

**INTERLOCAL AGREEMENT REGARDING
ADDITIONAL FUNDING FOR THE DEVELOPMENT AND OPERATION OF
THE KITSAP FAIRGROUNDS & EVENT CENTER**

This Interlocal Agreement ("Agreement") is entered into as of Nov 14, 2005, between Kitsap County ("the County"), a municipal corporation organized and operating pursuant to the Constitution and laws of the State of Washington; and the Kitsap Public Facilities District ("the PFD"), a municipal corporation organized and operating under the laws of the State of Washington, as established by the County, pursuant to Chapter 36.100 RCW.

RECITALS

WHEREAS, the County Commissioners established the PFD pursuant to Chapter 36.100 RCW and Resolution No. 093-2000, to perform any function or combination of functions authorized by that chapter; and

WHEREAS, the PFD is authorized by RCW 36.100.030 to acquire, construct, own, remodel, maintain, equip, re-equip, repair, and operate "regional centers," as defined in RCW 35.57.020; and

WHEREAS, RCW 35.57.020 defines "regional center" to include special event centers and facilities available to the public and used for community events, sporting events, trade shows, and artistic, musical, theatric, or other cultural exhibitions, presentations, or performances, together with related parking facilities, so long as such facilities serve a regional population, and are constructed, improved, or rehabilitated after July 25, 1999, at a cost of at least \$10,000,000 (Ten Million Dollars); and

WHEREAS, RCW 82.14.390 authorized the PFD to impose a 0.033% sales and use tax (the "Sales Tax"), which operates to shift a share of the State's sales and use tax revenues to public facilities districts at no additional cost to taxpayers; and

WHEREAS, the PFD has imposed the Sales Tax authorized by RCW 82.14.390; and

WHEREAS, the Sales Tax may be applied to acquire, remodel, finance, and operate a regional special events center as defined in RCW 35.57.020; and

WHEREAS, the PFD and the County in 2002 decided to cooperate in establishing a "regional center" as defined in RCW 35.57.020; and

WHEREAS, the PFD and the County decided to establish this regional center at the Kitsap County Fairgrounds and Ball Fields Complex, encompassing 129 acres; and

WHEREAS, the PFD and the County implemented their decision to establish this regional center by entering into that certain Interlocal Agreement Regarding Funding, Development, and Operation of the Kitsap Special Events Center, dated March 25, 2002 ("the Original ILA"); and

COPY

WHEREAS, the Original ILA created the Kitsap Special Events Center, the name of which was later changed to the "Kitsap Fairgrounds & Event Center," and

WHEREAS, the PFD and the County agreed in the Original ILA to construct certain improvements at the Kitsap Fairgrounds & Event Center, which improvements included, but were not limited to, improvements to the Kitsap Pavilion, the community baseball fields, youth athletic fields, event camping, parking facilities, pedestrian circulation facilities, the food service building, and related improvements; and

WHEREAS, the PFD and the County agreed in the Original ILA that the improvements at the Kitsap Fairgrounds & Event Center might be built in phases; and

WHEREAS, the PFD agreed in the Original ILA to provide \$4,200,000 (Four Million, Two Hundred Thousand Dollars) of financing toward the cost of certain improvements to be made at the Kitsap Fairgrounds & Event Center; and

WHEREAS, the Original ILA between the PFD and the County was later amended so that the PFD increased its contribution to the cost of the improvements at the Kitsap Fairgrounds & Event Center to \$4,325,000 (Four Million, Three Hundred Twenty-Five Thousand Dollars); and

WHEREAS, the County has substantially completed the initial improvements to the Kitsap Fairgrounds & Event Center called for in the Original ILA, as amended; and

WHEREAS, the PFD has collected more Sales Tax than had been originally projected when the Sales Tax was imposed as authorized by RCW 82.14.390; and

WHEREAS, the Original ILA contemplated the possibility of completing additional improvements to the Kitsap Fairgrounds & Event Center in the event additional funds became available and identified what those additional improvements would be on its attached Exhibit "A"; and

