



CITY OF GEARHART

Staff Report

For Special City Council Meeting - 3/22/2023

Subject - New Business - Clatsop County Sheriff's Office IGA (Intergovernmental Agreement)

Synopsis: As everyone is aware, Chief Bowman is retiring April 1st and the search for a new Chief is well underway. In the interim, an IGA between the City of Gearhart and the County Sheriff's Department has been proposed and is attached for Council consideration. The IGA will provide the City with law enforcement coverage during the new Chief and Officer recruitment process. Sheriff Phillips has detailed services, responsibilities and necessary definitions throughout the agreement. Signing will provide the City with law enforcement coverage upon execution through June 30, 2023.

Recommendation: City staff recommends Council motion to approve the City of Gearhart enter into the attached law enforcement IGA with Clatsop County.

Legal Analysis: As cited per ORS throughout the agreement.

Financial Analysis: The base cost is \$12,000 per month with diverted service hourly costs (as needed) listed in the referenced Appendix A.

Respectfully Submitted,

Chad

**INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN
CLATSOP COUNTY AND THE CITY OF GEARHART
FOR LAW ENFORCEMENT SERVICES**

This Agreement is made by and between CLATSOP COUNTY, a political subdivision of the State of Oregon ("County"), the Clatsop County Sheriff ("Sheriff" or "Department"), and the CITY OF GEARHART, a municipal corporation ("City"). Collectively, the County, Sheriff, and City are referred to as the "Parties".

RECITALS

WHEREAS, The City possesses the power and legal authority to provide law enforcement services within its incorporated City limits.

WHEREAS, the City desires to enter into a contract with the County and Sheriff whereby the Sheriff provides certain law enforcement services within the incorporated boundary of the City; and

WHEREAS, the Sheriff has the resources to provide those certain law enforcement services to the City; and

WHEREAS, the City and County acknowledge and agree that ORS 236.605 to 236.640 are applicable to the transfer of law enforcement services;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by this reference.

2. Statutory Authority

2.1. Pursuant to ORS 190.010, a unit of local government may enter into a written agreement with any other unit of local government for the performance of any and all functions and activities that a party to the agreement, its officers or agencies, have authority to perform.

2.2. The Parties are units of local government, agencies, or officers, as defined in ORS 190.003.

2.3. Pursuant to ORS 190.030, the Parties intend that Clatsop County, the Clatsop County Sheriff's Office, and their officers, agents, and employees are vested with all powers, rights and duties relating to the law enforcement services contemplated herein.

2.4. Pursuant to ORS 206.345, the Clatsop County Sheriff has authority to enter into Intergovernmental Agreements, jointly with the County. During the existence of the contract, the

Sheriff and the deputies of the Sheriff shall exercise such authority as may be vested in them by terms of the Agreement, including full power and authority to arrest for violations of all duly enacted ordinances of the contracting City.

3. Effective Date/Term. This Agreement is effective upon execution by all Parties, and shall continue through June 30, 2023.

4. Duties of County and Sheriff

4.1. Law Enforcement Services: The Sheriff will augment law enforcement services within the City of Gearhart seven (7) days per week, on a 24-hour basis with on-duty deputies and within the resource limitations present at the time, on-call coverage will not be provided. The Sheriff may use DPSST field trained and certified deputies or Sworn solo status Reserve Deputies to augment services. The Parties acknowledge and agree that Deputies assigned to augment services in the City may take calls and patrol outside of the City within Zone 3 (Westlake south to County line and east on Hwy 26 to M.P. 10), as needed, at the Sheriff's discretion. Law enforcement services include:

4.1.1 Due to the limited nature and duration of the Agreement deputies will be responsible to investigate and enforce state crimes and violations as included in Oregon Revised Statutes, and respond to calls for service. Law enforcement services do not include enforcement of City or other local ordinances or rules. Deputies may respond to and take initial reports on City ordinance violations, however, the initial report will be forwarded to City officer(s) for follow-up and disposition;

4.1.2. Proactive patrol to prevent and deter criminal activity, and to provide police services for discretionary enhanced work, and special events as reasonably requested by the City.

