

MEMORANDUM OF INTERLOCAL AGREEMENT FOR OPERATION AND MAINTENANCE OF SKAMANIA COUNTY COURTHOUSE PLAZA

This MEMORANDUM OF AGREEMENT FOR OPERATION AND MAINTENANCE OF The SKAMANIA COUNTY COURTHOUSE PLAZA (this “MOA”), is made and entered into this ____ day of _____, 2020, by and between SKAMANIA COUNTY, a political subdivision of the State of Washington (the “County”), and the CITY OF STEVENSON, a Washington municipal corporation (the “City”).

RECITALS

A. Skamania County and the City of Stevenson have partnered with the Stevenson Downtown Association (“SDA”) to develop the Skamania County courthouse lawn into a recreational Plaza (“Project”), for the benefit of the residents and tourists of Skamania County and the City of Stevenson. As part of that partnership, Skamania County and the City of Stevenson desire to enter into an MOA to set expectations and responsibilities to that will facilitate an enduring partnership and that will align ongoing costs and benefits of the Pproject and ensure the Pproject’s long term success.

B. The Board of County Commissioners and the Stevenson City Council have determined that this Pproject is in the public interest of both County and City residents, and that similar projects in other cities have increased economic growth and civic vitality in the immediate vicinity of those projects.

C. The County owns real property commonly known as the courthouse lawn, located within the City and that is contiguous with the County Courthouse. The real property that is proposed as part of this Pproject is legally described in Exhibit A attached hereto and incorporated herein by this reference.

D. Once developed, the parties wish to allow the City to operate and maintain the Project Courthouse Plaza for the benefit of the public, while the County maintains ownership of the real property. Because the primary financial beneficiaries of any economic growth will be the City and its businesses, the City agrees that it should bear the financial responsibility for ongoing maintenance and operation of the Plaza so long as the real property is operated substantially as a recreational park (“Plaza”). Because the Courthouse Plaza is contiguous to the Skamania County Courthouse and is intimately connected to the Courthouse’s character, the County shall retain final decision making authority with respect to any substantial modifications to the design or branding of the Plaza, as well as retaining the right to utilize the Plaza for County-related events and activities.

E. The City and the County understand that the development of the Plaza depends on the City and County having an enforceable agreement regarding operations and maintenance/repairs. For that reason, City and County recognize that the promises in this MOA this agreement are essential for the successful development of this Pproject, and agree that both parties will sign the MOA agreement and plan for the implementation of the MOA agreement prior to the final development of the Plaza.

MEMORANDUM OF AGREEMENT

NOW, THEREFORE, the County and the City state their Agreement regarding the operational control and maintenance of the Plaza as follows:

1. Purpose of MOA.

The purpose and intent of this MOA is to define the parties' understanding of the intentions of the County and the City as they relate to the operation and maintenance of the ~~Courthouse~~ Plaza. The primary role for the County is to provide the real property constituting the ~~Courthouse~~ Plaza (see Exhibit A) and cooperate with the City in ensuring the County's assistance so ~~that~~ the City will have the ability to operate and maintain the real property and facilities associated with that are closely tied to the County Courthouse ~~real property and facilities~~. In entering into this MOA, the parties expressly intend to create a binding, legally enforceable contract ~~that obligates~~ the City to commit to pay fully and adequately pay for the maintenance and operation of the Plaza and equally obligates the County to cooperate with the City and to ensure the real property is not encumbered or otherwise made legally unavailable for continued use as a park-like Plaza at least until the expiration of this MOA agreement or for any longer length of time obligated by RCO or other grant awarded to the County which is used to fund the construction and development of the Plaza. Notwithstanding any other provisions of this MOA agreement, any decisions regarding the naming or branding of the ~~Skamania County Courthouse~~ Plaza shall be subject to the consultation and final approval of the County.

Commented [RM1]: What is RCO?

Commented [LJ2R1]: Recreation and Conservation Office. They have a grant program which carries restrictions on use of the land for a period of time depending on the program the grant is through. Some requirements are in perpetuity.

2. Effective Date and Duration.

This MOA shall take effect immediately upon the signature of both parties (~~T~~he "Effective Date"), but the City's obligation to operate and maintain the ~~Courthouse~~ Plaza will begin upon completion of the construction of the Plaza. This MOA shall remain in effect for thirty (30) years from the effective date, or for such length of time as is required by any grant funding used to complete the project, whichever is longer. PROVIDED, HOWEVER, that the term of this MOA may be extended or renewed as agreed to by the County and City in writing on such terms as are negotiated at the time of extension or renewal, by written agreement between the County and the City.

