO: Clark Regional Emergency Services Agency (CRESA) and ask to speak with an on-duty supervisor; or if currently working on an investigation or other law enforcement purpose with CCSO, then communication with the CCSO Commander or Sergeant involved in the investigation is sufficient.
8. Termination: Either party shall have the right to terminate its participation in this Agreement for any reason whatsoever upon providing the other party thirty (30) days written notice in advance of the date sought for termination, provided however, that any obligation or liability arising directly or indirectly from an occurrence prior to the date sought for termination shall not be excused.
9. Termination - Individual(s): Either party shall have the right to terminate the participation in this Agreement of any individually named and identified deputy sheriff for any reason whatsoever upon providing the other party thirty (30) days written notice in advance of the date sought for termination, provided however, that any obligation or liability arising directly or indirectly from an occurrence prior to the date sought for termination shall not be excused.
10. Third Party Beneficiaries: Multnomah County and Clark County, acting through their respective Sheriff's Offices, are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to any third party.
11. Non-Discrimination: In the exercise and enjoyment of authority under this Agreement, no party shall discriminate against any person because of age, sex, race, religion, color, national origin, marital status, pregnancy, veteran status, any physical, mental, or sensory disability, or actual or perceived sexual orientation or any other discrimination prohibited by federal, Oregon or Washington law.
12. Pre-existing Agreements: All pre-existing Mutual Law Enforcement Assistance Agreements between the Parties are rescinded, revoked and superseded by the terms and conditions of this Agreement.
13. Waiver: No waiver by any party of any term of condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.

14. **Severability:** If any section or part of this Agreement is held by a court of competent jurisdiction to be invalid or illegal such action shall not affect the validity of any other part of this Agreement.
15. **Amendment:** The provisions of this Agreement may be amended with the mutual consent of the Parties. However, no additions to or amendments of the terms of this Agreement shall be valid unless made in writing and formally approved and executed by each party.
16. **Property:** No transfer of property between the parties or to any third party is provided for by this Agreement.
17. **Personnel:** No transfer of any Personnel between the Parties is provided for by this Agreement. Each party to this Agreement shall continue to provide its own personnel who may be assigned to render assistance or who may otherwise exercise any authority under this Agreement, the same salaries, compensation for death or disability, retirement and leave, cost of transportation, and other normal fringe benefits such personnel would receive from that party as the employing agency.
18. **Entire Agreement:** This Agreement is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded, except that execution of the Agreement may be made in counterparts.


**Approved as to Form:**

Jenny M. Madkour  
Multnomah County Attorney

  
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Carlos J. Calandriello  
Senior Assistant County Attorney

Date: 9-18-2018

Tony Golik  
Clark County Prosecuting Attorney

  
\_\_\_\_\_  
Leslie A. Lopez  
Deputy Prosecutor – Civil Division

Date: 10-11-18

(CONTINUED FROM PREVIOUS PAGE)

Multnomah County Sheriff's Office

Michael Reese  
Michael Reese, Sheriff

Date: 9/17/18

Clark County Sheriff's Office

\_\_\_\_\_  
Chuck E. Atkins, Sheriff

Date: \_\_\_\_\_

Clark County

Shawn Hennessee  
Shawn Hennessee, County Manager

Date: 11-24-18