

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING FOR SERVICES (“MOU” herein) is made and entered into under the authority of Ch 39.34 RCW (Interlocal Cooperation Act) by and between the Sheriff of Clark County, Washington (“Sheriff” herein), located at 707 W. 13th, Vancouver, WA 98660 and the Clark County Board of Law Library Trustees (“Law Library” herein) until terminated in accordance with the termination provisions in this MOU.

RECITALS

WHEREAS, Law Library is funded primarily by Clark County court filing fees; and
WHEREAS, Law Library is housed within the Clark County Courthouse, and does not pay rent associated with its occupancy; and
WHEREAS, Law Library is required to be maintained and managed by its Board pursuant to applicable statute, and
WHEREAS, Sheriff desires to engage Law Library to perform, and Law Library agrees to undertake, carry out and complete certain services as hereinafter set forth:

NOW, THEREFORE, the parties agree as follows:

I. PARTIES TO THE MOU.

The parties to the MOU are:

- A. Sheriff
Clark County Sheriff
707 W. 13th Street
Vancouver, WA 98660

- B. Law Library:
Board of Law Library Trustees
Clark County Law Library
Clark County Courthouse
1200 Franklin Street
Vancouver, WA 98660

II. REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICES.

The representatives of the parties who are primarily responsible for the administration of this MOU, and to whom formal notices, demands and communications shall be given are as follows:

A. The principal representative of the Sheriff shall be:

Jackie Webster
Chief Jail Administrator
Clark County Sheriff's Office
707 W. 13th Street
Vancouver, WA 98660

B. The principal representative of the Law Library shall be:

Maria Sosnowski
Clark County Law Library
Clark County Courthouse
1200 Franklin Street
Vancouver, WA 98660

C. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be affected by personal delivery or mail, registered or certified, postage prepaid.

D. If the name of the principal representative designated to receive the notices, demands or communications, or the address of such person, is changed, written notice shall be given within ten (10) working days of said change.

III. DESCRIPTION OF WORK.

Sheriff hereby requests the Law Library, and the Law Library agrees, to provide services relating to the acquisition and maintenance of material for use in the Sheriff's Jail Law Library and to provide certain copying services for inmates and detainees incarcerated at Clark County, Washington, in the following particulars:

A. To assist the Chief Jail Administrator, through its County Law Librarian, in acquiring materials identified by the Chief Jail Administrator as suitable for use in providing Jail inmates access to the courts, as that term is defined and employed by the United States Supreme Court in *Lewis v. Casey*, 518 U.S. 343, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996) and subsequent cases.

B. To assist the Chief Jail Administrator, through its County Law Librarian, by providing monthly inspection and update of materials acquired for use in the Jail Law Library.

C. To provide copies of forms and other materials that Jail inmates may from time to time request from the County Law Library only if those materials are not part of the Jail Law Library collection and subject to a limit of 20 pages per day per inmate.

D. Law Library shall provide the following deliverables to the Sheriff:

(1) Copies of invoices for acquisitions, replacements and updates of acquisitions of legal materials identified and requested by the Chief Jail Administrator; and

(2) Quarterly invoices for time spent by its County Law Librarian on behalf of the Jail Administrator or Jail inmates as well as charges for copies made for the inmates or reimbursement for items purchased on behalf of the jail using the law library credit card.

E. Law Library shall perform and complete, in a manner satisfactory to Sheriff, all work and services set forth above. The Sheriff's Representative, or the Representative's designee, shall have the right to review and inspect the work during the course of its performance at such times, as may be specified by the Representative.

IV. COMPENSATION, COSTS, AND METHOD OF PAYMENT.

A. Payment Schedule.

1. The Sheriff agrees to pay Law Library at a rate of \$70.00 per hour, but not to exceed \$350.00 (5 hours) in any one month during calendar years 2013 and 2014. Said fees shall apply to each hour spent by the County Law Librarian in inspecting and updating Jail Law Library Materials and in providing copies of forms and materials as may from time to time be requested by Jail inmates, which amounts shall be invoiced by Law Library at the end of the each calendar quarter, covered by this MOU.

2. In addition, the Sheriff agrees to pay for the cost of each copy of any form or other material that may from time to time be requested by Jail inmates. Payment shall be at the rates established by the County Law Library Board from time to time for copies of library materials to the general public, and shall be added to the quarterly invoices sent to the Sheriff.

3. The Law Library shall maintain a record of time expended including the activities undertaken on behalf of Sheriff.

4. The Sheriff has the right upon reasonable advance notice of five (5) days to inspect Law Library's time logs, and records.

B. Costs and Expenses.

1. Law Library will copy and deliver the requested copies and time logs and records at its expense.

2. Law Library shall be responsible for all other costs and expenses associated with activities undertaken pursuant to this MOU. Such cost includes, but is not limited to, all costs of equipment provided by Law Library, communications costs, all professional fees, all fines, licenses, bonds or taxes required of or imposed against Law Library, and any other costs of providing services.