Commented [LJ3]: Matthew's request: This MOA shall remain in effect until such time as the City chooses to discontinue maintenance of the Plaza, or the County proves the City has failed to adequately execute its obligations as so designated within this MOA.

County and City recognize ~~that this MOA agreement~~ regarding operation and maintenance obligations is a necessary part of any cooperative effort to secure funding for and for construction of the Plaza. This MOA agreement does not control the relationship of County and City prior to final construction of the Plaza. County and City relationships related to cooperative funding and/or construction will be controlled by future other agreements or contracts duly executed by the parties.

3. Administrators.

Each party to this MOA shall designate an individual (an "Administrator"), who may be designated by title or position, to oversee and administer such party's participation in ~~this~~

~~MOA~~this MOA. The parties' initial Administrators shall be the following individuals:

| <u>County's Initial Administrator:</u> | <u>City's Initial Administrator:</u> |
|---|--|
| Tim Elsea Skamania County Public Works Director ____ Vancouver Avenue Stevenson, Washington 98648 (509) 427-3910 phone elsea@co.skamania.wa.us | Leana Kinley City of Stevenson City Administrator 7121 E. Loop Road Stevenson, WA 98648 (509)427-5970 phone leana@ci.stevenson.wa.us |

Either party may change its designated Administrator at any time by delivering written notice of such party's new Administrator to the other party.

New section:

The county shall convey the Plaza land to the city, with the following restrictions:

- a) The land be used solely in the manner detailed throughout this MOA.
- b) The City may not lease or sell the land.
- c) Proof of breach of this section will constitute termination as outlined in section 7.6, and the land shall be returned to County possession.

Commented [LJ4]: Matthew's request.

4. Understanding of the City

4.1 Maintenance. The City shall maintain in good working order and make any needed repairs to the existing and any future ~~f~~Facilities on the ~~Courthouse~~-Plaza during the term of this MOA.

4.2 Garbage and Debris. The City shall, at its sole cost and expense, and on a timely basis to ensure a clean and attractive Plaza, collect and dispose of any and all debris located within the Plaza or in the area immediately surrounding the Plaza if it seems likely ~~that~~ the debris came from the Plaza.

4.3 Utilities. The City shall pay all costs, charges and expenses for utility service to the ~~Courthouse~~-Plaza, including but not limited to power, water, sewer, waste water, natural gas, propane, communications and telephone services, if any.

4.4 Assessments. The City shall pay all costs associated with any and all assessments and Local Improvement Districts charges to the Plaza property during the term of this Agreement.

4.5 Signage. The City shall maintain, at its sole cost and expense, informational signs located at the Courthouse Plaza which recognizes the County and the City as partners in the development and operation of the Plaza and which provides contact information for the City as sole operator of the Plaza. Suggested language could include language such as: "This Plaza Developed in cooperation with Skamania County." Any Recreation and Conservation Office ("RCO") required funding signs should be maintained by the City at the Plaza.

4.6 Enforcement. The Plaza is subject to Revised Code Washington, the City of Stevenson Municipal Code, and all other rules and regulations adopted by the State, City or County. The City shall, at its sole cost and expense, enforce the Revised Code of Washington, ~~the~~ Municipal Code of Stevenson, and any applicable Skamania County Code, rules and regulations within the Plaza, and monitor the Plaza for appropriate use.

4.7 Operation as Public Park Plaza. The City intends to operate the Plaza as a public park or Plaza and for such ancillary uses or purposes as are commonly associated with a public park or Plaza and for no other purpose or use whatsoever without the prior written consent of the County, which may be granted or withheld in the County's sole discretion. The County may enter the Plaza at any time for purposes of inspecting and ensuring the Plaza usage is consistent with the intentions expressed in this MOA.

4.8 Public Access. The Plaza should be available to the public during the dates and times as specified by the City and as agreed by the County. The City shall have the power to schedule special events and regular uses such as for a weekly community market, but shall confer with Skamania County to ensure ~~that~~ any such special or regular events do not interfere with the needs of or the regular business of the County.

4.9 Usage Fees and Licensing. The City may issue licenses to third parties and collect fees therefrom for all activities in the Plaza, subject to: (a) any RCO guidelines as outlined in RCO Long-Term Obligations Manual 7 (Attachment B) and any other restrictions placed on or associated with the Plaza through this MOA agreement. The authority for granting and/or conveying all other easements, or other grant or conveyance of real property interest shall remain with the County. Any and all fees collected by the City pursuant to this Section should only be expended on Plaza operations, maintenance, repairs and improvements.

