BELLEVUE RECORDS MANAGEMENT

CONTRACT FACE SHEET

Document Type:

- ☐ Claim
- ☐ Collective Bargaining Agmt
- ☐ Connection Charge Agmt
- ☐ Contract
- ☐ Franchise Agreement
- ☐ Grant Agmt
- ☒ Interlocal Agmt
- ☐ Latecomer Agreement
- ☐ Lease
- ☐ MOU
- ☐ ROW Use Agmt
- ☐ Settlement Agmt

Relationship to Original:

- ☐ Amendment
- ☐ Cancellation
- ☐ Change Order
- ☐ Correspondence
- ☐ Initial
- ☐ Lien
- ☐ MOU
- ☒ New
- ☐ Release
- ☐ Renewal
- ☐ Retainage
- ☐ Working

***Vendor Name:** City of Duvall

***JDE PO Number:** /

***Original's Effective Date:** 11-30-2009

***Amendment's Effective Date** /

***Termination Date:** 12.31.2099

***Clerk's Receiving Number:** 45302 (City Clerk's Office will enter)

Original's Receiving Number: /

Bid/RFP/RFQ/ITQ Number: /

Ordinance Number: /

Resolution Number: 7948 07.06.2009

CIP Number: /

Project Description: JAG Property Proceeds Distribution & Hold Harmless Agreement

KC Recording Number: /

Vendor *or* Parcel Number: /

File Location: 09-517

- Denotes Mandatory Fields. If referring to Retainage, please indicate the Termination Date same as the Contract Termination Date.

DEPT: CM

Face Sheet Date 12.02.2009 C ✓ JDE N/A

Scan/Index Date 12.2.2009 AC ✓ ECM

CR#45302 DATE12-02-09 LOC 09-517
Res 7948

PROCEEDS DISTRIBUTION AND HOLD HARMLESS AGREEMENT

This Proceeds Distribution and Hold Harmless Agreement (Agreement) is entered into between Duvall (JAG City) and the City of Bellevue and is effective upon the date of the last signature below.

RECITALS

A. Whereas, King County entered into a Jail Services Agreement (JSA) with many of the cities located in King County (Contract Cities) to house and provide jail services for Contract Cities' misdemeanants;

B. Whereas, the JSA provides for the transfer of real property located in Bellevue with tax parcel numbers 2825059291, 2825059292, and 2825059015 (Jail Property) to the City of Bellevue on behalf of the JAG Cities to facilitate the Contract Cities reducing their jail population housed by King County as provided in Section 11 of said JSA;

C. Whereas, Section 12 of the JSA provides that the Jail Property (or the proceeds from its sale [Proceeds]) 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 of the population reduction schedule in the JSA;

D. Whereas, Section 12 of the JSA further provides that in the event the Contract Cities do not meet the objectives set forth in said section, King County would be entitled to return of Proceeds;

E. Whereas, on October 31, 2002, the City of Bellevue and King County entered into a Land Transfer Agreement [City of Bellevue Clerk's Receiving # 33014] conveying the Jail Property to the City of Bellevue on behalf of all cities in King County (JAG Cities) for the purposes described in Section 12 of the JSA;

F. Whereas, JAG Cities, except Kent and Enumclaw, entered into an Interlocal Agreement for Jail Administration (Interlocal Agreement) in part to create rules for administering the obligations related to Sections 11 and 12 of the JSA;

G. Whereas, the obligations of Section 12 of the JSA are incorporated into Section 7.1 of the Interlocal Agreement including its application to all King County Cities;

H. Whereas, on March 16, 2009, the City of Bellevue (Bellevue) sold the Jail Property to Seattle Children's Hospital for $13 million;

I. Whereas, on March 26, 2008, the Assembly created by the Interlocal Agreement approved the distribution of Jail Proceeds;

J. Whereas, some Cities have acted to designate their portion of the Proceeds towards fulfilling their obligations under the JSA through undertakings such as the SCORE facility;

K. Whereas, it is the intent of this Agreement that Bellevue stand in no worse (or better) position than any other JAG City with respect to liability or costs associated with the distribution of and/or possible return of Proceeds to King County because of its unique obligations to King County in Section 12 of the JSA as incorporated into the Interlocal Agreement (unique Section 12 obligations);

L. Now therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a precondition for receipt of said Proceeds, the JAG City and Bellevue agree:

AGREEMENT

1. Per the Jail Oversight Assembly approved formula noted in the city-by-city proceeds distribution (Attachment A), Bellevue shall pay JAG City, $ 28,001.99 (representing $ 28,216.56 - its proportionate share of the Proceeds/Interest minus $ 214.56 its proportionate share of the expenses Bellevue may recoup as provided in Section 7.2 of the Interlocal Agreement) within 30 days of the execution of this Agreement.

