

BUILDING JOINT DEVELOPMENT AND OWNERSHIP AGREEMENT

This Building Joint Development and Ownership Agreement (this “**Agreement**”) is by and between the City of Sedro-Woolley (the “**City**”) and the Central Skagit Rural Partial County Library District (the “**District**”), pursuant to RCW Chapters 27.12 and 39.34.

RECITALS

- A. The City and the District operate and maintain public libraries located in the City of Sedro-Woolley, each open to the public and available for full service use without fees for residents of each entities’ geographical limits.
- B. The existing libraries are inadequately sized to serve the population as it exists today or is projected to grow into the future. The City and the District desire to form a partnership to develop, construct and own a new library (the “**New Library**”) that will be operated by the District for the benefit of both the City and the District.
- C. The City and the District formed a Joint Negotiating Committee which met on four occasions in 2016 and proposed a “Library Partnership Concept” on November 28, 2016.
- D. The Library Partnership Concept was the subject of lengthy public process by both the City Council and the District Board of Trustees (the “**Board**”).
- E. Consistent with Resolution 943-16, the City Council held a special meeting on February 24, 2017, in a workshop format, to answer questions and take input on the proposal. A second meeting was held on March 8, 2017, at which testimony was taken from the public on the proposal and ultimately the City Council voted 6-1 to proceed with the Library Partnership Concept.
- F. At its regular meeting held on March 16, 2017, the Board voted 4-0 to proceed with the Library Partnership Concept.
- G. Consistent with the Library Partnership Concept, the City and the District have documented their intent to work cooperatively to provide library services more efficiently and effectively in the combined territorial limits of the District and the City through three interlocal agreements: (1) the Library Partnership Agreement; (2) this Agreement; and (3) the Library Services Agreement (collectively, the “**ILAs**”).
- H. The City Council held a public hearing to consider the ILAs on June 14, 2017 and a second meeting with public comment on _____, 2017, after which the City Council voted ___-___ to approve the ILAs.

- I. The Board considered and took public comments on the ILAs at its regular meeting held on _____, 2017, and again took public comment and voted ___-___ to approve the ILAs at its regular meeting held on _____, 2017.

NOW, THEREFORE, in consideration of the foregoing, the parties agree and contract as follows:

AGREEMENT

1. **EFFECTIVE DATE OF AGREEMENT.** This Agreement shall become effective when the conditions set forth in Paragraph 2 of the Partnership Agreement have occurred (the “**Effective Date**”).
2. **PURPOSE.** The parties desire to more efficiently and effectively serve their residents by jointly developing and owning the New Library building, sized to service the combined service areas of the parties.
3. **OWNERSHIP/POSSESSION.** In exchange for the services to be provided by the District pursuant to the Library Services Agreement and other good and valuable consideration, including, but not limited to, the operation of the New Library and the provision of library services described in Paragraphs 2 and 3 of the Library Services Agreement, the City agrees to transfer a 59% ownership interest in the New Library to the District. The deed of transfer from the City to the District shall include a power of termination in favor of the City in the event of the dissolution of the District in order to carry out the intent and obligation of the District as provided below in Section 12. B. Such transfer shall result in legal title to the New Library building and associated real property and site improvements (collectively, the “**Premises**”) being held in the names of the City of Sedro-Woolley and the Central Skagit Rural Partial County Library District, as tenants-in-common, with the City’s ownership at 41% and the District’s ownership at 59%. For the term of this Agreement and for the purpose of implementing the ILAs, the District shall have possession of the Premises and shall maintain and operate the Premises at its sole expense.
4. **INSURANCE.** The City, its officers, employees and agents, shall not be liable for any injury (including death) or damage to any persons or to any property sustained or alleged to have been sustained by the District or by others as a result of any condition (including existing or future defects in the premises), or occurrence whatsoever related in any way to the Premises or related in any way to the District’s use of the Premises, except to the extent of such damage caused by negligence of the City. The District agrees to defend, indemnify and hold and save the City, its officers, employees and agents, harmless from any and all liability or expense (including expense of litigation) in connection with any such items of actual or alleged injury or damage. In addition, the District shall, at its

own expense, maintain throughout its occupancy of the premises, proper liability insurance with a reputable insurance company or companies in the minimum of \$5,000,000.00 single limit liability, including fire legal liability and a comprehensive general liability broadening endorsement to indemnify both the City and the District against any such liability or expense. The City shall be named as one of the insured, and shall be furnished a copy of such policy or policies of insurance or certificate of such insurance coverage by the District, or both, at the City's election. Each certificate of insurance shall provide that the insurance policy or policies are not subject to cancellation without at least thirty (30) days advance written notice of such cancellation having been first given to the City.

