

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM: A-6

DATE: December 11, 2008

SUBJECT: Police Facility Lease Agreement

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the Council is to authorize the Mayor to sign a five-year lease agreement (Attachment A) with the Snohomish County Sheriff's Office to use the facility located at 515 Main Street in Sultan as the Snohomish County Sheriff's East Precinct Office.

STAFF RECOMMENDATION:

1. Discuss the proposed lease agreement with the Snohomish County Sheriff's Office and direct staff to areas of concern.
2. Authorize the Mayor to sign a five-year lease agreement with the Snohomish County Sheriff's Office to use the facility located at 515 Main Street in Sultan, Washington as the Snohomish County Sheriff's East Precinct Office.

SUMMARY:

At the Council meeting on November 13, 2008, the City Council approved an interlocal agency agreement with the Snohomish County Sheriff's Office for law enforcement services.

During the meeting, the Sheriff's Office presented a lease agreement for the Council's consideration. The lease agreement was presented without staff or attorney review. The City Council directed staff to work with the Sheriff's Office to develop a mutually agreeable lease agreement.

DISCUSSION:

There are three key sections in the proposed lease agreement:

Section 2 Term: The lease agreement is for five years ending December 31, 2013. The County has the option of extending the lease agreement for two (2) one-year terms.

The lease agreement (Section 2) discusses a rent increase as described in Paragraph 3, but needs some additional clarification and detail.

Section 3 Rent: Section 3 defines the rent as \$30,000/ year for the life of the lease, **less the County's costs associated with maintenance, repair and services provided by the County under Section 13.C.**

This is different than the approved ILA which identified specific repair and maintenance costs included in the annual payments to the County for law enforcement services.

The Council may want to discuss capping the costs to those identified in the Interlocal Agency Agreement (ILA).

Section 13 Maintenance, Management and Services: This section describes the City and County responsibilities for maintenance and repair to the facility. This section is tied to Section 3 rent with the \$30,000 credit towards rent being reduced by the County's costs associated with maintenance and repair.

The Council may want to discuss including more specific details for routine maintenance and janitorial services.

ALTERNATIVES:

1. Authorize the Mayor to sign a five-year lease agreement with the Snohomish County Sheriff's Office to use the facility located at 515 Main Street in Sultan, Washington as the Snohomish County Sheriff's East Precinct Office.

This action implies the City Council is comfortable with the terms and conditions of the lease and are prepared to move forward with leasing the City's facility to the Sheriff's Office effective January 1, 2009.

2. Authorize the Mayor to sign a lease agreement with the Snohomish County Sheriff's Office to use the facility located at 515 Main Street in Sultan, Washington as the Snohomish County Sheriff's East Precinct Office , and direct staff to areas of concern.

This action implies the City supports the concept of the lease agreement and has specific concerns regarding the terms of the agreement. The Mayor would be authorized to sign the lease agreement once the Council's concerns have been addressed.

3. Do not authorize the Mayor to sign the lease agreement with Snohomish County, and direct staff to areas of concern.

This action indicates the Council has significant concerns about the lease agreement that may or may not be resolved. The Council may want to further discuss the issue or receive further information before proceeding.

STAFF RECOMMENDATION:

1. Discuss the proposed lease agreement with the Snohomish County Sheriff's Office and direct staff to areas of concern.
2. Authorize the Mayor to sign a five-year lease agreement with the Snohomish County Sheriff's Office to use the facility located at 515 Main Street in Sultan, Washington as the Snohomish County Sheriff's East Precinct Office.

ATTACHMENTS

A – Proposed Lease Agreement for the police facility located at 515 Main Street, Sultan, Washington.

After Recording Return To:
Snohomish County Property Management
3000 Rockefeller Avenue M/S 404
Everett, WA 98201

LEASE
City of Sultan
Police Department Facility
515 Main Street, Sultan, WA 98294

This Lease is made this _____ day of _____, 2009 between CITY OF SULTAN, a municipal corporation of the State of Washington, hereafter referred to as the "City", and SNOHOMISH COUNTY, a municipal corporation and political subdivision of the State of Washington, hereafter referred to as the "County".