2. Upon receipt of said Proceeds, JAG City acknowledges and agrees that Bellevue has lawfully discharged all obligations and duties of Bellevue to that JAG City under the first paragraph of Section 7.2 of the Interlocal Agreement, and that Bellevue is discharged from all of its obligations and duties to that JAG City under the second paragraph of Section 7.2 of the Interlocal Agreement.

3. JAG City will abide by all requirements regarding the use of and goals related to the proceeds as provided in Section 7.1 of the Interlocal Agreement (whether a party to a JSA or not). JAG City will only leave or place a City Inmate in King County Jail after December 31, 2012 (post 2012 inmate housing) if King County confirms in writing that this post 2012 inmate housing does not violate the population reduction schedule referenced in Section 12 of the JSA and incorporated into Section 7.1 of the Interlocal Agreement.

4. Should there be a determination that a JAG City failed to abide by the requirements of Section 7.1 (at-fault JAG City) triggering an obligation for Bellevue to return all or part of the at-fault JAG City's Proceeds and any required interest to King County, said Proceeds shall be paid to Bellevue within 10 working days of written notice unless the at-fault JAG City makes other acceptable arrangements with Bellevue and/or King County or the at-fault JAG City obtains injunctive or other legal relief against King County that absolves Bellevue of any legal obligation to return said Proceeds and interest prior to the expiration of the 10 working day period.

5. Bellevue and JAG Cities maintain that King County may only require return of Proceeds from an at-fault JAG City. However, if there is a determination that there is an obligation to return to King County Proceeds in an amount in excess of the amount distributed to an at-fault JAG City(s) then each non at-fault JAG City shall pay up to the full amount of its Proceeds and any required interest to Bellevue within 10 working days of written notice unless the non at-fault JAG City makes other acceptable arrangements with Bellevue and/or King County or the non at-fault JAG City obtains injunctive or other legal relief against King County that confirms Bellevue has no legal obligation to return said Proceeds and interest prior to the expiration of the 10 working day period. If the obligation to return Proceeds is in excess of the at-fault JAG City's distribution, but less than each JAG City's full Proceeds, the amount due King County from the non at-fault JAG Cities shall be a prorated amount based on the percent of Proceeds received to the total Proceeds minus the amount representing the at-fault JAG City's share. The same prorated formula shall apply to required interest due from non at-fault JAG Cities.

6. Should Bellevue be sued for return of proceeds solely because of its unique Section 12 obligations, the alleged at-fault JAG City(s) shall immediately undertake the defense of Bellevue and pay all expenses and costs (including attorney's fees) associated with said defense whether or not said JAG City maintains it is or is ultimately determined to be not at-fault. Should King County be entitled to its attorney's fees in the suit, the at-fault JAG City shall hold Bellevue harmless and indemnify Bellevue from any liability or costs associated with the obligation to pay King County's attorney's fees.

7. Should Bellevue be the only party sued based on the alleged fault of other JAG Cities, those alleged at-fault JAG Cities agree to stipulate to being named as defendants with the concurrence of Plaintiff and/or not oppose Bellevue's motion to be included in the suit as an indispensible party. The obligations of Paragraph 6 shall apply whether or not the alleged at-fault JAG City is named in the litigation.

8. If King County sues Bellevue for return of proceeds because of Bellevue's alleged violation of Section 12 of the JSA regarding use of proceeds or the reduction in jail population along with other JAG Cities for their violations, each party will undertake its own defense at its own cost.

9. At-fault JAG Cities shall be responsible for costs of whatever form or nature associated with Bellevue's unique Section 12 obligations, including but not limited to staff costs in coordinating and collecting proceeds or attorneys fees, and including administrative costs Bellevue incurs even where timely payment of Proceeds is made. Said costs shall be prorated among at-fault JAG Cities as appropriate.

10. In the event Bellevue incurs liability or costs associated with its unique Section 12 obligations and said liability or costs are not addressed in any other provision of this Agreement, each JAG City shall indemnify, hold harmless and defend Bellevue and

its elected officials, employees agents and representatives from and against any and all claims, demands, causes of action, liabilities, judgments, settlements, damages or costs, including reasonable attorney's fees of whatever form related to Bellevue's unique Section 12 obligations in proportion to its share of the proceeds.

11. Each JAG City shall keep its Proceeds in a segregated fund and keep records sufficient to demonstrate that all expenditures of the Proceeds comply with Section 7.1 of the Interlocal Agreement. Said records shall be kept for at least 6 years from the date of the expenditure of the last Proceeds of the JAG City.

