

## SEPA AGREEMENT

This Agreement is made between The City of Seattle ("Seattle" or the "City") and King County ("County") regarding environmental review under the Washington State Environmental Policy Act and regulations thereunder ("SEPA") of a proposal for increasing available jail space for cities within King County ("Cities' Proposal"), and a proposal for increasing jail space and other uses related to criminal justice for the County ("County Proposal").

**WHEREAS**, the Cities of Seattle, Bellevue, Shoreline, Redmond and Kirkland (collectively, the "Cities") have notified King County of their SEPA Nominal Lead Agency Agreement ("Cities' SEPA Agreement") regarding the funding and preparation of an environmental impact statement ("EIS") to evaluate alternatives for location of a jail that would accommodate current and future misdemeanor needs of the Cities ("City Jail Uses") and potentially of other cities in North and East King County, including the cities of Beaux Arts, Bothell, Carnation, Clyde Hill, Duvall, Hunts Point, Issaquah, Kenmore, Lake Forest Park, Medina, Mercer Island, Newcastle, North Bend, Sammamish, Skykomish, Snoqualmie, Woodinville and Yarrow Point; and

**WHEREAS**, the Cities have discussed with King County the possible inclusion of the County-owned property located on the Southeast corner of the intersection of Fifth Avenue and Jefferson Street in downtown Seattle ("County Property") among the sites to be considered in the EIS; and

**WHEREAS**, King County has previously identified on a preliminary basis the need to locate a range of County criminal justice facilities within the County, such as jail space for County needs, Superior Court and District Court courtrooms, Sheriff's Department Criminal Investigation Division operations space, community corrections facilities, crisis division facilities, psychiatric and medical jail beds, and general administrative space of King County criminal justice agencies ("County Facility Uses"); and

**WHEREAS**, County Facility Uses could potentially be combined with City Jail Uses in a single facility on the County Property ("Facility"); and

**WHEREAS**, King County and Seattle seek to clarify their respective roles and responsibilities in the Cities' consideration of the County Property as part of the EIS process and the County's consideration of locating County Facility Uses within the County;

**NOW, THEREFORE**, in consideration of their respective obligations set forth herein, King County and Seattle agree as follows:

**1. Cities' SEPA Agreement Affirmed.** King County acknowledges and affirms the Cities' SEPA Agreement and the respective roles set forth therein. Without limiting the foregoing, King County acknowledges that the scope of the Cities' Proposal is not yet determined, and that decision on whether to include the County Property as an alternative site in the EIS will be made by the Cities after a scoping process, and if the

Cities decide not to include the County Property, this Agreement shall terminate pursuant to Section 7.

**2. Evaluation of County Property.** With respect to the consideration of County Property in the EIS, Seattle shall coordinate with King County with the intent of facilitating issuance of an EIS that is adequate to address, to the extent required under SEPA, any significant environmental impacts of the potential development and use of the Facility contemplated by the Cities and the County. The County will be responsible for any SEPA process associated with the County's decision where to locate County Facility Uses. The parties anticipate information and analysis generated by the City and its consultants for the purpose of the EIS may be used by the County in any such process. Coordination with King County shall include the following actions by the City:

(a) soliciting and accepting ongoing inquiries and comments from King County on technical analysis and preliminary concept design work for the Facility; making available to King County all written information gathered and used in the preparation of environmental documents evaluating the potential siting or development of City Jail Uses and County Facility Uses in the Facility; and providing King County with draft documents related to technical analysis and preliminary concept design work for the Facility at meaningful stages through the EIS process;

(b) providing King County with a draft of the scoping notice on or before November 25, 2008;

(c) if on or before December 5, 2008 the County requests changes to the scoping notice relating to the County Property or County Facility Uses, issuing the scoping notice only with the substance of such changes included or with the approval by King County of any final language relating to the consideration of County Property and County Facility Uses, except as provided in Section 3 of this Agreement;

(d) providing King County with a draft of the proposed Draft EIS ("DEIS") and supporting technical memoranda and discipline reports prior to issuance of the DEIS;

(e) coordinating with King County regarding any comments or requested changes to the proposed DEIS from the County relating to County Property and County Facility Uses, or relating to any alternative site in unincorporated King County described in the proposed DEIS, that are received within 15 Working Days after the proposed DEIS was sent to King County;

(f) issuing the DEIS only with the substance of such requested changes relating to County Property and County Facility Uses included or with the approval by King County of any final language relating to the consideration of County Property and County Facility Uses, except as provided in Section 3 of this Agreement;

