

**FOURTH AMENDMENT TO THE JAIL FACILITY USE AGREEMENT AMONG
SKAGIT COUNTY, THE CITY OF MOUNT VERNON, THE CITY OF SEDRO-WOOLLEY,
THE CITY OF ANACORTES AND THE CITY OF BURLINGTON COLLECTIVELY KNOWN AS
"THE PARTIES"**

RECITALS

Whereas Skagit County ("**County**"); the City of Sedro-Woolley ("**Sedro-Woolley**"); the City of Anacortes ("**Anacortes**"); the City of Mount Vernon ("**Mount Vernon**") and the City of Burlington ("**Burlington**"); collectively referred to as "parties," entered into a Jail Facility Use Agreement ("Agreement") (Skagit County Contract No. C20130315) and subsequent amendments (Skagit County Contract Nos. A20140026, A20150135 and A20150168) regarding the funding and use of a new jail facility; and

Whereas the timing of Additional Financial Consideration (AFC) from the parties to the Jail Fund in the event of a Revenue Stabilization Account (RSA) shortfall sets a schedule for payments that may result in large fluctuations from year to year and could cause the Jail Fund to have an inadequate amount of cash for operations; and

Whereas the parties to the Agreement met in open session on January 8, 2021 and March 12, 2021 to discuss modifying the agreement to allow for a different schedule of payments to reduce the years in which the (RSA) falls below the Minimum Funding Threshold (MFT) and smooths the amount of the AFC; and

Whereas the parties to the Agreement intend that additional payments to the Jail Fund made for any year be reconciled with the actual financial results for that year, and that each party receives a reconciliation statement showing any overage or shortfall which will be credited or charged the following year; and

Whereas the parties have agreed to enter into this amendment to the Agreement to provide the necessary changes to the payment schedule.

NOW, THEREFORE, in consideration of the foregoing, the parties hereby amend the Jail Facility Use Agreement pursuant to Washington law including but not limited to Chapter 70.48 RCW and Chapter 39.34 RCW by executing this Amendment and hereby agree as follows:

AGREEMENT

1. Paragraph 4 of Interlocal Agreement C20130315 shall be replaced in its entirety with the following:

4. **JAIL FUND**. Skagit County agrees to establish the Jail Fund to account for the construction and operations of the New Jail. The Jail Fund shall consist of "**Total Revenues**," defined as (1) bond revenues; (2) the direct funding by the County set out in paragraph 4(a) below; (3) the Sedro-Woolley payment, as set out in paragraph 3(c) above; and (4) the revenue received from the countywide Sales Tax Measure after payment of the rebates described in Sections 3 (a) and (b); and (5) all other revenues derived from or associated with the Jail enterprise and its operation. Operational expenses of the Jail will be paid by the Jail Fund. Notwithstanding any other provision of this Agreement, the first priority for payment from the Jail Fund shall be Bond Payments.

- a. Direct Funding by County. Skagit County agrees to place into the Jail Fund for Jail operations \$5,500,000 per annum beginning January 1, 2014, from revenue sources separate from the revenue generated by the Sales Tax Measure. This amount will increase (or decrease) by the annual percentage increase (or decrease) in the Jail base operating budget from a baseline year of 2014, as defined in Exhibit B hereto.
- b. The Revenue Stabilization Account. Skagit County agrees to establish a fund balance to be known as the Revenue Stabilization Account (hereinafter, the "**RSA**"), a subcomponent of the ending fund balance of the Jail Fund.
 - i. The RSA will be funded by all revenues deposited into the Jail Fund in excess of debt service ("**Bond Payments**") and other permitted expenditures from the Jail Fund.
 - ii. During construction of the New Jail, Sales Tax Measure and other revenues in excess of that required for Bond Payments and the Operating Budget may either be applied toward New Jail project costs or applied to the RSA, at the discretion of the Finance Committee established pursuant to paragraph 5 herein.
 - iii. There is hereby established a Minimum Funding Threshold hereinafter, the "**MFT**") for the RSA, in the amount of \$3,900,000 as of December 31 of each year. The intent of the MFT is to serve as a hedge against potential fluctuations in revenue derived from the Sales Tax Measure from year to year.
 - iv. After the MFT first has been fully met, then, should the year-end RSA balance in any year thereafter be below the MFT, the difference between the MFT and the year-end RSA balance shall be considered an excess cost to be covered by the parties hereto through additional financial contribution. Except for initial funding of the MFT, in any year in which the RSA is projected in the August 15 Jail Model update (as defined in section viii below) to be below the MFT at the end of the following calendar year, as illustrated below, the parties to this Agreement will plan for the subsequent budgeting for and payment of the required additional financial contribution to the Jail Fund to occur by May 31 of the next calendar year. The exact amount of a party's required additional financial contribution shall be determined by the October 31 Jail Model update.

By way of illustration, if in Year 1 the RSA is projected in the August 15 Jail Model to fall below the MFT in Year 2, the parties to the Agreement will, during Year 1, plan for the subsequent budgeting for and payment of the required additional financial contribution during Year 2, with payment of the required additional financial contribution to the Jail Fund no later than May 31 of Year 2 based upon the actual amounts showing due in the October 31 Jail Model Update in Year 1.