4.2. Administrative Services. The County and Sheriff will provide administrative services as necessary to provide the law enforcement services as described herein.

4.3 Equipment. The County and Sheriff will supply all equipment necessary to perform the services described, including patrol vehicles, uniforms and related duty equipment, radios, and other similar equipment necessary for law enforcement purposes.

4.4 Municipal Court. Due to the limited nature and duration of the Agreement any action that must be cited into Municipal Court will be addressed by City officer(s). Deputies will enforce crimes and violations contained in Oregon Revised Statutes and cite into Clatsop County Circuit Court.

4.5 Misdemeanor and Felony Cases. The Sheriff will cite or book misdemeanor and felony cases in the normal course with the Clatsop County Circuit Court. To the extent possible under state law, revenue from criminal charges arising within the incorporated City boundaries and cited to Clatsop County Circuit Court will be credited to the City.

4.6 Decision and Policy-Making Authorities. The Sheriff will make operational decisions and develop and implement policies related to the services provided herein. The City Manager will provide general guidance to the Sheriff's appointed management liaison, related to performance of this Agreement, enforcement priorities, City goals, involvement in City events, neighborhood meetings, and other discretionary special events.

4.7 Policies and Procedures. All deputies assigned to assist the City will be subject to County and Sheriff policy, procedure, and other regulations. The Sheriff will adopt policies and procedures as may be necessary to provide the services described herein.

5. City's Duties.

5.1 Payment of Costs. The City will reimburse the County for the County's costs to perform the services described herein, as described in Section 6, below.

~~5.2 Authority. The City confers municipal police authority to the County and Sheriff's Office to enforce City codes and ordinances within the incorporated City.~~

5.3 Prosecution. The City remains solely responsible for prosecution (i.e.: City Prosecutor) and adjudication (i.e.: Municipal Judge) of City ordinance/code violations, including, but not limited to traffic and civil code violations. The City remains solely responsible for administration of the Municipal Court. The City remains solely responsible for enforcement of City code, except as specifically provided otherwise in this Agreement.

5.4 City Officer Schedule. City will provide officer schedule at least 15 days prior each covered month. The Sheriff's Office, within its resources, will provide augmented services on the City officer's days off with the intent that the City officer will not be called out on days off.

5.5. Use of Office Space/License.

5.5.1 License. The City grants to the County and Sheriff, their officers, agents and employees, a license to enter upon, occupy and use the Police Department Office located at 698 Pacific St, Gearhart, Oregon (the "Property"). Except as otherwise specifically stated herein, the County's license is exclusive.

5.5.2 Permitted Use. County is permitted to use the Property as office and meeting space Monday through Sunday, 24 hours per day. The County may allow other law enforcement agencies to use the Property for law enforcement purposes.

5.5.3 Insurance. The City shall be responsible to insure the Property and its contents.

5.5.4 Fee. There shall be no fee for the use of the Property.

Consideration for use of the Property is the provision of the service contemplated by this Agreement.

5.5.5 Maintenance. Day to day general janitorial and maintenance services will be performed by the City. Any capital repairs or improvements will be the responsibility of the City.

6. Service Costs.

6.1. Initial Period. City will pay the County a fee for the services (base cost) provided hereunder, in an amount of \$12,000 per month. The Sheriff's Office will be available to respond to calls for service and conduct proactive patrol within the City, when City officer(s) are not on duty, approximately 120 hours/week. The Agreement does not require the County to provide a specific number of hours of proactive patrol within the City per week or other time period as provided for in Section 4.1. A.

6.2 Subsequent Periods. Service payments for subsequent periods will vary according to the service level adjustments, if any, and changes in actual costs, and will be agreed upon prior to July 1, 2023.

6.3 Overtime. The City will pay for all overtime incurred by the County in execution of this Agreement. The County, unless approved by the City, will not create overtime by assigning overtime deputies to augmented patrol. The Parties agree that appropriate overtime includes holdover caused by response, investigation, and or arrest duties performed and court attendance in furtherance of this Agreement.