WHEREAS, the PFD is willing to provide additional funding for the construction of some of the additional improvements to the Kitsap Fairgrounds & Event Center as contemplated in the Original ILA ("the Additional Improvements"); and

WHEREAS, the County is willing to commit to the development, design, construction, equipment, operation, and maintenance of the Kitsap Fairgrounds & Event Center, and the Additional Improvements thereto; and

WHEREAS, the Additional Improvements to the Kitsap Fairgrounds & Event Center are within the scope of the parties' Original ILA;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

A G R E E M E N T

1. Purpose of Agreement.

The PFD and the County are entering into this Agreement pursuant to RCW 36.100.030 and RCW 39.34.030. The purpose of this Agreement is to set forth the rights and responsibilities of each of the parties with regard to the funding, development, and operation of the Additional Improvements to the Kitsap Fairgrounds & Event Center. This Agreement supplements, but does not replace, that certain Interlocal Agreement Regarding Funding, Development, and Operation of the Kitsap Special Event Center dated March 25, 2002, as amended by Amendment "A" dated October 14, 2002, and the Second Amended and Restated Interlocal Agreement Regarding Funding, Development, and Operation of the Kitsap Special Event Center dated May 19, 2003; provided, however, that in the event a specific provision of this Agreement conflicts with the original Interlocal Agreement Regarding Funding, Development, and Operation of the Kitsap Special Event Center or any amendment thereto, the terms of this Agreement shall control.

2. Additional Improvements.

The PFD and the County have agreed that one of the needed Additional Improvements is the purchase and installation of new stadium seating, which improvement has already been purchased and installed by the County. The PFD and the County have also agreed that one of the needed future Additional Improvements is the paving of the Gordon Field parking lot. The PFD and the County agree to work cooperatively to identify other Additional Improvements that are to be constructed under this Agreement. The PFD and the County agree that the County shall be responsible for the development, design, calling for bids, and construction of Additional Improvements to the Kitsap Fairgrounds & Event Center.

3. Funding.

The PFD and the County are prepared to fund Additional Improvements, which include the stadium seating and paving the Gordon Field parking lot, with a current cost of approximately \$1,050,000 (One-Million Fifty-Thousand Dollars). The cost of constructing these Additional Improvements shall be borne by the County and the PFD as set forth below. The PFD agrees to make twenty (20) annual payments of \$24,000 (Twenty-Four Thousand Dollars) to the County. The first payment shall be made within 30 (Thirty) days after the execution of this Agreement by both parties. Thereafter, the PFD shall make equal payments of \$12,000 (Twelve Thousand Dollars) to the County on June 1 and December 1 of each year. The PFD's payments represent its contribution to both the principal and interest costs of the Additional Improvements and have a present value of approximately \$300,000 (Three-Hundred Thousand Dollars). To pay a portion of the cost of the Additional Improvements, the County shall apply interest earned on the bond proceeds used to fund the initial improvements to the Kitsap Fairgrounds & Event Center called for in the Original ILA in the approximate amount of \$250,000 (Two Hundred Fifty Thousand Dollars). The County agrees to pay the balance of the \$1,050,000 (One-Million Fifty-Thousand Dollars) cost of the Additional Improvements from whatever sources it deems appropriate. In the event the cost of

any or all of the Additional Improvements exceeds the parties' current estimate of the cost of each of the improvements, the County may elect to either fund the additional expense of each of the Additional Improvements, or elect not to fund and construct any or all of the Additional Improvements. In such an event, the PFD's obligation to fund the Additional Improvements shall be reduced pro rata based upon the original estimated cost of constructing the Additional Improvements. The PFD may then allocate such uncommitted funds to any of its other obligations, projects, or expenses that it, in its sole discretion, decides to fund.

