

REGIONAL CENTER INTERLOCAL AGREEMENT
Between the Kitsap Public Facilities District and the City of Port Orchard

This **REGIONAL CENTER INTERLOCAL AGREEMENT** (the “Agreement”) is made pursuant to Chapter 39.34 RCW between the City of Port Orchard, a Washington noncharter code city acting under Chapter 35A.12 RCW (“Port Orchard”), and the Kitsap Public Facilities District, a Washington special purpose district operating under Chapter 36.100 RCW (the “District”).

WHEREAS, pursuant to RCW 36.100.030(1) and RCW 35.57.020, 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 agencies to operate such facilities. For these purposes, “regional center” means a convention, conference, or special events center under RCW 35.57.020(1)(a), or any combination of facilities and related parking 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, Port Orchard has proposed a project (the “Project”), which qualifies as a regional center and which is more fully described in Attachment “A” (Project Summary), attached hereto and incorporated by reference.

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

WHEREAS, the District anticipates collaborating with Port Orchard on the development of a regional center, specifically, The South Kitsap Special Events Center, where the District’s primary role would be to provide funding to create public benefits for Kitsap County.

WHEREAS, the District and Port Orchard are committed to undertaking their respective tasks in the “Agreement Tasks” attached hereto as Attachment “B” and incorporated by reference.

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 Port Orchard and the District to collaborate efficiently and effectively in order for the parties to determine the feasibility of the Project and, if feasible, construct the Project with funds from Port Orchard in part and from the District in part.

2. **Port Orchard Funding Request.** Port Orchard has requested funding in the amount of \$12,000,000.00 (Twelve Million Dollars) for the purposes more fully described in Attachment “A” and in accordance with the phasing in Attachment “B”.

3. **Port Orchard Obligations.** Port Orchard shall undertake the majority of the “Agreement Tasks”, as set forth in Attachment “B”. In addition, Port Orchard shall undertake the following:

3.1 **Contract Administration.** Port Orchard 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 RCW.

3.2 **Reporting.** Port Orchard shall regularly (not less than monthly) meet with the District to evaluate the progress of its Agreement Tasks.

3.3 **Timing of Agreement Tasks.** The anticipated timing of the Agreement Tasks is set forth in Attachment “B.”

3.4 **Ownership of Work Product and/or Intellectual Property.** [Reserved]

3.5 **Recognition.** Port Orchard 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 undertake the tasks set forth in Attachment “B” and shall undertake the following tasks:

4.1 **Contract Administration.** The District shall be responsible for all aspects on contract administration for the Market Analysis, Financial Viability, and Risk Assessment tasks described in Attachment “B”, including advertising, bidding, awarding, and monitoring.

4.2. **Funding.** The District shall fund the tasks set forth in Attachment “B” in an amount not to exceed \$12,000,000.00 (Twelve Million Dollars). The dollar amounts for each task listed in Attachment B are estimates for each project phase but may be shifted as needed, provided that funds allocated to Task 7 may not be used prior to proceeding with Task 7. In the event the funding remains from Tasks 1-6, these funds

may be spent on subsequent tasks. In the event the City proposes to shift or reallocate funds to different Tasks, it shall first provide written notice to the KPFD, who shall have a right of approval, not to be unreasonably withheld.

5. **Process for Payment.**

5.1 **Establishment of Account.** Port Orchard shall establish an account, separate from any other Port Orchard 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 Port Orchard.

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

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. Port Orchard may not reimburse itself for any of its expenses from the funds on deposit.

5.4 **Release of Funds.** Port Orchard 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, Port Orchard 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.** Port Orchard will promptly inform the District if any of the consultants/service providers inform Port Orchard 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.** Port Orchard shall not be required to reimburse the District for the funds transmitted to Port Orchard 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 Port Orchard and that consultant/service provider. Otherwise, unused funds shall be reimbursed to the District.

5.7 **Final Accounting.** Within thirty (30) days of the completion of the Assignment Tasks, Port Orchard shall provide a final written accounting of the District funds.

6. **Feasibility Assessment, Performance Requirements, Conditions/Contingencies/Checkpoints.** The District and Port Orchard are committed to funding the Project as set forth in this Agreement, subject to the following conditions:

6.1 Mutual Determination of Feasibility. See Attachment “B”, Task 1.

6.2. Independent Feasibility Review – Department of Commerce. Irrespective of the parties’ determination of feasibility as set forth above in Subsection 6.1, the District’s funding commitment is subject to the statutory independent feasibility review of RCW 36.100.025. While the parties may cooperate to coordinate the reviews contemplated by subsections 6.1 and 6.2, those reviews may be conducted at different times as necessary.

