

REGIONAL CENTER INTERLOCAL AGREEMENT
Between the Kitsap Public Facilities District and Kitsap County

This **REGIONAL CENTER INTERLOCAL AGREEMENT** (the “Agreement”) is made pursuant to chapter 39.34 RCW between Kitsap County, a political subdivision of the State of Washington operating under Chapter 36 RCW (“County”), and the Kitsap Public Facilities District, a Washington special purpose district operating under RCW 36.100 (the “District”).

WHEREAS, pursuant to RCW 36.100.030(1) and RCW 35.57.20, the District is authorized to acquire, construct, own, remodel, maintain, equip, repair, and operate a regional center, and pursuant to chapter 36.100.030(2), the District may enter into interlocal agreements with other public agencies to operate such facilities. For purposes of this Agreement, “regional center” means special event center and recreation, convention and conference facilities, serving a regional population constructed after July 25, 1999, at cost of at least ten million dollars.

WHEREAS, pursuant to RCW 82.14.390, the District is entitled to receive certain local sales taxes which the District may use for the development of qualifying regional centers.

WHEREAS, the District believes it has the financial capacity to support the development of one or more new regional centers in Kitsap County and has requested proposals from public agencies for new regional centers in Kitsap County.

WHEREAS, the County has proposed a project which qualifies as a regional center.

WHEREAS, the District Board has completed an evaluation and review process of seven (7) applications for new regional centers and has initially determined to proceed with further review for possible funding with several applicants.

WHEREAS, the District anticipates collaborating with the County on the development of the Port Gamble Heritage Park (the “Project”), where the District’s primary role would be to provide funding to create public benefits for Kitsap County. The Project will include, as primary features, a mountain bike ride park, the regional Sound to Olympics Trail, parking areas, bathrooms and other park and trail amenities and a master plan assessing opportunities for economic development further leveraging the Park’s assets.

WHEREAS, the District has not committed to an amount or timing of funding, but desires to work collaboratively with the County in furtherance of the development of the Project.

WHEREAS, District funding is subject to an independent financial feasibility review prior to the issuance of any indebtedness or the long-term lease, purchase, or development of a regional facility pursuant to RCW 36.100.025.

NOW, THEREFORE, in consideration of the mutual obligations and benefits herein, the parties agree as follows:

1. **Purpose of Agreement.** The purpose and intent of this Agreement is for the County and District to collaborate on the feasibility of the Project utilizing County property and funds in part and District funds in part. The County project is more fully described in Exhibit A (Project Summary/Description).

2. **County Funding Request.** The County has requested funding in the amount of \$1,697,556 for the following purposes: developing a master plan/feasibility study, constructing a mountain bike ride park, completing design and permitting of the Sound to Olympics Trail and installing parking, bathrooms and other amenities related to the ride park and STO Trail. A full schedule and cost estimates for the County's funding request for years 2019 through 2021 appear in Exhibit B. Any funding considerations for years 2022 and beyond will require an amendment to this Agreement.

3. **County Obligations.** The County shall serve as the administrator for the Project and undertake the following tasks (the "Agreement Tasks"), as set forth in Exhibit "B" for years 2019 through 2021. Any County obligations for years 2022 and beyond will require an amendment to this Agreement. In addition, the County shall undertake the following tasks:

3.1 **Contract Administration.** The County shall be responsible for all aspects of the contract administration for the Agreement Tasks, which shall include, but not be limited to, advertising, bidding, awarding, and monitoring the contract(s), as generally required by any applicable law or regulation.

3.2 **Reporting.** The County shall regularly (not less than monthly) report to the District the progress of the County's obligations under this Agreement.

3.3 **Recognition.** The County shall publicly recognize the District's contribution to the Project in a manner to be agreed upon. The District may require some identification of the Project as "Regional Center" or "Special Event Center."

4. **The District's Obligations.** The District shall fund the tasks set forth in Exhibit "B" in an amount not to exceed \$1,697,556 for years 2019 through 2021. Any District obligations for funding in years 2022 and beyond will require an amendment to this Agreement.

5. **Process for Payment.**

5.1 **Establish Account.** The County shall establish an account, separate from any other County account to hold the funds deposited by the District for the purposes of this Agreement. Funds from the District shall not be commingled with other general accounts of the County.

5.2 **Advance Deposits.** The District may, but is not required to, pre-pay the County for each of the Agreement Tasks and subtasks, where applicable, before the County contracts with the consultant/service provider that will perform the particular task.

5.3 **Use of Funds.** The funds from the District shall solely be used for the payment of invoices for the Agreement Tasks and no other purposes. The County may not reimburse itself for any of its expenses from the funds on deposit.

5.4 **Release of Funds.** The County shall only release funds for the Agreement Tasks upon receipt of invoices for work performed, which work complies with the terms and conditions of the contracts for the Agreement Tasks. Further, the County shall notify the District of any proposed payment for review and consent, not to be unreasonably withheld or delayed.

5.5 **Increase in Consultant Contract Amounts.** The County will promptly inform the District if any of the consultants inform the County that the consultant/service provider is proposing an increase in a contract sum. The District shall, in its sole discretion, determine if the District's contribution to the contract sum should be increased.