4. **Lead Agency Responsibilities.**

The County, on behalf of the PFD and itself, will (i) be the agency with the primary responsibility for the development of the Additional Improvements to the Kitsap Fairgrounds & Event Center; (ii) finance (in conjunction with the PFD), acquire, design, construct, own, operate, and maintain the Additional Improvements to the Kitsap Fairgrounds & Event Center; and (iii) otherwise administer the development, operation, and maintenance of the Kitsap Fairgrounds & Events Center for the benefit of itself, the PFD, and the residents of the County.

5. **Reporting Requirements.**

The County shall keep the PFD informed as to the status of the design, bidding, construction, funding, and completion of each major component of the Additional Improvements. As they are developed, the County shall provide preliminary schematic and design development documents, drawings, plans, and specifications to the PFD for its review and comment. When the final design documents, drawings, plans, and specifications for each of the Additional Improvements are completed, such design documents shall be submitted to the PFD for its review and comment; which submission shall be made before the County puts the construction of one or all of the Additional Improvements out to bid. The PFD shall also be notified when the County has awarded any bid for the construction of one or all of the Additional Improvements; and, further, shall provide to the PFD a copy of each contract entered into by the County with regard to each major component of the Additional Improvements. Once construction of each major component of the Additional Improvements is under way, the County shall provide the PFD with a monthly status report in a mutually acceptable form regarding each major component of the Additional Improvements. At a minimum, the monthly status report form shall include information regarding current cost projections and costs incurred per budget line item. This monthly status report shall be due by the 15th of each month and shall reflect costs incurred in the previous month. In the event the County fails to provide any of the required information or documents called for above, the PFD may withhold any of the payments called for in Paragraph 3 above, until such time as the County has provided the required information or documents to the PFD.

6. **Administrator.**

This Agreement does not establish or create a separate legal entity or a joint board. The County shall be the administrator (within the meaning of RCW 39.34.030(4)) of this cooperative undertaking for the provision and operation of the Kitsap

Fairgrounds & Event Center including any of the following: acquiring, designing, constructing, owning, remodeling, maintaining, equipping, re-equipping, repairing, financing, managing, scheduling, and operating the Additional Improvements as provided for in this Agreement.

7. **Non-Discrimination.**

The County shall administer the provision and operation of the Kitsap Fairgrounds & Event Center, including the Additional Improvements, in such a manner as to provide residents of the County with access to the Kitsap Fairgrounds & Event Center without regard to their place of residence. The County shall not discriminate with respect to fees charged, conditions for use, attendance, or other access to the Kitsap Fairgrounds & Event Center on the basis of such residency.

8. **Insurance.**

The County agrees to acquire and maintain insurance on the Kitsap Fairgrounds & Event Center, including the Additional Improvements, against risks, accidents, or casualties, at least to the extent that insurance is usually carried by public entities operating like properties and at least to the extent that such policies are available at reasonable cost, to protect the Kitsap Fairgrounds & Event Center against loss. In the event of any loss or damage, the County will promptly apply the proceeds of any insurance policy to the extent necessary to repair or replace (or cause the repair or replacement of) the damaged portion of the insured property to the extent economically viable. Insurance described in this Paragraph shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the County, or in the form of self-insurance by the County. The County shall establish such funds or reserves that it deems are necessary to provide for its share of any such self-insurance.

9. **Environmental Law Compliance.**

The County shall be responsible for complying with all environmental laws applicable to construction of the Additional Improvements at the Kitsap Fairgrounds & Event Center. This includes, but is not limited to, County regulations, the State Environmental Policy Act ("SEPA"), CERCLA (42 U.S.C. § 9603), MTCA (RCW 70.105(D)), and the Clean Water Act (33 U.S.C. § 1321). To the extent required by WAC 197-11-944, the County shall be the nominal lead agency, whereby the County shall be responsible for complying with the duties of the lead agency under all applicable SEPA rules.