5. PROPERTY INSURANCE.

- A. The District will carry structural insurance for fire and casualty in the amount of the full replacement value of the New Library structure, and the City shall receive any and all proceeds thereof up to the amount of any outstanding indebtedness incurred by the City to finance the Project, in case of fire or other casualty. The City shall be named as additional insured on the District's policy and such policy shall not be cancellable without a minimum of sixty days prior written notice to the City. In the event that the District fails to maintain an adequate policy of insurance, the City may insure the New Library structure for fire and other casualty and deduct the cost of said policy from the payment due under the Library Services Agreement.
- B. INSURED CASUALTY. Following the occurrence of any insured casualty to the New Library Structure and receipt of any insurance proceeds, the City and the District will work together and use best efforts to apply those proceeds to rebuild, repair or replace such facilities as may be necessary or appropriate to enable the District to continue to provide library services at the New Library.

6. FUNDING/BUDGET.

- A. ISSUANCE OF BONDS. In order to finance the acquisition, design, construction and equipping of the New Library (the "**Project**"), the City agrees to issue, sell and deliver its limited tax general obligation bonds (the "**Bonds**"). The total budget for the Project has not been determined, but the maximum principal face amount of the Bonds shall not exceed \$5,000,000, exclusive of interest and costs, without written agreement of the parties. The Bonds shall have a maximum term of twenty (20) years from the date of issuance. The Bonds shall be a general obligation of the City within the constitutional and statutory debt limitations applicable to cities in the State of Washington. The payment of principal of or interest on the Bonds shall not be an obligation or debt of the District for purposes of any constitutional or statutory debt limitations.

Net proceeds of the Bonds and any other funding for the Project shall be placed in an account in the Library Construction Fund, which will be managed by the City. Following the completion of the Project, the City will provide the District with a complete accounting for the Project.

It is anticipated that interest on the Bonds will be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"). The City and the District hereby agree that they will take all actions necessary to prevent interest on the Bonds from being included in gross income for federal tax purposes, and they will neither take any action nor make or permit any use of the New Library at any time while the Bonds are outstanding which will cause interest on the Bonds to be included in gross income for federal income tax purposes.

- B. INTENT TO REIMBURSE. Funds expended by either party after the Effective Date of this Agreement and prior to the issuance of Bonds for acquisition or design of the Project, other than deposits into the Library Construction Fund under Paragraph 7, shall be reimbursed by the proceeds of the Bonds to the extent permitted by the Code.
- C. REFUNDING BONDS. The City agrees to not extend or renegotiate the term of the Bonds beyond their original final maturity date without the consent of the District. The City reserves the right to refund and/or defease the Bonds without the consent of the District when the final maturity will not be extended and there will be aggregate debt service savings. The term "Bonds" as used herein and in the Library Partnership Agreement and the Library Services Agreement shall include any debt issued to refund and/or defease the bonds originally issued by the City to finance costs of the Project.
7. LIBRARY CONSTRUCTION FUND. For the period of time between the Effective Date of this Agreement and the December prior to the year in which the first debt service payment is due on the Bonds, the City and the District agree to place \$30,000 per month into an account held within the Library Construction Fund in the same proportions as identified above in Section 3 of this Agreement (City \$12,300.00/District \$17,700.00). Such funds shall be used for the purpose of acquisition, designing, and constructing the New Library.
8. JOINT RESERVE FUND. Beginning the January following the final Bond payment, the City and the District agree to place \$30,000 per month in a Joint Reserve Fund which will be held by the City for the restricted purpose of major repair, expansion and/or future reconstruction in the same proportions as identified above in Section 3 of this Agreement (City \$12,300.00/District \$17,700.00); each party will "own" its share of the reserve fund which may be