4.10 General Maintenance and Adequate Reserves. Except as where otherwise provided in this MOA, the City shall, at its sole cost and expense, keep and maintain the Plaza and all fixtures and improvements located thereon in good condition and repair, subject to ordinary wear and tear. All such maintenance and repair for which the City is responsible should be performed by the City in a good and workmanlike manner in compliance with all applicable laws.

~~The City will maintain Adequate reserves for the maintenance of the Plaza will be maintained by the City.~~ The calculation of the reserves shall be based on the useful life of each asset in the ~~Park~~ Plaza and the cost to replace said asset. These reserves shall be set aside on an annual basis, and shall be calculated such as to ensure ~~that~~ adequate funds are available for any needed renovation ~~or and~~ repairs of the Plaza. The reserve funds may be used for capital maintenance or repairs (over \$5000 and over one-year extension of useful life) and for capital improvements.

5. Joint Responsibilities.

The intent of this MOA is to pass all responsibility to the City for day to day ~~m~~Maintenance and ~~O~~Operations of the Plaza. It is the intent of the County to act in an advisory and oversight capacity only in order to ensure compliance with this MOA including assisting the City in pursuing additional grant funding and complying with funding source restrictions and

requirements, any third party obligations, and any other legal obligations of the County and City. County shall support the City with grant funding requests as a supportive partner in any grant proposals. The parties understand the City and County will jointly develop and submit any grant funding requests depending on the nature of the funding opportunity. The City shall not apply for any grant funding that encumbers or restricts the use of the Plaza without the approval of the County.

7. Alterations and Improvements.

7.1 No Conversion. The City should not make additions, changes, alterations, or improvements to the Plaza including but not limited to any electrical, mechanical, utilities, and other systems and facilities serving the Plaza existing at the effective date of this MOA or in the future (collectively, the “Alterations”) ~~that are~~ inconsistent with this MOA’s conditions and restrictions, or RCO grant contracts associated with the Plaza. Any known conditions and restrictions or RCO grant contracts are attached collectively as Exhibit B and incorporated herein by this reference.

7.2 Consent by the County. The City should not make Alterations from a mutually agreed design without first obtaining the prior written consent of the County. The City should provide the County with detailed plans and specifications detailing any proposed Alterations. Should the County consent to any proposed Alterations, such consent should not be deemed a representation or warranty as to the adequacy of the architectural design or plans for such Alterations, and the County hereby expressly disclaims any responsibility or liability for same. The County shall have no obligation whatsoever to make any Alterations ~~to the Plaza~~ now or at any time in the future, unless such obligations are negotiated by the City and approved made explicitly by the County in writing.

7.3 Alterations by City. All Alterations should be performed: (a) at the City’s sole cost and expense unless funding is obtained through a RCO or other grant or donation source; (b) in a good safe environment and performed in a professional workmanlike manner, with all materials used being of a quality at least as good as or better than existing condition those already in use on the Plaza; (c) in accordance with plans and specifications approved by Skamania County and any associated grant/sponsor agencies; and (d) in compliance with all applicable laws, codes and regulations including but not limited to those related to prevailing wages (see RCW 39.12), retainage (see RCW 60.28), bonding (see RCW 39.08), use of licensed contractors (see RCW 39.06), and competitive bidding (see RCW 36.32 and RCW 35.21.278), and all codes and regulations. The County hereby expressly disclaims any responsibility or liability for same.

7.5 Disposition of Alterations at Termination. This agreement does not intend to create a separate legal entity. Upon the expiration or earlier termination of this MOA Agreement, all fixed Alterations should remain in and be surrendered within the Plaza as a part thereof, unless, with respect to any Alteration, the County specifies in its consent ~~to the construction of such Alteration~~ ~~that~~ such Alteration must be removed prior to surrender, in which case the City intends, prior to surrender, to remove the identified Alteration ~~in question~~ and repair any damage, to the extent economically feasible, to the Plaza caused by such removal.