10. **Maintenance, Operation, and Legal Compliance.**

The County shall manage, operate, and maintain the Kitsap Fairgrounds & Event Center, including the Additional Improvements, at all times in a safe and clean manner. The County shall provide (either directly or by contract) all management, supervision, personnel, materials, equipment, services, and supplies necessary to operate, maintain, and repair the Kitsap Fairgrounds & Event Center and shall take all reasonable precautions to prevent damage, injury, or loss by reason of or related to the

construction, operation, and maintenance of the Additional Improvements to the Kitsap Fairgrounds & Event Center to any person or property. The County shall comply with all applicable laws and ordinances in constructing, operating, and maintaining the Additional Improvements to the Kitsap Fairgrounds & Event Center. The County shall undertake all modifications to the Kitsap Fairgrounds & Event Center required to comply with all applicable laws, regulations, judgments, and orders.

11. **Appointment as Agent.**

Except with respect to the express undertakings of the PFD in this Agreement, the PFD hereby appoints the County as its agent with respect to the provision, construction, and operation of the Kitsap Fairgrounds & Event Center, including the Additional Improvements, but not otherwise, with full power and authority in connection therewith to make all management and operational decisions and take all actions necessary to carry out this joint undertaking without further need or requirement to consult with or obtain approval from the PFD in connection with matters relating to the Kitsap Fairgrounds & Event Center.

12. **County Indemnity Obligations.**

The County shall defend, indemnify, and hold the PFD, and its respective elected officials, officers, employees, and agents ("PFD Indemnitees") harmless from all claims, regardless of the nature of the claim, arising directly or indirectly from the planning, permitting, construction, maintenance, and operation of the Kitsap Fairgrounds & Event Center, including the Additional Improvements, except for claims arising from the sole negligence of any PFD Indemnitee. In the case of concurrent negligence of the County and a PFD Indemnitee, each party shall, unless otherwise agreed, defend itself and hold the other party harmless from their proportionate share of the resulting damages. This indemnity and hold harmless obligation shall extend to all claims of whatsoever kind and nature. It shall include attorneys' fees, expert witness fees, court costs, arbitration costs, administrative fines and penalties, and any other direct expense that is a direct consequence of a breach of any provision of this Agreement or any negligent act or failure to act. It shall include the duty to promptly accept tender of defense and provide defense to the PFD Indemnites.

13. **PFD Indemnity Obligations.**

The PFD shall defend, indemnify, and hold the County, and its respective elected officials, officers, employees, and agents ("County Indemnites") harmless from all claims, regardless of the nature of the claim, arising directly or indirectly from any breach by the PFD of this Agreement or any negligent acts of the PFD for which the PFD is solely responsible. This indemnity and hold harmless obligation shall extend to all claims of whatsoever kind and nature. It shall include attorneys' fees, expert witness fees, court costs, arbitration costs, administrative fines and penalties, and any other direct expense that is a direct consequence of a breach of any provision of this Agreement or any negligent act or failure to act. It shall include the duty to promptly accept tender of defense and provide defense to the County Indemnites.

14. Interlocal Cooperation Act Provisions.

The parties acknowledge that they have entered into this Agreement pursuant to the express authority granted to them by RCW 36.100.030(2) and RCW 36.01.010; pursuant to RCW 39.34.100, the powers and authority conferred by the Interlocal Cooperation Act (Chapter 39.34 RCW) are supplemental to powers or authority conferred by RCW 36.01.010 and RCW 36.100.030(2); and nothing contained in the Interlocal Cooperation Act limits the authority or power of either party to contract pursuant to RCW 36.01.010 and RCW 36.100.030(2). To avail themselves of the supplemental powers and authority granted by the Interlocal Cooperation Act, the parties agree that:

- a. No separate legal or administrative entity within the meaning of RCW 39.34.030(3)(b) or "joint board" within the meaning of RCW 39.34.030(4)(a) is created by this Agreement;
- b. The County's Administrator, is appointed as the "administrator" within the meaning of RCW 39.34.030(4)(a) and is responsible for administering the County's rights and duties set forth in this Agreement, and the PFD's president is appointed as the "administrator" within the meaning of RCW 39.34.030(4)(a) and is responsible for administering the PFD's rights and duties set forth in this Agreement;
- c. Paragraphs 2, 3, and 4 of this Agreement set forth the manner in which property is to be acquired, held, and disposed of under this Agreement, as required by RCW 39.34.030(3)(e) and RCW 39.34.030(4)(b); and
- d. The County will, pursuant to RCW 39.34.040, cause this Agreement to be filed with the Kitsap County Auditor immediately upon the full execution hereof by the parties.