6.4 Discretionary Enhanced Work, and Special Events. The City will pay for straight time, and overtime paid by the County to respond to a request for discretionary enhanced work or special events. Responding to these City requests shall be treated as a response for assistance by another jurisdiction, with the responsibility for payment falling on that jurisdiction. City will not be billed for responding to the City as part of mutual aid that would normally be provided between the City and County. Providing normal "back-up" or support to officers as well as mutual aid will be continued under traditional practices.

6.5 Response During a Disaster. If the City experiences a disaster or unusual occurrence and overtime is requested by the City to respond, overtime paid by the County to respond will be billable at the actual overtime rate of the deputy(ies) on duty. The City will be responsible for seeking available reimbursement from FEMA or OEM, unless the County is otherwise required to do so.

6.6 Payment Methodology. The Sheriff's Office will present an invoice within 15 days after the end of each month that services are provided. The invoice will provide the base cost and any overtime worked.

6.6.1 Actual Increases Paid. City acknowledges that fee increases will include actual increases in County costs due to salaries, benefits, materials and supplies, capital expenditures, personnel services, and administrative allocation charges.

6.7 Recording Keeping. County will accurately record and track all calls for service, and overtime hours incurred and provide such when requested by the City pursuant to the above sections.

6.8 Roll up of Employment Costs. For purposes of this Agreement, anywhere the Parties are required to pay employee salaries, overtime, or transfer costs, the rate of pay is inclusive of payroll costs, including employer required PERS contributions and employee PERS "pick-up", FICA, and workers' compensation.

7. Miscellaneous

7.1. Reports, Audits and Inspections. On a monthly basis, the City will receive monthly reports including calls for service, overtime hours incurred beyond a regular schedule shift or otherwise reasonably requested. The records and documents related to all aspects of this Agreement are subject to inspection, review and audit by either party during the term of the Agreement and up to five years thereafter, subject to all applicable public record disclosure exemptions.

7.2 Decision and Policy Making Authorities. The Sheriff's Office will provide services to the City as provided in this Agreement with the understanding that the City Manager will coordinate either directly with the Sheriff or his/her designee, on a regular basis, to identify preferred areas of patrol or special activities needing particular attention, including but not limited to: neighborhood meetings, town halls, local promotional programs for law enforcement or City needs, school related matters, etc.

7.3. Independent Contractor. County is performing duties as an independent contractor. Nothing herein shall be construed as creating a relationship of employer and employee, or principal and agents, between City and County or any of the County's agents or employees. The County shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by County pursuant to this Agreement. County employees assigned to provided services under this agreement are not City employees.

7.4 Dispute Resolution. The Parties agree to engage in good faith negotiations to resolve disagreement regarding performance issues, changes in expectations, cost related matters, or any other dispute arising out of this Agreement.

7.5. Non-discrimination. The Parties certify they are Equal Opportunity Employers and comply with all applicable federal, state and local laws, as well as rules and regulations not to discriminate on the basis of race, gender, ethnic background, national origin, religion, sexual orientation, marital status, age, disability, or status as a veteran.

7.6 Public Records and Media Contact. The Sheriff will follow County and Sheriff's Office protocol for release of information to the media or public consistent with Public Records laws. The Sheriff will provide timely information to City Officials about the status of major incidents. The City will consult with the Sheriff's Office prior to providing public statements regarding law enforcement cases or major incidents occurring within the City.

7.7. Indemnification. The intent of this provision is that each party is responsible for their own actions or the actions they direct or control. If a suit or action results from the policy, direction, act or omission of a party, that party shall defend and indemnify the other party as provided below.