Commented [KW5]: See RCW 39.34.030(4)

7.6 Renewal and Disposition of Property upon Termination of Agreement. Upon expiration of this MOA Agreement, the MOA Agreement will automatically renew for an additional 30-year term, unless County notifies City at least twenty-four (24) months in advance of their intent not to renew the MOA Agreement. If County notifies City of its intent not to renew this MOA Agreement, upon termination of the MOA Agreement the County shall will be responsible for all operations and maintenance of the Plaza, and City will have no further maintenance obligations under this MOA Agreement. Any funds City holds in reserve fund for maintenance of Plaza at the time of termination of the MOA shall be remain the property of City, unless County agrees to continue the use of Project property as a Park Plaza, in which case any reserve funds shall be available for capital improvements of the Plaza by County as described in Section 4.10 above. If County plans to discontinue use of Project property as a Plaza and sell or lease property to a third party, City shall have the right to retain any reserve funds. If County chooses to discontinue use of property as a Park Plaza and sells the real property to third party, County shall reimburse City for any City general fund contributions made by City in actual construction of the Plaza (not to include lodging tax funds expended or any funds expended in maintenance of the Plaza, after construction).

Commented [LJ6]: Matthew's request: This MOA shall terminate at such time as the City chooses to discontinue maintenance of the Plaza, or the County proves the City has failed to adequately execute its obligations as so designated within this MOA.

7.7 Liens. The City intends to keep the Plaza free from any liens arising out of work performed for, materials furnished to, or obligations incurred by, or on behalf of, the City. Any construction liens filed against the real property associated with the Plaza for work claimed to have been furnished to the City will be discharged by the City, by bond or otherwise, within ten (10) days after receipt of the filed the filing of the claim or lien, at the City's sole cost and expense. Should the City fail to discharge any such construction lien, the County may at its election pay the ~~that~~ claim or post a bond or otherwise provide security to release eliminate the lien as an encumbrance or claim against title and the cost to the County should be immediately due and payable by the City. The City should indemnify and hold the County harmless from and against any liability arising from any such lien.

8. Independent Contractor.

The City intends to perform all work associated with the Plaza as an independent contractor and not as an agent, employee, partner, joint venturer or servant of the County. The City intends to be solely responsible for control, supervision, direction and discipline of its personnel and agents, who shall be employees and agents of the City and not the County. The County shall only have the right to ensure quality and performance.

9. Indemnification/Hold Harmless.

The parties understand ~~that~~ the City shall assume the risk of, be liable for, and pay all damage, loss, costs, and expense of any party arising out of the operation and maintenance of the Plaza, except any such damage, loss or costs that caused or incurred by the sole negligence and/or willful misconduct of the County, ~~and~~ its employees acting within the scope of their employment and any agents acting within their scope of agency. The City shall hold harmless, indemnify, and defend the County, its officers, elected and appointed officials, employees, and agents from and against all claims, losses, suits, actions, counsel fees, litigation costs, expenses, damages, judgments, or decrees by reason of damage to any property or business, and/or any death, injury, or disability to or of any person or party, including, but not limited to, any employee, contractor,

licensee, invitee and/or any other persons who may be in, on, around or upon the Plaza with the express or implied consent of the City or arising out of or suffered, directly or indirectly, by reason of or in connection with the Plaza or this MOA, or any act, error, or omission of the City, the City's employees, agents, and subcontractors, whether by negligence or otherwise. It is specifically and expressly understood ~~that~~ the indemnification provided in this MOA constitutes the City's waiver of immunity under the state industrial insurance laws, Title 51 RCW, solely for the purpose of this indemnification. The City understands ~~that~~ this waiver has been mutually negotiated.

10. Liability Related to City Ordinances, Policies, Rules and Regulations.

In signing this MOA, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, policies, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, policy, rule or regulation is at issue, the parties understand the City shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and reasonable attorney's fees.

11. Condition of Plaza.

The City acknowledges and agrees ~~that~~ it has had an adequate opportunity to inspect the property of the proposed Plaza, the proposed plan for creation/improvement of the Plaza and is accepting the Project entering into this MOA with the Plaza in the condition "as is" or as improved, subject to all faults and defects, known and unknown. The City further represents and warrants to the County ~~that~~ except for the County's express representations, warranties, covenants and obligations under this MOA and the exhibits hereto, the City has not relied and will not rely on, and the County is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Plaza and the Plaza Facilities. This provision does not apply to any subsurface conditions associated with the real property. The County remains obligated for any costs or expenses associated with any subsurface conditions, known or unknown.

12. Insurance.

12.1 City's Insurance Obligation. The parties understand ~~that~~, upon signing this MOA, the City, at its own cost, shall have procured and will maintain for the duration of this MOA, insurance as specified in Section 12.2 below, the Minimum Scope and Limits of Insurance. Each insurance policy shall be written on an "occurrence" form unless otherwise approved by the County. The City's maintenance of insurance through a qualified Risk Pool is acceptable under this MOA. Nothing contained within these insurance requirements shall be deemed to limit the scope, application, and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this Section 12 shall affect and/or alter the application of any other provision contained within this MOA.