15. Available Legal Remedies.

The parties have the right to exercise any and all of the following remedies, singly or in combination, in the event that a party violates any material provision of this Agreement.

- a. Commence an action for equitable or other relief, including injunctive relief, or
- b. Seek a writ of mandamus to compel performance, or
- c. Commence an action seeking specific performance of any provision that reasonably lends itself to such remedy.

16. **Procedure in the Event of Default.**

Before exercising any of the available legal remedies the party alleging a breach ("Party") shall follow the procedure below.

- a. Notice of Violation. In the event that the Party believes that the other party has not complied with the terms of this Agreement and is a defaulting party ("Defaulting Party"), the Party shall notify the Defaulting Party in writing, by certified mail, of the nature of the alleged non-compliance.
- b. The Defaulting Party's Right to Cure or Respond. The Defaulting Party shall have ten (10) days from the receipt of notice described above, to (a) respond to the Party, or (b) to cure such default or, in the event that by nature of the default such default cannot be cured with the ten (10) day period, initiate steps to remedy such default as promptly as possible. The duty to cure includes the duty to cure all harms caused by the acts or omissions of the Defaulting Party. At the end of the ten (10) day period, the Defaulting Party shall notify the Party, in writing, of the steps it has taken to cure the default, if any; if the cure is not complete, the reason it is not complete and the projected date for completion; and if the default is disputed, the complete basis for that contention.
- c. If the Party determines that the Defaulting Party did not cure or initiate steps to cure to the Party's satisfaction, after the notice required herein was provided, then the Party may exercise its available remedies.

17. **Supplemental Documents.**

The parties agree to complete and execute all supplemental documents necessary or appropriate to implement fully the terms of this Agreement.

18. **Duration of Agreement.**

This Agreement shall continue in full force and effect until the soonest of the time that the parties have fully performed their respective obligations under this Agreement, that the PFD is no longer legally entitled to collect Sales Tax, or that this Agreement has been terminated by agreement of the parties.

19. **Governing Law; Venue.**

This Agreement is governed by and shall be construed in accordance with the substantive laws of the State of Washington and shall be liberally construed so as to carry out the purposes hereof. Except as otherwise required by applicable law, any action under this Agreement shall be brought in the Superior Court of the State of Washington in and for Kitsap County.

20. **Notices.**

All notices and other written communications required by this Agreement shall be in writing and, except as expressly provided elsewhere in this Agreement, shall be deemed to have been given at the time of delivery if personally delivered, or at the time of mailing if mailed by first class, postage pre-paid and addressed to the party at its address as stated below or at such address as any party may designate at any time in writing.

To PFD: Walter S. Draper IV, Chair
 Kitsap Public Facilities District
 1200 N.W. Fairgrounds Road
 Bremerton, WA 98311

To County: Director of Administrative Services
 Kitsap County
 614 Division Street, MS 7
 Port Orchard, WA 98366

21. **Severability.**

It is the intent of the parties that if any provision of this Agreement or its application is held by a court of competent jurisdiction to be illegal, invalid or void, the validity of the remaining provisions of this Agreement or its application to other entities, or circumstances shall not be affected. The remaining provisions shall continue in full force and effect. The rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular invalid provision. However, if the invalid provision or its application is found by a court of competent jurisdiction to be substantive and to render performance of the remaining provisions unworkable and non-feasible, and is found to seriously affect the consideration and/or is inseparably connected to the remainder of this Agreement, then the entire Agreement shall be null and void.