7.7.1. County Hold Harmless. Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, the City shall indemnify and hold harmless the County and its officers, agents, and employees from all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by an reason of or arising out of any act or omission of the City, its officers, agents and employees relating to or arising out of performing services pursuant to this Agreement. In the event that any suit based on such a claim, action, loss or damages is brought against the County, the City shall defend the same at its sole cost and expense; provided that the County reserves the right to participate in said suit if any principle of government or public law is involved; and if final judgment be rendered against the County, and its officers, agents, and employees, or jointly against the City and County and their respective officers, agents and employees, the City will satisfy the same. City will secure and maintain throughout the terms of this agreement comprehensive liability insurance in the amount of \$2,000,000 for City, its officers, employees and agents and naming Clatsop County as an additional insured. City agrees to fully indemnify and defend Clatsop County, its officers, agents, employees and assigns against any action, suit or proceeding currently pending against the City, any city officer, employee or agent, specifically including any City police officer, provided however that this provision shall not apply to any cases where County or County employees are named in the action as a result of their own acts or omissions.

City agrees to fully indemnify and defend Clatsop County for any action brought against Clatsop County for City liability whether prior to the effective date of this Agreement or otherwise, including, but not limited to claims or obligations arising out of Oregon Workers' Compensation laws and regulations. It is the intent of this provision that the City remain responsible for any civil action or proceeding against or by a transferred employee if the incident giving rise to the action occurred prior to the officer being transferred under the terms of this agreement.

7.7.2. City Hold Harmless. Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, the County shall indemnify and hold harmless the City and its officers, agents, and employees from all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by an reason of or arising out of any act or omission of the County, its officers, agents and employees relating to or arising out of performing services pursuant to this Agreement. In the event that any suit based on

such a claim, action, loss or damages is brought against the City, the County shall defend the same as its sole cost and expense; provided that the City reserves the right to participate in said suit if any principle of government or public law is involved; and if final judgment be rendered against the City, and its officers, agents, and employees, or jointly against the City and County and their respective officers, agents and employees, the County will satisfy the same. County will secure and maintain throughout the terms of this agreement comprehensive liability insurance in the amount of \$2,000,000 for the County, its officers, employees and agents and naming the City of Gearhart as an additional insured.

County agrees to fully indemnify and defend City, its officers, employees and assigns against any action, suit or proceeding currently pending against the County, any, employee or agent, specifically including any County officer, provided however that this provision shall not apply to any cases where City or City employees are named in the action as a result of their own acts or omissions.

7.7.3. Liability related to City Ordinances, Rules and Regulations. 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, policies, customs, rules or regulations, whether written or unwritten. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, policy, custom, rule or regulation is at issue, the City will defend the enforceability and/or validity of the ordinance, policy, custom, rule or regulation at its sole expense and, if judgment is entered or damages are awarded against the City, the County or a County officer, agent, employee as a result of enforcement of such rule, the City will satisfy the same, including all chargeable costs and reasonable attorney fees, if applicable. If a claim, suit, administrative proceeding or action determines that the City policy or ordinance is unconstitutional and/or violates a person's legal rights, the City will indemnify the County and any involved officer, agent or employee for damages attributable to the claim. The City's defense and indemnification of an individual County employee involved in this claim will be in accordance with ORS 30.285. The City will be liable for the defense and indemnity of claims that allege municipal liability as a result of a City ordinance, policy, custom, rule or regulation.

7.8. Governing Law, Venue, Attorney Fees. This Agreement is governed by and construed in accordance with Oregon law, without regard to the principles of conflicts of law. Any claim, suit, or legal action arising from the terms of this agreement will be brought forth and conducted in Clatsop County Circuit Court, unless otherwise brought forth under the jurisdiction of the United States District Court for the District of Oregon. Each party shall be responsible for its own costs and attorney fees. Nothing in this Agreement precludes the mutual agreement for resolution through alternative dispute resolution, mediation or binding arbitration.

7.9. Non-Appropriations. In the event the City Council reduces, changes, eliminates or otherwise modifies funding for this Agreement, then City may terminate this Agreement, in whole or in part, subject to Section 8.13 of this agreement and with written

notice to the County Board of Commissioners and the Sheriff. This Agreement is subject to the appropriation of funds by the County, and/or receipt of funds from state or federal sources. In the event sufficient funds are not appropriated and/or received by the County for the payment of consideration required to be paid under this Agreement, then County may terminate this Agreement in accordance with Section 8.13 herein. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with Article XI, Section 10 are deemed inoperative to that extent.