12. The JAG City representative who will be responsible for management and expenditure of the fund and for receiving notices related to the obligations under 7.1 of the Interlocal Agreement is (include name, title, address & phone #):
    a. Police Chief
       City of Duvall Police Department
       PO Box 1300
       Duvall, WA 98019-1300

    JAG City shall notify Bellevue of any change in this designated representative or contact information.

13. The City of Bellevue as a recipient of $ 971,638.82 (representing $ 979,083.98 - its proportionate share of the Proceeds/Interest minus $ 7,445.16 its proportionate share of the expenses) is also a JAG City and in that capacity shall be bound by the same terms under this Agreement as any other JAG City.

14. This Agreement shall be authorized by each JAG City's legislative body or other authorizing authority if not within authority of legislative body.

15. General Provisions:

    A. Governing Law; Forum. The Agreement will be governed by the laws of Washington and its choice of law rules. The JAG City consents to the exclusive personal jurisdiction and venue of the federal and state courts located in King County, Washington, with respect to any dispute arising out of or in connection with the Agreement, and agrees not to commence or prosecute any action or proceeding arising out of or in connection with the Agreement other than in the aforementioned courts.

    B. Severability. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provision will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

C. Nonwaiver. Any failure by a party to enforce strict performance of any provision of the Agreement will not constitute a waiver of that party's right to subsequently enforce such provision or any other provision of the Agreement.

D. No Assignment. Neither the Agreement nor any of the rights or obligations of the JAG City arising under the Agreement may be assigned without Bellevue's prior written consent. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of, the parties and their successors and assigns.

E. Notices. All notices and other communications under the Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its address set forth in this agreement.

F. Legal Fees. In any lawsuit between the parties with respect to the matters covered by the Agreement, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in the lawsuit, in addition to any other relief it may be awarded.

G. Counterparts. The Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document.

In witness whereof, the parties have executed this Agreement and it shall be effective as of the last date written below.

CITY OF DUVALL

By: _____ Date: 11/12/09
Title: Mayor

CITY OF BELLEVUE

By: Brad Miyake Date: 11-30-09
Title: Deputy City Mgr

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

Resolution authorizing execution of a Proceeds Distribution and Hold Harmless Agreement (Proceeds Agreement) to receive an apportionment of the jail property proceeds.

FISCAL IMPACT

The Jail Advisory Group (JAG) designated the City of Bellevue lead agency for maintaining and disposing of three parcels of land abutting 116th Avenue N.E. just north of NE 12th St (tax parcels # 2825059291, 2825059292, and 2825059015). These parcels were provided to cities through negotiation of the Jail Services Agreement with King County in 2002. As lead agency, Bellevue is holding the proceeds from the sale of the property on behalf of all King County cities. The total amount of proceeds (net sale proceeds plus investment interest revenue) is approximately $13.1 million. The cities, through the Jail Oversight Assembly, have directed distribution of the proceeds to each city signing the Proceeds Agreement based on a methodology that utilizes an average of each city's assessed valuation and jail population (see Attachment 1).

As the caretaker of the property, Bellevue is allowed to recover costs incurred to manage and sell the properties, which totaled approximately $100,000. This amount will be deducted from the total proceeds prior to distribution to all of the cities in order to reimburse Bellevue for incurred expenses. Based upon the Oversight Assembly's approved methodology, the City of Duvall's estimated share of the remaining proceeds is approximately $28,001.99. Based upon the 2002 Jail Services Agreement (JSA) with King County, the proceeds must be used for the purpose of providing or contracting for secure jail beds. The City of Duvall, however, maintains discretion over the specific use of its share of the proceeds, provided the funds are used in a manner consistent with the JSA.

POLICY CONSIDERATION

Contracts providing jail beds for city misdemeanant inmates at King County and Yakima County expire in 2012 and 2010 respectively. Cities have been working together to plan for secure jail beds for city inmates in the future. As a component of the 2002 JSA with King County, King County transferred ownership of property located in Bellevue to the City of Bellevue on behalf of all King County cities. The JSA allows cities to use the proceeds from the sale of the property for the purpose of building or contracting for secure jail beds. As the lead city designated to maintain and dispose of the property, Bellevue is responsible for making the distribution of the proceeds from the property's sale according to the methodology approved by the Jail Oversight Assembly. In Bellevue's lead role, it also has unique obligations to return proceeds to King County should one or more cities misspend their proceeds. On July 6, 2009, the Bellevue City Council approved the Proceeds Agreement, carrying out direction made by the Jail Oversight Assembly last year to distribute proceeds from the sale of the of the jail property to each city for jail purposes and to protect Bellevue in its lead role should a return of proceeds to King County be required.