V. OBLIGATIONS OF LAW LIBRARY.

A. Tools and Instruments.

Law Library will supply all necessary tools and equipment associated with the completion of services under this MOU, including but not limited to, word processing and spreadsheet software; computer, printer, paper, supplies; telephone, fax machine, typewriter, modem, floppy disks, research materials, and any other instruments required.

B. Workers' Compensation.

Law Library agrees to provide Workers' Compensation Insurance for its own employees and agrees to defend, hold harmless, and indemnify the Sheriff and Clark County for any claims including but not limited to claims arising out of injury, disability, or death of any of Law Library's employees, subcontractors, or agents in connection with any work or duties in completing the work described within this MOU except those performed by in the County Jail. With respect to the performance of this MOU and as to claims against the Sheriff and Clark County, their officers, agents and employees, Law Library expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this MOU extend to any claim brought by or on behalf of any employee of Law Library. This waiver is mutually negotiated by the parties to this MOU.

C. State and Federal Taxes.

1. Law Library shall be responsible for paying all required state and federal taxes and insurance.

2. Sheriff and Clark County will not:

- a. withhold FICA;
- b. make state or federal unemployment insurance contributions on behalf of Law Library;
- c. withhold state or federal income tax from Law Library's payments;
- d. make disability insurance contributions on behalf of Law Library;
- e. obtain Workman's Compensation Insurance on behalf of Law Library.

D. EMPLOYEE BENEFITS.

Law Library, as an independent contractor, and its employees, are is not entitled on account of this MOU to any benefits typically payable by the Sheriff for Sheriff's employees, such as medical, sick leave or vacation benefits.

VI. OBLIGATIONS OF SHERIFF.

A. Cooperation:

1. Sheriff agrees to comply with all reasonable requests of Law Library and to provide access and pertinent documents necessary for Law Library to provide services under this contract.

2. Pertinent documents include, but are not limited to, inmate request slips, jail library budget information, previously written library proposals, background, research and other source documents, records and review of proposal drafts.

B. Place of Work:

1. Sheriff will not guarantee a place of work for the Law Library for completion of services provided by the Law Library under this MOU. However, Sheriff may provide temporary workspace at its Jail Law Library for Law Library staff to conduct work associated with the inspection and updating of materials under this MOU.

2. The Sheriff, through the Jail Administrator, shall provide security and ensure the personal safety of the County Law Librarian and other Law Library employees, volunteers and agents during any monthly inspections of the Jail Law Library. The County Law Librarian shall be able to request that inmates be removed from the jail law library area during monthly inspections.

3. The Sheriff, through the Jail Administrator, is responsible to ensure that books are not rearranged by staff or inmates. If a significant number of books are rearranged, at the discretion of the Law Librarian, the Law Librarian will cease work in the jail law library and report the rearrangement of books to the Chief Jail Deputy or

designee. In this event, at the Law Librarian's next scheduled visit the Librarian shall have at least two trustees and one CO (for security) and will direct them in repositioning of the collection.

C. Hold Harmless and Indemnification.

Acknowledging that access to the courts is the sole responsibility of the Sheriff, the Sheriff shall defend, indemnify and hold harmless the Law Library, their trustees, officers, officials, employees and agents from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any claim in any way relating to inmate access to the courts or any claim relating to any negligent or willful act of the Sheriff, his Chief Jail Administrator or any Sheriff's employee, during the term of this MOU, whether or not there is concurrent negligence on the part of the Law Library, but excluding liability due to the sole negligence or willful misconduct of the Law Library or its trustees, officers, officials, employees or agents.

VII. TERM AND EFFECTIVE DATE.

This MOU shall be effective from the date last signed by the parties and shall be operative as to services performed between January 1, 2013, and December 31, 2014.

VIII. TERMINATION OF CONTRACT FOR CAUSE.

A. Termination by Sheriff:

1. Should Law Library default in providing services under this contract or materially breach any of its provisions, Sheriff may terminate this MOU upon ten (10) days written notice to Law Library.

2. Law Library shall have the right and opportunity to cure any such material breach within the ten (10) day period.

B. Termination by Law Library:

1. Should Sheriff, his staff, employees, agents and/or representatives default in the performance of this contract or materially breach any of its provisions, Law Library, at its option, may terminate this MOU by giving ten (10) days written notice to Sheriff.

2. Sheriff shall have the right and opportunity to cure any such material breach within the ten (10) day period.

IV. GENERAL PROVISIONS.

A. Entire MOU of the Parties.

1. This MOU supersedes any and all prior proposals, agreements, understandings, and other contracts, either oral or written, between the parties regarding the rendering of services in any manner whatsoever.