WITNESSETH:

1. PREMISES. The City does hereby lease to the County, and the County does hereby lease from the City those certain premises located at 515 Main Street, Sultan, WA 98294 identified as all of tax parcel number 00586200401000 described as follows:

Lots 10 and 11, Block 4, Plat of Stevens First Addition to the City of Sultan, as per plat recorded in Volume 2 of Plats, Page 12, and as corrected in Volume 6 of Plats, page 34, records of the Auditor of the County of Snohomish, State of Washington.

Situate in the County of Snohomish, State of Washington.

Said premises containing approximately .15 acres (the "Premises").

2. TERM. The initial term of this lease shall commence upon the full execution of all parties to this lease and end at midnight December 31, 2013.

In addition, the County may extend the lease for two (2) one-year (1-yr.) option terms. The County shall notify City of the County's intention to exercise an option term no later than six months before the expiration of the current term. County's failure to exercise any option to extend will nullify the remaining options to extend. The lease during any option term shall be on the same terms and conditions as the initial term, except that the rent will increase in the manner described in paragraph 3.

If the term of this lease extends beyond the current County fiscal year, the obligations of the County in succeeding fiscal years are contingent upon legislative appropriation for the specific purpose of funding this lease in accordance with law. In the event that funds are not so appropriated, the County may terminate this lease without penalty or further obligation.

3. RENT. The City and the County are parties to an Interlocal Agreement that requires the County to provide law enforcement services on behalf of the City. Snohomish County deputies will be solely responsible for providing the law enforcement services with no participation from City employees. The City will be responsible for annual payments to the County for the law enforcement services provided by the County under the Interlocal Agreement as shown on the attached Exhibit A – Payment Schedule.

The County will be responsible to the City for an annual lease rent for the Premises under this Agreement in the amount of \$30,000.

Term	Annual Lease Rent
Commencement Date – December 31, 2009	\$ 30,000
January 1, 2010 – December 31, 2010	\$ 30,000
January 1, 2011 – December 31, 2011	\$ 30,000
January 1, 2012 – December 31, 2012	\$ 30,000
January 1, 2013 – December 31, 2013	\$ 30,000

As payment for lease rent under this Agreement, the County will provide a credit toward the City's obligation under the Interlocal Agreement equal to the annual lease rent of \$30,000 less the County's costs associated with maintenance, repair and services provided by the County under Section 13.C. Upon request, the County will provide the City with documentation to support annual Section 13.C costs incurred throughout the term of this lease.

4. USE. The County will use the premises exclusively for the operation of law enforcement services and for no other purpose without prior consent of the City. Any office equipment, law enforcement equipment, furniture, or supplies placed or installed on the Premises by the County shall remain the property of the County, unless it is acquired by the City under the terms of the Interlocal Agreement or a part of the City's inventory prior to the execution of this lease.

The County shall keep the Premises and access areas in a neat and clean condition. Upon termination of the Lease, the County shall quit and surrender the Premises in as good a state and condition as reasonable use and wear and tear thereof permit, damage by the elements or other actions not caused by the County, its employees, agents, customers or invitees excepted.

5. ALTERATIONS AND FIXTURES. During the term of this lease the County agrees to make, at County's expense, any alterations that are necessary to keep in compliance with any Federal, State, County or City laws and regulations that are required for occupancy of the Premises, including all building and fire codes. County agrees that in performing improvements specified in this paragraph 5, it shall comply with all provisions of the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*) and any associated regulations, and shall keep the building in continuous compliance with such act and regulations throughout the term of this lease, including any option or holdover term.

County agrees to make no alterations to the Premises without City's prior written consent, which consent shall not be unreasonably withheld. Any such alterations to the Premises shall be made at the County's expense and shall become the property of the City at the termination of the lease. Upon termination of this lease, County shall have the right, consistent with Section 4 of this lease agreement, to remove all movable County improvements, furnishings and trade fixtures placed therein by the County that can be removed without material injury to the Premises, and will repair any damage to the Premises caused by such removal. The County will be allowed, within reasonable limits, to hang pictures, corkboards and install shelving to earthquake standards without being held responsible for damage to the Premises, and such damage shall be considered reasonable wear and tear.

6. DAMAGE. In the event that any damage of any kind is caused by County in the course of performing work authorized by this Lease, the County will repair the damage at its sole

cost and expense. Repair work shall begin without delay and continue without interruption until completed and within thirty (30) days of termination of this Lease.