BACKGROUND

Regional Jail Planning and Jail Property

The JAG (the Jail Administration Group) was formed after renegotiation of the JSA which calls for a phased reduction in cities' misdemeanant prisoners. The current agreement ends on December 31, 2012, which is the date that all city misdemeanants must be housed in alternate facilities unless other arrangements are made with King County. The JAG provides an organizational structure for coordinating the contract for jail beds with Yakima and King Counties and to plan for new local jail beds that would be needed when the King County contract expires.

The full JAG represents thirty-seven King County cities and includes an oversight committee composed of elected officials from each city (the Jail Oversight Assembly). A jail needs study was completed in 2006 which identified a total projected average daily bed need of 1,450 beds for all JAG cities in 2026. In 2007, the cities formed two groups for regional jail planning purposes, SCORE (South County Correctional Entity) and the North East Cities (NEC). Both groups are currently engaged in feasibility or construction planning for new jail facilities.

At the time cities entered into the current JSA with King County, the County transferred ownership of property within the Bellevue city limits to Bellevue to hold on behalf of King County cities. The property, or proceeds from sale of the property, was to be used to help provide funding to cities for new misdemeanant jail capacity.

Based on the anticipated sale of the jail property, on March 26, 2008, the Jail Oversight Assembly authorized distribution of the sales proceeds based on a formula of an average of each King County city's AV (assessed value) and ADP (inmate average daily population). Distribution of the funds would allow cities to utilize the funds to meet the intent of the property transfer. The City of Duvall's estimated share of the funds is approximately $28,001.99 (see Attachment 1). The Council has the authority to determine how these funds are spent by the City, provided the funds are applied as required in the JSA.

In March, 2009, the City of Bellevue completed the sale of the jail property to Children's Hospital. Bellevue is holding the proceeds in a designated account pending the completion of the Agreement with each city to receive their share of the proceeds.

Use of the property or proceeds from the property is spelled out in the JSA. The JSA indicates JAG cities will: 1) use the funds to contribute to the cost to construct or contract for secure facilities, and also may use the funds to construct or contract for alternative correction facilities at the discretion of the cities; and 2) the cities will reach the zero targets at King County facilities by December 31, 2012. The property transfer agreement and JSA provide that in its lead role, Bellevue is responsible for returning to King County proceeds distributed to Bellevue and other cities should King County prove these provisions have not been met. These documents are ambiguous as to the scope of proceeds that must be returned in this circumstance or in the event of failing to meet the zero targets. It is Bellevue's and other King County cities position (we believe) that each city is only individually liable for return of its proceeds should its actions violate the agreements. It is not clear at this point whether King County would assert another reading of the agreements. One purpose of this Proceeds Agreement is to protect Bellevue so that it does not have any greater liability or costs than any other city solely because if its lead role functions in returning proceeds. The proceeds distribution agreement has been drafted to ensure that all cities must accept an appropriate share of potential liability/costs under various possible scenarios involving King County making a claim against Bellevue for return of other cities' proceeds.

Each city will need to enter into an agreement with the City of Bellevue to receive the designated amount of funds. Staff is seeking Council approval for the City Manager to sign a Proceeds Agreement to receive an apportionment of the estimated designated funds as provided in Attachment 1.

ATTACHMENTS

(1) Estimated Property Proceeds Distribution by City

JAG Property Proceeds Distribution, Methodology Approved by the Jail Oversight Assembly on March 26, 2008

