

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Motion to Authorize the City Manager to Execute an Agreement with the City of Bellevue for the Distribution of Property Proceeds
DEPARTMENT:	City Manager's Office
PRESENTED BY:	Julie Underwood, Assistant City Manager Scott MacColl, Intergovernmental Programs Manager Eric Bratton, CMO Management Analyst

PROBLEM/ISSUE STATEMENT:

Cities in King County jointly owned a parcel of property in Bellevue that originally was meant to facilitate the building of or contracting for additional misdemeanor jail capacity. Due to the cities' decision to split into two joint planning processes (north/east cities and south county cities), the property was sold to provide each entity funds for jail planning. This authorizing agreement allows Shoreline to receive our proportionate share of the property proceeds, which is contractually restricted for jail planning and operations purposes.

In 2002, King County conveyed property to Bellevue on behalf of all King County cities through a Land Transfer Agreement. The agreement covered all cities that then contracted with the County for misdemeanor jail bed space in exchange for the cities accepting caps on the number of inmates that could be sent to King County jails and for rate increases. In 2003, the King County cities entered into an Interlocal Agreement for Jail Administration (Interlocal Agreement) that included certain conditions for use of the proceeds should the King County cities agree to sell the Bellevue property. Under the terms of the Interlocal Agreement, the cities must use the property proceeds solely for addressing the cities' long-term jail needs. If a city does not use their portion of the proceeds properly, the County can demand that the city's entire disbursement be repaid to the County.

Based on the anticipated sale of the jointly owned property, on March 26, 2008, the Jail Oversight Assembly authorized the distribution of the sales proceeds based on a formula of an average of each King County city's assessed value (AV) and inmate average daily population (ADP). Almost one year later, on March 16, 2009, the property sale closed with a purchase price of \$13 million.

Bellevue is prepared to disperse the proceeds to the cities, but first it has asked the cities to enter into an agreement releasing Bellevue from any liability or responsibility with King County for repayment of funds for another city. The attached agreement establishes the roles and obligations of the cities and Bellevue in relation to the disbursement of the proceeds.

FISCAL IMPACT:

Shoreline's contractually proportionate share of the sale proceeds is \$383,406.83. However, these funds are restricted to jail planning and operations. If any of the funds are used for anything other than jail planning and operations, then the entire amount must be paid back to King County through Bellevue. These funds are designated to fund the jail planning processes to date and continuing jail planning efforts.

RECOMMENDATION

Staff recommends that the Council authorize the City Manager to execute an agreement for the distribution of the proceeds and to hold the City of Bellevue harmless for the disbursement of those funds.

Approved By:

City Manager 

City Attorney 

BACKGROUND

The Property

In 2002, King County entered into a Jail Services Agreement (JSA) with many of the cities (Contract Cities) located in King County to house and provide jail services for Contract Cities' misdemeanants. As part of the JSA, King County transferred real property located in Bellevue (Jail Property) to the City of Bellevue on behalf of those cities entering into the JAS. The purpose of the transfer was to help facilitate the reduction of the Contract Cities' jail population housed by King County.

Under section 12 of the JSA, the Jail Property (or the proceeds from its sale [Proceeds]) must be used for building secure capacity, contracting for secure capacity, or building or contracting for alternative corrections facilities sufficient to reduce the Contract Cities use of King County jails to zero by January 1, 2012. Section 12 further provides that in the event the Contract Cities do not meet the stated objectives for the use of the property, the County would be entitled to a return of the property or all of the Proceeds.

On March 16, 2009, Bellevue sold the Jail Property to Seattle Children's Hospital for \$13 million. On March 26, 2008, the Jail Assembly Group (JAG), which is composed of all of the cities that entered into the JSA with King County, approved the distribution of Jail Proceeds under a formula that averages each cities assessed value and average daily jail population.

Bellevue, in consultation with the other contracting cities, drafted a Proceeds Distribution and Hold Harmless Agreement (Agreement) between each of the contracting cities and Bellevue on how to distribute the Proceeds. The agreement establishes:

1. The terms and conditions for JAG cities to receive proceeds from the sale;
2. How the proceeds must be spent; and
3. Consequences to JAG Cities should one or more of these cities either mispend the proceeds or fail to meet the population reduction goal contained in the JSA and/or the Interlocal Agreement.

Use of the Proceeds

In October of 2008, Shoreline entered into a SEPA Nominal Lead Agency Agreement (SEPA Agreement) with Bellevue, Kirkland, Redmond and Seattle. Under the terms of that agreement, the cities agreed to join in conducting an environmental review of potential sites for the construction of a regional jail for all of the cities in north and east King County.