22. **Complete Agreement.**

This Agreement, together with that certain Interlocal Agreement Regarding Funding, Development, and Operation of the Kitsap Special Event Center dated March 25, 2002, as amended by Amendment "A" dated October 14, 2002, and the Second Amended and Restated Interlocal Agreement Regarding Funding, Development, and Operation of the Kitsap Special Event Center dated May 19, 2003 represent the entire agreement between the parties concerning the Kitsap Fairgrounds & Event Center. This Agreement may not be amended except as provided herein.

23. **Bond Covenants.**

Nothing in this Agreement is intended to affect or in any way modify the bond covenants previously made by the County in that certain Interlocal Agreement Regarding Funding, Development, and Operation of the Kitsap Special Event Center dated March 25, 2002, as amended by Amendment "A" dated October 14, 2002, and the

Second Amended and Restated Interlocal Agreement Regarding Funding, Development, and Operation of the Kitsap Special Event Center dated May 19, 2003.

24. **Modification.**

No change, termination or attempted waiver of any of the provisions of this Agreement shall be binding on any of the parties unless executed in writing by authorized representatives of each of the parties. This Agreement shall not be modified, supplemented, or otherwise affected by the course of dealings between the parties.

25. **Benefits.**

This Agreement is entered into for the benefit of the parties to this Agreement only and shall confer no benefits, direct or implied, on any third persons.

26. **Assignment.**

The rights granted by this Agreement may not be assigned without the written consent of all the parties hereto.

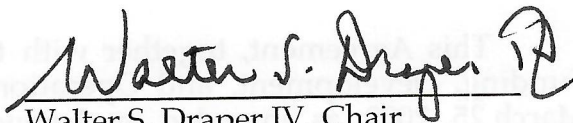
27. **Execution in Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

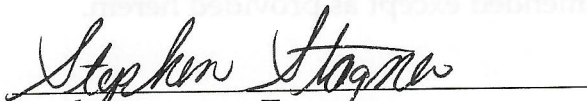
28. **Disclaimer With Respect to Loans and the PFD.**

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

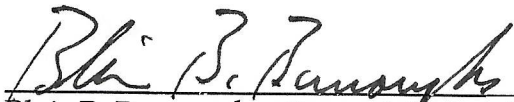
KITSAP PUBLIC FACILITIES
DISTRICT


Walter S. Draper IV, Chair


Attest:


Stephen Stagner, Treasurer

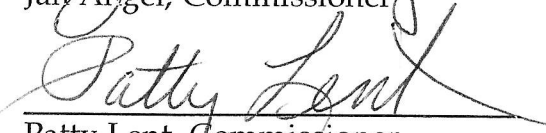
Approved as to form:


Blair B. Burroughs, General Counsel

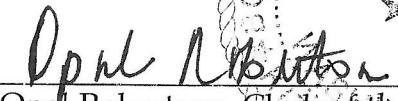
KITSAP COUNTY BOARD OF
COMMISSIONERS

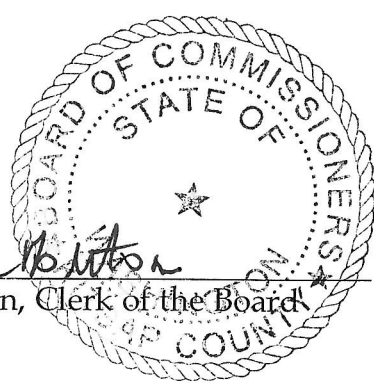

Chris Endresen, Chair


Jan Angel, Commissioner


Patty Lent, Commissioner

Attest:


Opal Robertson, Clerk of the Board

The seal is circular with a rope-like border. Inside the border, the words "BOARD OF COMMISSIONERS" are at the top, "STATE OF" is in the middle, and "KITSAP COUNTY" is at the bottom. A five-pointed star is in the center.

Approved as to form:

Kevin Howell, Deputy Prosecuting Attorney