2. This MOU contains all the covenants and agreements between the parties and any modification of the contract will be effective only if it is in writing and signed by both the parties.

B. Severability.

If any provision of this contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

C. Government Documents.

1. Law Library agrees to file all necessary governmental documents, including appropriate tax returns, reflecting its income status as an independent Law Library for services rendered to the Sheriff under this MOU.

2. Should any governmental agency audit the files of any either and request information on the Law Library of Sheriff, then Law Library and Sheriff agree to immediately furnish the requesting party with any records, including tax returns, relating to the services rendered under this contract.

D. Non-Discrimination.

1. Law Library shall comply with all applicable federal, state and local laws and regulations with regard to services rendered under this MOU and shall not discriminate on the basis of age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion, or sexual orientation.

E. Independent Contractor.

1. All acts of Law Library, its agents, officers, sub-Law Libraries and employees and all others acting on behalf of Law Library relating to the performance of

this MOU, shall be performed as independent Law Libraries and not as agents, officers, sub-Law Libraries or employees of either Sheriff or Clark County. Law Library, by virtue of this MOU, has no authority to bind or incur any obligation on behalf of either Sheriff or Clark County. Law Library has no authority or responsibility to exercise any rights or power vested in either the Sheriff or Clark County. It is understood by all parties hereto that this MOU shall not under any circumstances be construed or considered to create an employer-employee relationship or joint venture.

2. Law Library, its agents, officers, sub-Law Libraries and employees are, at all times during the terms of this MOU, shall represent and conduct themselves as independent Law Libraries and not as employees of either the Sheriff or Clark County.

3. Law Library shall determine the method, details and means of performing the work and services to be provided by Law Library under this MOU. Law Library shall be responsible to the Sheriff only for the requirements and results specified in this MOU, and, except as expressly provided in this MOU, shall not be subjected to the control of either the Sheriff or Clark County with respect to the action or activities of Law Library in fulfillment of this MOU. Law Library has control over the manner and means of performing services under this MOU.

4. As an independent Law Library, Law Library hereby agrees to indemnify and hold the Sheriff and Clark County harmless from any and all claims that may be made against the Sheriff or Clark County based on any contention by third party that an employer-employee or principle-agent relationship exists by reason of this MOU.

F. Conflict of Interest.

1. Law Library warrants that it presently has no interest and shall not acquire any interest which would conflict with performance or services as defined in this MOU. Law Library further warrants that, in performance of this MOU, Law Library shall not employ any person having such an interest. This clause in no way prohibits Law Library from performing similar services for other cities.

2. No member, official or employee of the Sheriff or Clark County shall be personally liable to the Law Library, or any successor in interest, in the event of any default or breach by the Sheriff, or for any amount which may become due to the Law Library or successor or on any obligations under the terms of this MOU.

3. The Law Library warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this MOU.

4. No member, official, or employee of the Sheriff or Clark County shall have any personal interest, direct or indirect, in this MOU, nor shall any member, official, or employee participate in any decision relating to the MOU which affects their personal

interests, the interests of this corporation, partnership or association in which they are directly or indirectly interested.

G. Assignment.

Neither this MOU nor any portion thereof may be sub-contracted or assigned without the express prior written consent of both the Sheriff. The Sheriff understands and agrees that Law Library uses and has maintained relationships with sub-Law Libraries who perform research and writing services. Recognizing Law Library as an independent Law Library, neither the Sheriff nor Clark County intends to mandate the manner in which Law Library achieves the goals and outcomes set forth under this MOU.

H. Waiver.

The waiver by any party to this MOU of a breach of any provision in this MOU shall be in writing and shall not operate or be construed as a waiver of any other provision or subsequent breach of this MOU unless specified in writing.

I. Non-Liability of Officials and Employees of Sheriff and Clark County.

No member, official or employee of the Sheriff's Office or Clark County shall be personally liable to the Law Library or any successor in interest, in the event of any default or breach by the Sheriff or for any amount which may become due to the Law Library, its successors, or on any obligations under the terms of this MOU.

J. Governing Law.

This MOU shall be governed by the laws of the State of Washington.

K. Extensions.

This MOU may be extended upon the mutual written consent of both parties.

L. Ratification.

Acts taken prior to the execution of this MOU but consistent with its terms are hereby ratified and affirmed.

M. Web posting.

Pursuant to RCW 39.34.040, this MOU shall be listed on the Law Library website in lieu of being filed with the Clark County Auditor.

SIGNATURES

CLARK COUNTY SHERIFF

CLARK COUNTY LAW LIBRARY

Signed *Garry E. Lucas*
For Garry E. Lucas, Sheriff

Signed *Rachel Brooks*
Rachel Brooks
Co-Chair, Board of Trustees

Date executed: March 19, 2013.

Date executed: March 15, 2013.