(g) making available to King County written comments received on the DEIS;

- (h) providing King County a draft of the proposed Final EIS (“FEIS”), including its technical memoranda and discipline reports and response to DEIS comments;
- (i) coordinating with King County regarding any comments or requested changes to the proposed FEIS from the County relating to the consideration of County Property and County Facility Uses, or relating to any alternative site in unincorporated King County described in the proposed FEIS, that are received within 10 Working Days after the proposed FEIS was sent to the County;
- (j) issuing the FEIS only with the substance of such requested changes relating to County Property and County Facility Uses included or with the approval by King County of any final language relating to the consideration of County Property and County Facility Uses, except as provided in Section 3 of this Agreement;
- (k) agreeing to designation of the County Property as a preferred alternative in the FEIS only if such a designation is agreed to by the County;
- (l) cooperating and sharing with the County information gathered and used in the preparation of portions of environmental documents evaluating the potential siting or development of the City Jail Uses and County Facility Uses in the Facility, including participating actively with the County and its consultants in identifying the potential programmatic elements, operations, conceptual design features and other aspects of the Facility that may affect the County's SEPA analysis. This cooperation and sharing of information may include making the City's consultants available to the County.

**3. Nominal Lead Agency.** King County acknowledges and affirms the City's role as the Nominal Lead Agency with respect to the Cities' Proposal to locate and develop City Jail Uses, including the alternative of developing them as part of the potential Facility. This role also includes the responsibility to defend the adequacy of the FEIS in any initial appeal as set forth in Section 8(a) of the Cities' SEPA Agreement, and with regard to any such defense of any such initial appeal, and subject to the execution of a satisfactory common interests and confidentiality agreement, Seattle shall keep the County reasonably informed of the status of the appeal and shall consult with the County regarding any major decisions affecting the County Property. The County further acknowledges and affirms that Seattle reserves the right to issue the DEIS or FEIS with different language than requested by the County under Section 2 of this Agreement, or without deletions requested by the County under Section 2, to the extent that Seattle determines that the different language or retained language may be necessary for adequacy of the EIS under SEPA, in which case the County may exercise its right to terminate this Agreement under Section 7.

**4. County Responsibilities Regarding Cities' EIS.** King County shall be responsible for the following:

- (a) The County shall participate actively with Seattle and its consultants in identifying the potential programmatic elements, operations, conceptual design features and other aspects of the Facility that may affect the SEPA analysis. The

County shall identify, by January 15, 2009, the maximum potential County Facility Uses to be considered within the scope of the EIS, including the estimated maximum size, nature and estimated maximum capacity of each use. Appropriate County staff shall provide technical input to Seattle and its consultants, beginning promptly after the date of this Agreement, so that the consultants can prepare preliminary concept designs for the Facility that would include the County Facility Uses as well as the City Jail Beds.

(b) The County shall make ongoing inquiries and comments on technical analysis and preliminary concept design work for the Facility, and comment on drafts of all documents related to technical analysis and design work at meaningful stages of the EIS process.

(c) The County shall review the draft scoping notice and provide comments or notify Seattle of its approval on or before December 5, 2008.

(d) The County shall review preliminary draft discipline reports and technical memoranda and provide comments to Seattle within 15 Working Days of receipt.

(e) The County shall review preliminary drafts of a DEIS or portions thereof, and any supplement or addendum thereto, and provide comments or approval within 15 Working Days of receipt.

(f) The County shall review drafts of a FEIS or portions thereof, and any supplement or addendum thereto, and provide comments or approval within 10 Working Days of receipt.

(g) The County shall consult with Seattle and consultants with respect to all actions, within the meaning of SEPA, that would be required of the County for purposes of participating in the Facility.

## **5. County Proposal and SEPA Process**

(a) The parties acknowledge that the County has not made any decision as to the extent, timing, or location of the development of County Facility Uses. Use of the term "County Proposal" herein is not meant to imply that the County has developed a proposal to a point at which it could make any environmental determination. The parties further acknowledge that the public interest would be best served if the Cities EIS process and any SEPA process associated with the decision of the County concerning whether, when and where to locate County Facility Uses are expeditiously completed.

(b) The parties will make good faith efforts to agree to coordinated timelines by January 15, 2009, including all SEPA "actions" identified by each party as potentially necessary to develop the Facility.

(c) The Parties shall meet every two weeks to share information and to otherwise coordinate implementation of this Agreement.