7. LIENS. In the event the Premises shall at any time during the term of this Lease become subject to any lawsuit brought to enforce a lien or any statement or claim of lien filed to enforce a lien resulting from the furnishing of materials or labor to the County on the Premises and contracted for or agreed to by the County, the County may contest such lien by legal proceedings but shall, in the event, cause such lien, at its sole cost, to be discharged within thirty (30) days after notice thereof by the substitution therefore of an appropriate lien release bond, by posting of adequate security for payment thereof (including all expenses incident thereto), or by such other method as shall be reasonably satisfactory to the City.

8. HOLD HARMLESS. The County shall assume the risk of, and be liable for all damage, loss, cost and expense of any party arising out of the County's use of the Premises, or actions or omissions of the County's agents, employees, or volunteers, except that solely caused by the negligence or willful misconduct of the City's employees acting within the scope of their employment. The County shall protect, save harmless, indemnify, and defend, at its own expense, the City, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever arising out of the performance of this Lease or use of the Premises, including claims by third parties or the County's employees to which it would otherwise be immune under Title 51 RCW or other law, except for those damages solely caused by the negligence or willful misconduct of the City, its elected and appointed officials, officers, employees or agents. The County's duties shall include, but not be limited to, investigating, adjusting and defending all claims alleging loss as described within this paragraph.

9. INSURANCE. Snohomish County self-insures \$1,000,000 of its common law and assumed liability for bodily injury and/or property damage to third parties in connection with accidents arising out of Snohomish County's operations. The limits of coverage meet or exceed limits typically required and the County's excess liability insurance covers all operations and applies in addition to the self-insurance program. The County's self-insurance will respond to the same extent as if an insurance policy had been purchased naming the City as an additional insured.

10. HAZARDOUS WASTE. The County understands that the City has not conducted any tests for hazardous substances on the site. To the best of the City's knowledge, the Premises is not in violation of any law, ordinance, rule or regulation relating to the environmental conditions thereon. Moreover, to the best of the City's knowledge, there is no hazardous waste or other substance, including but not limited to those that would be a hazardous waste, material or substance, toxic substance, gas or pollutant, as defined under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et. seq.*, the Washington Model Toxics Control Act, RCW Ch. 70.105D, RCW Ch. 70.95, and the regulations promulgated thereunder or under any applicable local or state environmental ordinance, statute, law, rule or regulation ("Hazardous Substances"), on or about the Premises or on any parcels of land which abut the Premises. Further, to the best of the City's knowledge: (i) there has been no release, spill, leak, discharge, emission, leak or disposal, (ii) there are no substances or conditions, in or on the Premises or any other parcels of land which may affect the Premises or use thereof that may support a claim or cause of action under any federal, state or local environmental statute, regulation, ordinance or other environmental regulatory requirements and (iii) there is no asbestos, PCBs or underground storage tanks located on the Premises or which have been removed therefrom.

The City agrees to indemnify, hold harmless and defend the County, its appointed officials, officers, employees, agents and representatives, from and against any and all claims, actions, suits, liability, loss, cost, expenses and damages of any nature whatsoever, including costs and attorneys' fees, which are caused by or arise out of (i) the existence of Hazardous Substances on the Premises or the migration of Hazardous Substances originally released or deposited on the Premises onto other parcels of land; (ii) the City's failure or insufficient compliance with any federal, state or local laws applicable to Hazardous Substances; or (iii) any claim, in law or equity, brought by any third party or the City's own officials, officers, employees, agents or representatives alleging any cause of action relating to the existence of Hazardous Substances on the Premises or any migration of Hazardous Substances originally released or deposited on the Premises onto other parcels of land, and, with respect to (i), (ii) and (iii), that existed, or in the case of migration commenced due to a condition that existed, as of or prior to the commencement of this Lease.

11. SUBLETTING AND ASSIGNMENT. The County shall not sublet the whole or any part of said Premises, nor assign this Lease, or any part thereof, without the written consent of the City, which consent shall not be unreasonably withheld. If consent is once given by the City to the assignment of this lease, or any interest therein, the City shall not be barred from afterward refusing to consent to any further assignment. This Lease shall not be assignable by operation of law.