- spent upon the approval of both parties or distributed consistent with Paragraph 12 below. By April 1 of each year, the City shall provide an accounting to the District showing the reserve fund balance and any activity in the reserve fund from the prior year.
9. CONTRACT ADMINISTRATION. Using the Conceptual Design, budget and location approved by both the City and the District, the Lead Entity, which is the City, will negotiate and administer the professional services agreements with architects, engineers and other professionals as needed for the design process and contractors and other professionals as needed for the construction phase, in accordance with required processes. Reasonable administrative costs in the amount of 5% of the construction contract shall be reimbursable by the Lead Entity and shall be part of the project budget.
 10. DESIGN & CONSTRUCTION MANAGEMENT. The City Supervisor and the District Director shall be designated as joint owner representatives during the design and construction processes. The owner representatives shall manage the design and construction based upon the approved conceptual design and project budget, and through meaningful public engagement. The owner representatives may select architects, engineers and other professionals as needed and contractors for the construction phase, in accordance with required processes. The owner representatives shall provide regular progress reports of the status of the project to both the City Council and District Board of Trustees. This provision is intended to allow for the timely and efficient development of the new library, while including both parties and stakeholders in the process.
 11. PARTITION. Neither party shall partition or attempt to partition the Premises during the life of the Bonds. In the event either party desires to partition the Premises after the life of the Bonds, the parties shall first meet and confer, provide written notice to the other party of its intent and no earlier than 90 days from the written notice and no later than 180 days, select and meet with a mediator in an effort to find an amicable separation. This process shall be a requirement prior to any legal recourse and is in addition to the Dispute Resolution provisions in Paragraph 16.
 12. FUTURE CONDITIONS:
 - A. If the City's voters approve annexation into the District, full title to the Premises and the Joint Reserve Fund will be transferred to the District at no cost to the District, *provided*, that the District will be responsible to the City for any outstanding Bonds issued by the City under Paragraph 6 herein which shall become due in full to the City no later than (1) the final maturity of the Bonds, or (2) six years, whichever is sooner. The District shall make required payments under this section annually, at least sixty days in advance of any

required payments from the City to its bondholders beginning the year in which the District first collects taxes from City residents.

- B. If the District's voters approve dissolution of the District, full title to the Premises (including the then-existing collection and all the furniture, fixtures & equipment in the New Library) and the Joint Reserve Fund will be transferred to the City at no cost to the City to allow the City to maintain a public library in Sedro-Woolley and a power of termination in favor of the City to enforce this obligation shall be included in the deed for the Premises.

13. INDEMNIFICATION.

- a. District Indemnification. To the extent permitted by law, the District shall indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, actions suits, liability, loss, costs, expenses and damages of any nature whatsoever, by any reason of or arising out of any negligent act or omission of the District, its officers, agents and employees, or any of them relating to or arising out of the performance under this Agreement and the other ILAs. In the event that any such claim, action or suit is brought against the City, the District shall defend the same at its sole cost and expense, including attorney fees. THE DISTRICT SPECIFICALLY AND EXPRESSLY WAIVES THE IMMUNITY THAT MAY BE GRANTED IT UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51, FROM THE REVISED CODE OF WASHINGTON. FURTHER, THE INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE TO OR FOR ANY THIRD-PARTY UNDER WORKMAN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS; PROVIDED, THAT THE DISTRICT'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS PARAGRAPH EXTENDS ONLY TO CLAIMS AGAINST THE DISTRICT BY THE CITY, AND DOES NOT INCLUDE OR EXTEND TO ANY CLAIM BY THE DISTRICT'S EMPLOYEES DIRECTLY AGAINST THE DISTRICT. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.
- b. City Indemnification. To the extent permitted by law, the City shall indemnify and hold harmless the District and its officers, agents, and employees from any and all claims, actions, suits liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason or arising out of any negligent act or omission of the City, its officers, agents, and employees, or any of them relating to or arising out of the performance under this Agreement and the other ILAs. In the event that any such claims, action or suit is brought against the District, the City shall

defend the same at its sole cost and expense, including attorney fees. THE CITY SPECIFICALLY AND EXPRESSLY WAIVES THE IMMUNITY THAT MAY BE GRANTED IT UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51, FROM THE REVISED CODE OF WASHINGTON. FURTHER, THE INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE TO OR FOR ANY THIRD-PARTY UNDER WORKMAN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS; PROVIDED, THAT THE CITY'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS PARAGRAPH EXTENDS ONLY TO CLAIMS AGAINST THE CITY BY THE DISTRICT, AND DOES NOT INCLUDE OR EXTEND TO ANY CLAIM BY THE CITY'S EMPLOYEES DIRECTLY AGAINST THE CITY. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

- c. Concurrent Negligence. If any claims are caused or result from the concurrent negligence of the City and the District these indemnity provisions shall be valid and enforceable only to the extent of the negligence of each entity.