**6. Cost.** King County shall be responsible for the cost of its own review and comment on those environmental documents identified in Section 4 above. The City, in concert with the other Cities in the Cities' SEPA Agreement, shall bear the cost of preparing the EIS and defending challenges to the adequacy of the FEIS. Nothing in this Agreement requires the City to pay costs of any SEPA process for purposes of the County Proposal, which costs will be the responsibility of the County. In addition, if as a result of any changes to the proposed Facility requested by the County after the end of the period allowed for County comments on the proposed FEIS under this Agreement, the parties will confer in good faith to determine if any addendum or supplemental EIS should be prepared for the Cities Proposal, and how the cost of such work would be allocated.

**7. Effectiveness and Termination.** This Agreement will become effective upon signing of the Agreement by Seattle and King County and, except as otherwise provided in this section, shall remain in effect until: (1) the FEIS, and any supplements or addenda to the FEIS that may be required as a result of any proceeding before the Seattle Hearing Examiner, have been issued, and (2) either (a) the time for any appeal of Seattle's decision on the adequacy of the FEIS has expired, or (b) a final decision on an appeal of that determination, in which Seattle has responsibility for defense under this Agreement, has been issued by the Hearing Examiner or by a court or other administrative tribunal with jurisdiction to hear an initial appeal on the adequacy of the FEIS. This Agreement shall terminate if Seattle gives notice to the County that the County Property will not be included in the Cities' draft or final EIS or that development of the City Jail Beds on the County Property is no longer considered as a potentially reasonable alternative, or if the County gives notice to Seattle that it no longer intends to participate in development of the Facility. Further, either party may terminate this Agreement with or without cause upon thirty (30) days written notice.

**8. Contact Persons and Notice.** The City and County each shall designate a single staff person to serve as the primary point of contact. The parties' addresses for notices under this Agreement shall be the physical and electronic addresses of the primary contacts as set forth below the signature of each party, until the party provides written notice of substitute primary contact information to the other party.

Notice and copies of documents may be provided by email or hand delivery, and if so provided shall be effective on the day received if received on a Working Day by 5:00 PM Pacific time, and if later then effective on the next Working Day. If provided by U.S. mail, any notice or other communication shall be effective on the second Working Day after deposit in the U.S. mail, postage prepaid, addressed in accordance with this Section.

**9. Definitions.**

For purposes of this Agreement, a “Working Day” is a day that is not a Saturday, Sunday, or City of Seattle holiday.

**10. Miscellaneous.**

(a) Nothing in this Agreement shall delegate, diminish or modify the statutory or regulatory authority of the parties. Nothing herein shall be construed to make Seattle a lead agency or co-lead agency for the County Proposal or to make the County a lead agency or co-lead agency for the Cities’ Proposal. To the extent that a party's performance under this Agreement would require expenditures, each party’s performance shall be contingent on sufficient appropriation by its respective legislative body.

(b) Time is of the essence of the terms of this Agreement.

(c) This Agreement may be modified only by written agreement of the parties.

(d) This Agreement does not establish any partnership or joint venture, nor authorize either party to incur a liability or obligation binding on the other party.

(e) This Agreement shall not result in any monetary liability, in damages or otherwise, from either party to the other. Neither Party shall be liable for any damages to, or costs incurred by, the other party resulting from any actual or alleged error, misstatement or omission in any SEPA document or related to any SEPA process, or any ruling regarding failure to comply with SEPA, whether or not the result of the negligence of a Party.

(f) Any other provision notwithstanding, this Agreement does not require a party to provide information or documents to the other that are protected by the attorney-client privilege or work-product privilege.

(g) This Agreement is for the benefit of only the parties hereto, and shall not give rise to any claim or remedy for any other person or entity.

THE CITY OF SEATTLE, a  
Washington municipal corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2008

Name: Brenda Bauer

Title: Director, Fleets and Facilities Department

**City of Seattle Contact:**

Name: Dove Alberg  
Title: Capital Programs Division Director, Fleets  
and Facilities Department  
Address: 700 Fifth Avenue, Suite 5200  
Seattle, WA 98104  
phone: 206-684-5195 fax: 206-684-0525  
email: dove.alberg@seattle.gov

KING COUNTY, a  
political subdivision of the State of Washington

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2008

Name: Kathy Brown

Title: Director, Facilities Management Division

**King County Contact:**

Name: Jim Burt  
Title: Major Capital Projects Unit Manager,  
Facilities Management Division  
Address: 500 Fourth Ave., Suite 800  
Seattle, WA 98104-2371  
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