12.2 Minimum Scope and Limits of Insurance. The City shall maintain limits no less

than:

- (a) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
- (b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (c) Workers' Compensation: Statutory requirements.

By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the City under this MOA. The City shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

12.3 Other Insurance Provisions and Requirements. The insurance coverage(s) required in this MOA are to contain, or be endorsed to contain the following provisions:

- (a) The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of or in connection with this MOA. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. The Additional Insured Endorsement shall be included with the certificate of insurance.
- (b) The City's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (c) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the City's liability to the County and shall be the sole responsibility of the City.
- (d) Coverage shall not be suspended, voided, canceled, reduced without prior written permission of the County.

12.4 Documentation of Insurance Requirements. The City shall furnish the County with certificates of insurance and endorsements per this MOA. The County reserves the right to require complete, certified copies of all required insurance policies at any time. If at any time any of the policies described in this Section 12 fail to meet minimum requirements, the City shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

12.5 Insurance Review. In consideration of the duration of this MOA, the parties understand ~~that~~ this Section 12, at the discretion of the County Risk Manager, may be reviewed

and adjusted with each amendment and within ninety (90) days of the end of the first five (5) year period of the MOA and the end of each successive five (5) year period thereafter. Any adjustments made as determined by the County Risk Manager, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the first day of each successive five (5) year period. Adjustment, if any, in insurance premium(s) shall be the responsibility of the City. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

13. Compliance with Laws.

In the performance of its obligations under this MOA, each party expects to comply with all applicable federal, state, and local laws, rules and regulations.

14. Default and Remedies.

If either party defaults in its obligations under this MOA, the non-defaulting party shall have the right to seek specific performance by the defaulting party. An event of default shall occur only upon the obligated party's failure or refusal to perform a material term of this agreement after the party entitled to performance has given written notice to the obligated party of the breached term, and 30 days have elapsed after notice. City acknowledges ~~the that~~ County has entered this MOA with the understanding ~~that~~ the obligations for maintenance, operations, repair, etc. of the ~~Courthouse~~ Plaza will be the sole responsibility of City, and ~~that~~ any default in City's obligations ~~that~~ resultings in maintenance, repair or operation costs being borne by the County shall result in those costs being payable by the City to County ~~upon after written notice and~~ demand.

15. Early Termination.

There is no early termination of this MOA Agreement. Any attempt to terminate this MOA Agreement early by either party shall constitute a default of the MOA Agreement.

16. Dispute Resolution.

County and City shall make every effort to resolve any dispute regarding this MOA Agreement informally. If informal dispute resolution is unsuccessful, there shall be no further obligation to engage in an alternative dispute resolution process.

17. Financing.

Each party will finance their obligations in this MOA through general or restricted funds of each agency as law permits. No joint financing is contemplated.

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18. Notices.

All notices required to be given by any party to the other party under this MOA Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic

mail (email) to the applicable Administrator or the Administrator’s designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 3 of this [MOA Agreement](#). Notice delivered by email shall be deemed given as of the date and time received by the recipient.

198. Nondiscrimination.

It is the policy of the County and the City to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington’s Law against Discrimination, Chapter 49.60 RCW. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and city and county contracts.

2019. Entire Agreement; Amendments.

This MOA constitutes the entire MOA between the parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This MOA may not be modified or amended in any manner except by a written document signed with the same formalities as required for this MOA and signed by the party against whom such modification is sought.

210. Conflicts between Attachments and Text.

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Should any conflicts exist between any attached exhibits or schedule and the text or main body of this MOA, the text or main body of this MOA, or to any modifications or amendments to this MOA shall prevail.

IN WITNESS WHEREOF, the parties have signed this MOA as of the date first above written.

COUNTY:

CITY:

Skamania County, a political subdivision of the State of Washington

City of Stevenson, a Washington municipal corporation

By _____

By _____ Na

Name: Richard Mahar

[Name:](#) Scott Anderson

Title: Skamania County Board of County Commissioners, Chair

Title: Mayor, City of Stevenson

Approved as to Form:

Approved as to Form:

Adam N. Kick, Skamania County
Prosecuting Attorney

Ken Woodrich, City Attorney

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Exhibit A
Legal Description of Courthouse Plaza

Exhibit B
RCO grant