14. TERM. This Agreement shall remain in effect from the Effective Date until the Bonds are no longer outstanding, which shall not be more than 20 years in duration from the date of issuance. Once the Bonds are no longer outstanding, this Partnership Agreement shall not automatically terminate, but from and after such date this Partnership Agreement shall be terminable by either party on one (1) year's written notice to the other. The City shall give written notice to the District one (1) year prior to the final date on which the principal amount of the Bonds shall be paid in full.

15. SURVIVAL. The provisions of paragraphs 6, 7, 8, 12, 13 and 16 shall survive the termination or expiry of this Agreement.

16. VENUE AND DISPUTE RESOLUTION. This paragraph establishes the sole and exclusive remedy for disputes arising under this Agreement, except as otherwise set forth herein. In the event of any dispute arising under this Agreement, the parties shall, as a material condition precedent to any suit under this Agreement, provide formal written notice of the dispute to the other party, and engage in formal mediation using a mutually agreed upon mediator. If the parties are unable to agree on a mediator within fifteen (15) days of written notice, either party may bring suit in Skagit County Superior Court for the sole purpose of seeking appointment of a mediator. If the parties are unable to resolve their differences within thirty (30) days after mediation, venue and jurisdiction for any action arising under this Agreement shall lie in the Courts of Skagit County, Washington. In the event of any

dispute arising under this Agreement, the Court shall award attorney fees, costs, expert witness fees, mediation costs, and all other costs related to the dispute to the prevailing party.

17. NO THIRD PARTY BENEFICIARIES. This Agreement is not intended to benefit any person, entity or municipality not a party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as beneficiary of this Agreement. This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but limited to, any agent, contractor, subcontractor, consultant, volunteer, or other representative of either party. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the parties hereto shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other party hereto.
18. SEVERABILITY. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this extent and end the terms and conditions of this Agreement are declared severable.
19. COMPLIANCE WITH LAWS. The parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement. The parties shall obtain and comply with any and all necessary permits, approvals, consents and notice from or to all applicable jurisdictions prior to commencing any work or action related to this Agreement.
20. CAPTIONS AND COUNTERPARTS. The captions in this Agreement are for convenience and reference only, and do not define, limit, or describe the scope or intent of this Agreement. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute one Agreement.
21. NO SEPARATE LEGAL ENTITY. This Agreement establishes a cooperative undertaking, and it is not the intention of the parties to create a new or separate legal entity by this Agreement. This Agreement does not establish or create a joint venture or partnership entity between the parties, and no party shall be responsible for the liabilities and debts of the other parties hereto.

22. INTEGRATED AGREEMENT. This agreement is one of the three ILAs between the parties that were negotiated and executed simultaneously. Neither party has relied on any representation other than those expressly set forth in the three ILAs in entering this Agreement.
23. NEUTRAL AUTHORSHIP. Each of the terms and conditions of this Agreement have been reviewed and negotiated with resort to legal counsel, and represents the combined work product of the parties hereto, and this Agreement shall not interpreted for or against any party hereto. The parties represent that they have had a full and fair opportunity to seek legal advice with respect to the terms of this Agreement, and have either done so or have voluntarily chosen not to do so. The parties represent and warrant that they and their authorized representatives executing this Agreement have fully read this Agreement, that they understand its meaning and effect, and that they enter into this Agreement with full knowledge of its terms.
24. FURTHER ACTS. The parties agree to take such further actions and to execute documents as in their reasonable judgment may be necessary or desirable in order to carry out the terms of, and complete the transactions contemplated by, this Agreement.
25. FILING. A copy of this Agreement shall be filed with the Skagit County Auditor or, alternatively, listed by subject on the City's web site or other electronically retrievable public source.
26. AMENDMENT. This Agreement may not be amended except by an agreement in writing executed by both the City and the District.

[signature pages to follow]

DATED this ____ day of _____, 2017.

**CENTRAL SKAGIT RURAL PARTIAL
COUNTY LIBRARY DISTRICT**

Mary Alice Grobins, Chair

DATED this _____ day of _____ 2017

CITY OF SEDRO-WOOLLEY

Mayor Keith L. Wagoner

Attest:

Patsy Nelson, Finance Director

Approved as to form:

Eron Berg, City Attorney