RECEIVING NO. 4244
DATE 8-18-09
CITY CLERK
09-091

PROCEEDS DISTRIBUTION AND HOLD HARMLESS AGREEMENT

This Proceeds Distribution and Hold Harmless Agreement (Agreement) is entered into between Woodinville (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, $ 86,320.79 (representing $ 86,982.22 - its proportionate share of the Proceeds/Interest minus $ 661.43 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. City Manager Richard Leahy
    Tel = 425-489-2265
    17301 - 133rd AVE NE, Woodinville, WA 98072

    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 WOODINVILLE

By: Richard F. Leahy
Title: CITY MANAGER

Date: 8/6/2009

CITY OF BELLEVUE

By: Brad Miyake
Title: Deputy City Mgr

Date: 8-12-09