- v. If the year-end RSA balance is at or above the MFT, it may be utilized consistent with paragraph 5 of this Agreement, including distributions to parties, provided that in no event may the RSA be utilized for purposes other than Bond Payments and Operating Budget shortfalls prior to the third full year of operation of the New Jail.
- vi. Additional financial contribution required from, and distributions to, the parties shall be calculated according to the following formula:

$$\frac{\text{USAGE}}{\text{TOTAL USAGE}}$$

"Usage" means, for any party, for the Calendar Year preceding the Calendar Year in which the Jail Model projects the RSA to fall below the MFT which additional financial contribution is assessed or distribution is made from the RSA (hereinafter, the "**Measurement Period**"), the total number of inmate days on behalf of that party, as determined by Jail staff. The initial Measurement Period will be Calendar Year 2020 for the additional required financial contribution, if any, to be planned for in 2021 for payment by May 31, 2022. An inmate day may be counted as a fraction if an inmate is held on behalf of multiple parties. For example, an inmate held on charges from two jurisdictions will be counted as 1/2 for each of the two jurisdictions.

"Total Usage" means the total of Usage for all of the parties for the Measurement Period.

- vii. When the RSA is below the MFT, the RSA may be used only to fund Bond Payments (first priority) and Operating Budget shortfalls (second priority), which use will be promptly reported to the Finance Committee.

Projection of the RSA balance shall be determined through the use of a Jail Model which is a spreadsheet calculation used to incorporate revenue sources minus debt service and operating expenses for the Jail Fund based on actual and historical financial information, actual budget, and estimates based on known or expected conditions not yet reflected in the budget. The County shall provide an update to the Jail Model at least semiannually based on the information and schedule detailed below.

- a. August Update. The Jail Model shall be updated by August 15 of each year to incorporate the approved Jail Budget for operating revenues and expenses for that year and the year-end actuals for the year prior, with inclusion of appropriate estimates and assumptions. This Jail Model will be used to provide the parties with an estimate of the amount of required additional financial contribution that will be due and payable to the Jail Fund no later than May 31 of the following year.

- b. **October Update.** The Jail Model is to be further updated by October 31 each year and shall incorporate the preliminary annual Jail budget for the following year and the year-end projections for the year in which the update occurs, with inclusion of appropriate estimates and assumptions as reviewed by the Jail Finance Committee. This model update will be used to provide each party with the actual amount of required additional financial contribution, if any, that will be due to the Jail Fund in May 31 of the following year.
 - c. **Reconciliation Report.** For any year that additional financial contributions are made by the parties, the amount paid will be reconciled with the actual financial results for that year, and each party will receive a reconciliation statement no later than August 15, showing any overage or shortfall, which will be credited or charged in the following year.
- c. The parties acknowledge that the County intends to issue the Bonds in reliance upon the commitments and agreements of the parties reflected in this Agreement. The Bonds, when issued, will have a term not to exceed thirty (30) years, and may be refinanced by the County, without limitation, for the purpose of debt service savings so long as the term is not extended, and Bond Payments due in any year are not increased. All references to Bond Payments include any refunding bonds that may be issued to refinance the Bonds initially issued. In the event the Department of Revenue determines that it is not able or willing to distribute the Sales Tax Measure revenues as set forth herein, the parties agree to work cooperatively to achieve the intended revenue distribution.
 - d. The net proceeds derived by the County from the sale of the Bonds shall be deposited into the Jail Fund and used only for expenses related to the construction of the New Jail (including those pre-construction costs incurred by the County no earlier than Jan 1, 2012 and which are identified in the attached **Exhibit C**) and all related soft and hard costs of construction. Once the project is complete, any remaining bond proceeds will be used only as allowed by the bond documents.
- 2. **Other Provisions:** All other provisions of the Jail Facility Use Agreement and prior amendments thereto that are not in conflict with any provision of this Amendment shall control.
 - 3. **Definitions:** All terms, unless expressly defined in the Amendment, shall have the same meaning as defined in the Jail Facility Use Agreement.
 - 4. **Counterparts:** This Amendment may be executed in counterparts by the Parties, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

DATED this 10 day of May, 2021.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**



Lisa Janicki, Chair



Peter Browning, Commissioner



Ron Wesen, Commissioner

Attest:

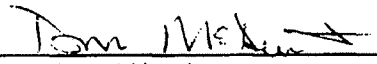


Clerk of the Board

For contracts under \$5,000:
Authorization per Resolution R20030146


Recommended:

County Administrator



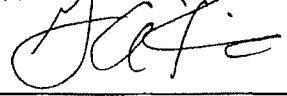
Department Head

Approved as to form:



Civil Deputy Prosecuting Attorney

Approved as to indemnification:



Risk Manager

Approved as to budget:



Budget & Finance Director

Dated this ____ day of _____, 2021

CITY OF MOUNT VERNON

Jill Boudreau, Mayor

APPROVED AS TO BUDGET:

Finance Director

APPROVED AS TO FORM:

City Attorney

Dated 6/24/2021

CITY OF ANACORTES

Laurie Gere
Laurie Gere, Mayor

APPROVED AS TO BUDGET:


Steven D. Hoglund
Finance Director

APPROVED AS TO FORM:

Andy San
City Attorney


Dated this 24th day of June, 2021

CITY OF BURLINGTON




Steve Sexton, Mayor

APPROVED AS TO BUDGET:



Finance Director

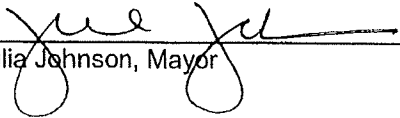
APPROVED AS TO FORM:



City Attorney

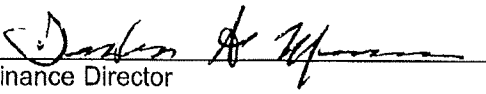
Dated this 12th day of May, 2021

CITY OF SEDRO-WOOLLEY



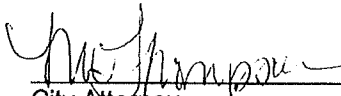
Julia Johnson, Mayor

APPROVED AS TO BUDGET:



Finance Director

APPROVED AS TO FORM:



City Attorney