	Sale Price/Proceeds	Interest/Revenue	Proceeds & Interest/Revenue	Admin/other costs	Cities' Distribution
	$12,986,694.50	$113,034.78		$99,613.08	$13,000,116.20
Cities	**Proportionate distributon based on Avg. of AV & ADP (1)**	**Proportionate Share of Revenues (2)**	**Proportionate Share of Proceeds & Interest/Revenues**	**Proportionate Share of Costs (3)**	**Final City-by-City Proceeds Distribution**
Algona	$23,168.33	$201.65	$23,369.99	$177.71	$23,192.28
Auburn	$801,366.31	$6,975.01	$808,341.32	$6,146.80	$802,194.52
Beaux Arts	$2,520.18	$21.94	$2,542.11	$19.33	$2,522.78
Bellevue	$970,635.68	$8,448.31	$979,083.98	$7,445.16	$971,638.82
Black Diamond	$13,282.47	$115.61	$13,398.08	$101.88	$13,296.20
Bothell	$126,754.71	$1,103.26	$127,857.97	$972.26	$126,885.71
Burien	$152,631.47	$1,328.49	$153,959.95	$1,170.74	$152,789.21
Carnation	$6,301.24	$54.85	$6,356.08	$48.33	$6,307.75
Clyde Hill	$42,491.88	$369.84	$42,861.73	$325.93	$42,535.80
Covington	$66,049.99	$574.89	$66,624.88	$506.63	$66,118.25
Des Moines	$177,128.08	$1,541.70	$178,669.78	$1,358.64	$177,311.14
Duvall	$27,973.08	$243.47	$28,216.56	$214.56	$28,001.99
Enumclaw	$90,688.23	$789.34	$91,477.57	$695.61	$90,781.96
Federal Way	$591,788.18	$5,150.86	$596,939.04	$4,539.25	$592,399.79
Hunts Point	$18,431.60	$160.43	$18,592.03	$141.38	$18,450.65
Issaquah	$219,690.57	$1,912.16	$221,602.73	$1,685.11	$219,917.62
Kenmore	$124,016.44	$1,079.43	$125,095.86	$951.26	$124,144.61
Kent	$1,166,452.48	$10,152.68	$1,176,605.16	$8,947.15	$1,167,658.01
Kirkland	$425,046.74	$3,699.56	$428,746.30	$3,260.28	$425,486.02
Lake Forest Park	$80,748.97	$702.83	$81,451.80	$619.38	$80,832.42
Maple Valley	$55,716.09	$484.95	$56,201.04	$427.36	$55,773.68
Medina	$76,614.51	$666.84	$77,281.36	$587.66	$76,693.70
Mercer Island	$215,059.90	$1,871.86	$216,931.76	$1,649.59	$215,282.16
Milton	$1,943.87	$16.92	$1,960.79	$14.91	$1,945.88
Newcastle	$53,960.39	$469.67	$54,430.06	$413.90	$54,016.16
Normandy Park	$34,419.82	$299.59	$34,719.40	$264.01	$34,455.39
North Bend	$26,466.09	$230.36	$26,696.45	$203.01	$26,493.44
Pacific	$14,058.03	$122.36	$14,180.39	$107.83	$14,072.56
Redmond	$454,343.94	$3,954.56	$458,298.50	$3,485.00	$454,813.50
Renton	$1,002,868.14	$8,728.86	$1,011,597.00	$7,692.40	$1,003,904.60
Sammamish	$208,156.50	$1,811.77	$209,968.27	$1,596.64	$208,371.63
SeaTac	$163,329.98	$1,421.61	$164,751.58	$1,252.81	$163,498.78
Seattle	$4,707,346.10	$40,972.23	$4,748,318.33	$36,107.21	$4,712,211.12
Shoreline	$385,405.07	$3,354.52	$388,759.59	$2,956.21	$385,803.38
Skykomish	$1,617.92	$14.08	$1,632.00	$12.41	$1,619.59
Snoqualmie	$67,185.14	$584.77	$67,769.91	$515.34	$67,254.57
Tukwila	$287,414.71	$2,501.63	$289,916.33	$2,204.58	$287,711.75
Woodinville	$86,231.67	$750.55	$86,982.22	$661.43	$86,320.79
Yarrow Point	$17,390.02	$151.36	$17,541.38	$133.39	$17,407.99
	$12,986,694.50	**$113,034.78**	**$13,099,729.28**	**$99,613.08**	**$13,000,116.20**

NOTES:

(1) The proceeds formula is an average of each city's AV and ADP. Assessed Value (AV) was derived from the King County Assessors Office estimates for 2007. Average Daily Population (ADP) was based on 2005-2007 data provided by each city. The methodology was approved at the March 26, 2008 Jail Oversight Assembly Meeting.

(2) This column includes all interest generated to-date in the account holding the sale property proceeds.

(3) The costs were incurred by the City of Bellevue on behalf of the rest of the cities and are recoupable as provided in Paragraph 7.2 of the Interlocal Agreement.

Final Version: July 7, 2009

2169-RES
7/1/2009

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7948

A RESOLUTION authorizing execution of separate Proceeds Distribution and Hold Harmless Agreements between Bellevue and individual King County cities.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Manager or his designee is hereby authorized to execute separate Proceeds Distribution and Hold Harmless Agreements between Bellevue and individual King County cities, a copy of which form of Agreements has been given Clerk's Receiving No. 44647.

Passed by the City Council this 6th day of July, 2009, and signed in authentication of its passage this 6th day of July, 2009.

(SEAL)

Grant S. Degginger, Mayor

Attest:

Myrna L. Basich, City Clerk