5.6 **Refund of District Funds.** The County shall not be required to reimburse the District for the funds transmitted to the County that are either (i) paid to a consultant/service provider; or (ii) committed to be paid to a consultant/service provider pursuant to a valid contract between the County and that consultant/service provider. Otherwise, unused funds shall be reimbursed to the District.

5.7 **Final Accounting.** Within thirty days of the completion of the Assignment Tasks, the County shall provide a final written accounting of the District funds.

5.8 **Property.** All real or personal property acquired, used, or held in connection with the Project shall be owned solely by the County except as provided in Section 5.6 of this Agreement.

6. **No Continuing Obligation.** Although the parties contemplate development of the Project will be phased, consisting of five stages described in Exhibit A, nothing in this Agreement should be construed or interpreted as a commitment by the District to fund beyond the Cost Estimate appearing in Exhibit B for years 2019-2021.

7. **Notice and Project Coordinators.** The following individuals are the Project Coordinators and official contacts for County and the District. Any notice, request, approval, direction, invoice, statement, or other communication which may, or are required to be given under this Agreement shall be in writing and shall be deemed to have been given if hand delivered, sent by a nationally recognized overnight delivery service, or if deposited in the U.S. mail and sent by certified mail, return receipt requested, postage prepaid to the Project Coordinators:

For County: Eric Baker
Policy Manager
Kitsap County
614 Division Street MS-4
Port Orchard, WA 98366
Phone: 360-337-4495
Email: ebaker@co.kitsap.wa.us

For the District: Michael Walton
Executive Director
Kitsap Public Facilities District
9230 Bay Shore Drive NW, Suite 101
Silverdale, WA 98383
Phone: 360-698-1885
Email: mwalton@kitsap-pfd.org

All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

8. **Non-Assignability.** Neither party may assign any interest in this Agreement and shall not transfer any interest in this Agreement without the prior written consent of the other party.

9. **Independent Governments – No Liability.** Each party is and shall remain an independent government. This Agreement does not create a partnership or other similar arrangement. The parties shall not be liable for the acts or omissions of the other party or their respective public officials, employees, or agents.

10. **Term of Agreement.** Except as may otherwise be stated herein, the term of this Agreement shall commence upon execution by both parties and shall continue until December 31, 2021. This Agreement shall be reasonably extended by the parties as may be necessary to complete the Assignment Tasks, as the parties otherwise agree.

10.1 **Early Termination – Nonpayment.** Notwithstanding the foregoing, this Agreement is contingent upon funding from the District. In the event that the District's expected funding payable to County hereunder is withdrawn, reduced, limited, or not received after the effective date of this Agreement, this Agreement may be terminated

by County by delivering thirty (30) days written notice to the District. The termination notice shall specify the date on which the Agreement shall terminate.

10.2 **District Early Termination.** The District may terminate this Agreement at any time by delivering thirty (30) days written notice to County, subject to the payment obligations set forth in Section 5.6 of this Agreement; i.e., pay for all work performed or in progress at the time of the notice.

11. **Amendment.** No modification or amendment of this Agreement may be made except by a written document signed by both parties.

12. **Counterparts and Electronic Transmission.** This Agreement may be signed in counterparts. Electronic transmission of any signed original document, and retransmission of any signed electronic transmission shall be the same as delivery of an original document.

13. **Governing Law.** This Agreement, and the right of the parties hereto shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, jurisdiction and venue shall lie exclusively in Kitsap County, Washington.

14. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

15. **Interpretation.** Each party participated in this Agreement and has had this Agreement reviewed by legal counsel. Therefore, any language herein shall not be construed against either party on the basis of which party drafted the particular language.

16. **True and Full Value.** The County and the District have each independently determined as to itself that (i) it has the authority to enter into this Agreement and (ii) the promises and covenants received from the other party represent “true and full value” received by it pursuant to RCW 43.09.210.

17. **Survivability.** All obligations contained herein shall survive termination until fully performed.

18. **Entire Agreement.** This Agreement, including all predicate paragraphs and exhibits which are incorporated into this agreement, contains all of the understandings between the parties. Each party represents that no promises, representations, or commitments have been made by the other as a basis for this Agreement, which have not been reduced to writing herein. No oral promises or representations shall be binding upon any party whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a written modification of this Agreement executed by both parties.

IN WITNESS WHEREOF, the County and the District have executed this Agreement as of the date last written below.

Dated this ____ day of _____, 2020

Dated this ____ day of _____, 2020

KITSAP PUBLIC FACILITIES DISTRICT

**BOARD OF COMMISSIONERS
KITSAP COUNTY, WASHINGTON**

Daron Jagodzinske, Chair

Charlotte Garrido, Chair

Rob Gelder, Commissioner

Edward E. Wolfe, Commissioner

ATTEST:

Dana Daniels, Clerk of the Board

EXHIBIT "A"

PROJECT SUMMARY/DESCRIPTION

EXHIBIT "B"

COUNTY AGREEMENT TASKS
(With budgets and timing schedule)