Any assignment made by the County shall not become effective until the assignee, in writing, shall assume this Lease and agree to perform and be bound by all of the obligations of the County accruing under this Lease from and after the date of such assignment. In the event of such an assignment and assumption, the County shall remain bound by all obligations of the County accruing under this Lease. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

12. NOTICES. All notices to be given by the parties hereto shall be in writing and may either be served personally or may be deposited in the United States mail, postage prepaid, by either registered or certified mail or by facsimile, and if to be given to the City, shall be addressed or faxed to the City at:

City of Sultan
319 Main Street, Suite 200
PO Box 1199
Sultan, WA 98294
Attn: Deborah Knight, City Administrator
Phone: 360-793-1164
Fax: 360-793-3344
Email: Deborah.knight@ci.sultan.wa.us

or if to be given the County, shall be addressed to the County at:

Snohomish County
3000 Rockefeller Avenue M/S 404
Everett, WA 98201
Attn: Cherie Hutchins
Phone: 425-388-3400
Fax: 425-388-7008
Email: cherie.hutchins@co.snohomish.wa.us

All notices shall be effective upon the earlier of personal delivery or two (2) days after being mailed.

13. MAINTENANCE, MANAGEMENT AND SERVICES.

A. City covenants and agrees to provide:

1. Public water, power, sewer, natural gas and/or propane to the Premises for a twenty-four (24) hour, seven (7) day a week operation.
2. Weekly garbage services for operation of the Premises to allow for twenty-four (24) hour, seven (7) days a week operation.
3. Routine landscaping maintenance.
4. Repair and maintenance of sidewalks and parking areas.
5. Improvements to the building's structure and the building's electrical, plumbing, and mechanical systems outside of routine maintenance and repair.

B. City agrees to pay for the following services to the Premises:

1. Routine maintenance of the landscaping.
2. Repair and maintenance of the sidewalks and parking areas.
3. Building insurance, taxes and assessments.
4. All costs associated with improvements to the building's structure and the building's electrical, plumbing, and mechanical systems outside of routine maintenance and repair.

C. County covenants and agrees to provide:

1. Routine maintenance and repair of the building's structure and the building's electrical, plumbing, and mechanical systems.
2. Interior and exterior painting.
3. Janitorial services.
4. Maintenance of roof and building's exterior walls.

D. County shall pay directly to the appropriate provider for the following services:

1. All utilities serving the Premises.
2. Garbage services.
3. Internet and communication lines serving the Premises.
4. Security systems and monitoring services provided to the Premises.

Routine maintenance and repair defined under this section shall be any work not performed by contract and that is performed on a regular scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once a year), to service, check, or replace items that are not broken; or work performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary.

City shall not be liable for any loss, injury, or damaged property caused by or resulting from any variation, interruption, or failure of such service beyond City's reasonable control. No temporary interruption or failure of such services incident to the making of repairs, alterations, or improvements, or due to accident or strike, or conditions or events beyond City's reasonable control shall be deemed an eviction of County or shall release County from any of County's obligations under this lease.

14. SIGNS. The County shall have the right to place identifying and instructional signage on and about the Premises with the City's consent, which consent shall not be unreasonably withheld, subject to compliance with all applicable laws.

15. DEFAULT. Upon either party's failure to observe or perform any term or condition of this Lease, that failure having continued for fifteen (15) days after the non-defaulting party gives written notice to cure such failure to the other party, such party shall be deemed in default. In the event of default and upon fifteen (15) days written notice of termination to the party in default, the non-defaulting party may terminate this Lease.

16. GOVERNING LAW AND VENUE. This Lease shall be governed by the laws of the State of Washington and any lawsuit regarding this Lease must be brought in Snohomish County, Washington.

17. NO WAIVER. No waiver shall be implied from an omission by either party to take any action related to breach of any covenant, term, or condition of the Lease. One or more waivers of any breach of any covenant, term, or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

18. HOLDING OVER. If the County, with the consent, express or implied, of the City, shall hold over after the expiration of the term of this Lease, the City and the County shall remain bound by all the terms, covenants, and agreements hereof, except that the tenancy shall be month to month.

19. SUCCESSORS AND ASSIGNS. The rights, liabilities, and remedies provided for herein shall extend to the heirs, legal representatives, successors and, so far as the terms of this Lease permit, assigns of the parties hereto; and the words "City" and "County" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms or corporations which may be or become parties to this Lease.

20. ENTIRE AGREEMENT. This Lease contains all the agreements between the parties with respect to any matter covered or mentioned in the Lease, and no prior agreement, letter of intent, or understanding relating to any such matter will be effective for any purpose. No provision in this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest and using the same formalities as are required for the execution of this Lease.