The total budgeted costs outlined in that SEPA Agreement are approximately \$3,300,000. The budget covers all expenses associated with conducting a comprehensive EIS on multiple sites. Bellevue, Kirkland, Redmond, Shoreline and Seattle (the Principal Cities) agreed to share the costs associated with the EIS process based on percentages determined by combining a city's population and its average daily jail population (ADP.) Shoreline's share of the costs under the terms of the Agreement is expected to be approximately \$229,000.

The funds to pay Shoreline's portion of the costs will come from the Proceeds. The remaining portion of the Proceeds must be used for continued jail planning or contracting for secure capacity. If Shoreline uses its share of the Proceeds for anything other than jail capacity or contracting, then it will have to return the entire amount to King County, even those amounts already spent appropriately.

RECOMMENDATION

Staff recommends that the Council authorize the City Manager to execute an agreement for the distribution of the proceeds and to hold the City of Bellevue harmless for the disbursement of those funds.

ATTACHMENTS

Attachment A: Proceeds Distribution and Hold Harmless Agreement

Attachment B: JAG Property Proceeds Distribution Amounts

PROCEEDS DISTRIBUTION AND HOLD HARMLESS AGREEMENT

This Proceeds Distribution and Hold Harmless Agreement (Agreement) is entered into between _____ (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 Paragraph 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 paragraph 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. 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, \$ _____ (representing \$ _____ - its proportionate share of the Proceeds minus \$ _____ 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 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 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 for Bellevue to return to King County Proceeds from a non at-fault JAG City, it will pay up to the full amount of its Proceeds to Bellevue with 10 working days of written notice unless the JAG City makes other acceptable arrangements with Bellevue and/or King County or the JAG City obtains injunctive or other legal relief against King County that confirms Bellevue has no legal obligation to return said

Proceeds 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 at-fault JAG City's share.

6. 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 or nature arising out of or related to any actions of that JAG City which result in any legal obligation for Bellevue to pay King County Proceeds distributed to that JAG City under this Agreement except Bellevue's own Proceeds. At-fault JAG cities shall be responsible for repayment of the full amount of the Proceeds distributed to them that must be paid to King County as the result of their actions, as well as for the administrative costs associated with Bellevue serving as a collector of Proceeds from said at-fault JAG Cities, 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 based on the fault of such Cities.
7. 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.
8. 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. _____

JAG City shall notify Bellevue of any change in this designated representative or contact information.
9. The City of Bellevue as a recipient of \$ _____ (representing \$ _____ - its proportionate share of the Proceeds minus \$ _____ 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.
10. This Agreement shall be authorized by each JAG City's legislative body or other authorizing authority if not within authority of legislative body.

11. 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 _____

By: _____
Title: _____

Date: _____

CITY OF BELLEUVE

By: _____
Title: _____

Date: _____

DRAFT

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

Cities	Sale Price		Admin/other costs		Cities' Distribution
	\$13,000,029.75	Avg. of AV & ADP (1)	\$80,668.22	Proportionate Share of Costs (2)	Final City-by-City Proceeds Distribution
Algona	\$23,192.12	\$89,189.13	\$143.91		\$23,048.21
Beaux Arts	\$2,522.77	\$9,162.36	15.65		\$2,507.11
Black Diamond	\$13,296.11	\$37,162.36	82.51		\$13,213.60
Burien	\$152,788.19	\$238,879.33	948.09		\$151,840.11
Clyde Hill	\$42,535.51	\$82,177.00	263.94		\$42,271.57
Des Moines	\$177,309.96	\$36,174.34	1,100.25		\$176,209.71
Enumclaw	\$90,781.35	\$25,091.31	563.32		\$90,218.04
Hunts Point	\$18,450.53	\$52,435.30	114.49		\$18,336.04
Kirkland	\$425,483.19	\$2,167.69	2,640.22		\$422,842.97
Maple Valley	\$55,773.30	\$80,831.88	346.09		\$55,427.22
Mercer Island	\$215,280.73	\$76,935.19	1,335.87		\$213,944.87
Newcastle	\$54,015.80	\$13,845.73	335.18		\$53,680.62
North Bend	\$26,493.26	\$34,535.16	164.40		\$26,328.87
Redmond	\$454,810.48	\$14,072.76	2,822.21		\$451,988.27
Sammamish	\$208,370.24	\$10,497.35	1,292.99		\$207,077.26
Seattle	\$4,712,179.79	\$16,497.89	29,240.18		\$4,682,939.61
Skokomish	\$1,619.58	\$36,400.81	10.05		\$1,609.53
Tukwila	\$287,709.84	\$36,400.81	1,785.31		\$285,924.53
Yarrow Point	\$17,407.88	\$36,400.81	108.02		\$17,299.86
	\$13,000,029.75		\$80,668.22		\$12,919,361.53

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 cities. The methodology w

(2) 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. This is a draft tally of costs. The final version may be different.

DRAFT, 4/21/09