7.10. Amendments and Written Notices. This Agreement may be amended at any time by mutual written Agreement of the City by City Council and the County by the Board of Commissioners and the County Sheriff. Any notice of change, termination, or other communication having a material effect on this Agreement will be provided either by hand delivery or certified/registered paid U.S. mail to the Clatsop County Sheriff and Board of County Commissioners, on behalf of the County, or City Council and City Administrator, on behalf of the City, at the following addresses:

For Sheriff/County:

Clatsop County Sheriff
1190 SE 19th St
Warrenton, OR 97146

Board of County Commissioners
800 Exchange St. Ste 410
Astoria, OR 97103

For City:

City of Gearhart City
City Manager
PO Box 2510
Gearhart, Oregon 97138

Gearhart City Council
PO Box 2510
Gearhart, OR 97138

8.11. Force Majeure. Neither party will be held responsible for delay, default cause by fire, riot, acts of God, terrorism or acts of war where such cause was beyond reasonable control.

8.12. No Third Party Beneficiaries. The City, County and Sheriff are the only parties to this Agreement and the only parties entitled to enforce its terms. Nothing in this Agreement is intended to convey or provide to any third party any benefit or right unless specifically named as intended beneficiaries in this Agreement.

8.13. Termination. Either party may terminate this Agreement for any reason by giving 60 day written notice to the other party.

8.14. No Assignment. Neither the County, Sheriff, nor City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder.

8.15. Sole Agreement and Warranties. This Agreement, including its exhibits contains all of the agreements of the Parties with respect to any matter agreed hereto. Any prior agreements, promises, negotiations or representation of or between the parties, either oral or written, relating to the subject matter of this Agreement, which are not expressly set forth in this Agreement are null and void and of no force or effect. If any of the provisions contained in this Agreement are determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

8.16. Time of the Essence. Parties agree that time is of the essence in the performance of this Agreement.

8.17. No Waiver. Waiver of any default will not be considered to be a waiver for any subsequent default. Waiver or breach of any provision of this Agreement will not be considered to be waiver of any other or subsequent breach and will not be considered to be a modification of the terms of the Agreement.

8.18. Amendments. This Agreement may be amended at any time by mutual written agreement of the City, the County, and the Sheriff.

8.19. Survival. The terms, conditions, representations and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.

8.20. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, each of which shall constitute one and the same instrument.

8.21. Other Necessary Acts. Each party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement, including by not limited to participation under existing IGAs.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates listed below:

CLATSOP COUNTY SHERIFF

**BOARD OF COUNTY COMMISSIONERS
FOR CLATSOP COUNTY, OREGON**

By: _____

Matthew Phillips, Sheriff

Date: _____

By: _____

Mark Kujala, Chair

Date: _____

Approved as to form

By: _____

Office of County Counsel

CITY OF GEARHART:

By: _____

Chad Sweet, City Manager

Date: _____

Appendices

Appendix "A" - County Cost Assessment 2022-23

Appendix "A"

These costs reflect full hourly rates for which fringe benefits and all employer related expenses are included. This table should be used for assessing cost for diverted services or services hired for specific private events or by private parties.							
	2022/23						
Straight Time Deputy	\$66.81						
Overtime Deputy	\$80.03						
Straight Time Sergeant	\$88.06						
Overtime Sergeant	\$111.04						
Straight Time Record & CHL Spec.	\$52.90						
Overtime Record & CHL Spec.	\$58.73						
Straight Acct II/Evid/Civil/Corr Te	\$59.80						
OT Acct II/Evid/Civil/Corr Tech.	\$69.08						
Senior Admin Supervisor	\$72.72						
Lieutenant	\$103.54						
Undersheriff	\$116.88						
Straight Time Reserve	\$28.26						
Overtime Reserve	\$42.39						
Volunteer Rate	\$29.95						
Patrol Vehicle	Vehicle Rent \$25 federal mileage rate						
Command Post Set up	\$200						
Command Post/add days	\$200						
Other equipment	Actual Cost						