6.3 Availability of Funds. This Agreement is contingent upon funding from the District. In the event that the District’s expected funding payable to Port Orchard hereunder is withdrawn, reduced, limited, or not otherwise available after the effective date of this Agreement, this Agreement may be terminated by either party.

6.4 Port Orchard’s Performance of its Assigned Tasks. District funding is conditioned upon Port Orchard’s timely completion of its Assigned Tasks including, but not limited to, necessary property acquisition, obtaining necessary permits, and obtaining necessary funding in addition to the funding from the District.

6.5 Adoption of Operational Standards. Once the parties have determined that the Project meets applicable feasibility reviews, and before funding is committed for construction, the parties shall adopt a supplemental Interlocal Agreement addressing construction review and operational standards, replacement/reserve funding standards, reporting obligations, and any special standards applicable only to the Project, consistent with similar Interlocal Agreements with other regional center partners.

6.6 Process for Termination. In the event any of the required conditions are not satisfied, the Agreement may be terminated, by either party delivering thirty (30) days written notice to the other. The termination notice shall specify the date on which the Agreement shall terminate.

7. **Notice and Project Coordinators**. The following individuals are the Project Coordinators and official contacts for Port Orchard 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 Port Orchard: Robert Putaansu, Mayor
City of Port Orchard
216 Prospect Street
Port Orchard, WA 98366
Phone: 360-876-4407
Email: rputaansu@cityofportorchard.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 otherwise stated herein, the term of this Agreement shall commence upon execution by both of the parties and shall continue until the earlier of when all Tasks have been executed or December 31, 2025. This Agreement shall be reasonably extended by the parties as may be necessary to complete the Assignment Tasks, as the parties otherwise agree.

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.** Port Orchard 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, Port Orchard and the District have executed this Agreement as of the date last written below.

CITY OF PORT ORCHARD

KITSAP PUBLIC FACILITIES DISTRICT

By: Robert Putaansuu
Its: Mayor

By: Bill Mahan
Its: Vice-Chair

Date: _____

Date: _____

ATTACHMENT “A”

PROJECT SUMMARY/DESCRIPTION

The City of Port Orchard proposes to construct an approximately 24,000 square foot South Kitsap Community Events Center (SKCEC) building including adjacent site improvements. The SKCEC will provide a central gathering place and multi-purpose facility in downtown Port Orchard that will support a multitude of functions for local and regional use. The facility will house our Regional Library branch and support large events such as galas, community festivals, conferences, concerts, service group meetings and more. The project will also support the redevelopment of the shoreline area with pedestrian and water access. The facility will include a catering kitchen and other amenities to support events requiring food service. The project will serve as a centerpiece of a much larger redevelopment project that includes parking, office, commercial, retail, and residential development.

ATTACHMENT “B”
AGREEMENT TASKS – COMMUNITY EVENT CENTER (CEC)
CITY OF PORT ORCHARD – KITSAP PUBLIC FACILITIES DISTRICT
(WITH ESTIMATED BUDGETS AND TIMING)

The following tasks shall be undertaken by, and will be the responsibility of, the City of Port Orchard, unless otherwise noted.

Task 1. Feasibility Study. \$100,000 (Task 1.1 -1.3 by City, Task 1.4 by KPF) (9-12 months)

Task 1.1. City’s Consultant Selection – RCW 39.80 Architectural and Engineering Services – Request for Qualifications.

Deliverable 1.1. Professional services contract (phased for all tasks in this document, excluding 1.4 selection by KPF). The District reserves the right to review and approve the City’s selection of consultants, such approval not to be unreasonably withheld.

Task 1.2. Prepare draft management plan.

Deliverable 1.2. Draft Management Plan.

Task 1.3. Initiate public outreach, prepare draft concept plan and draft space programming.

Deliverable 1.3. Draft Concept Plan and Space Programming Report.

Task 1.4. Market Analysis, Financial Viability, and Risk Assessment in accordance with KPF guidelines (KPF to select).

Deliverable 1.4. KPF’s portion of the feasibility study report.

Task 2. Project Planning, Outreach, Design, and Cost Estimates. \$300,000 (6-9 Months)

Task 2.1. Review feasibility study report findings and finalize space programming for proposed CEC.

Deliverable 2.1. Evaluate and refine existing needs assessment and provide final programming for CEC building.

Task 2.2. Gather information and prepare preliminary technical reports to inform architectural and site design.

Deliverable 2.2. Phase 1 Environmental Assessment (and Phase 2 EA, if needed), Preliminary Stormwater Drainage Report, Preliminary Geotechnical Report, Biological Evaluation, Topographic Survey, Archeological and Cultural Resources Report including inadvertent discovery plan, Utilities Capacity Evaluation (water/sewer).

Task 2.3. Property Ownership.

Deliverable 2.3. Work with public entities to determine ownership of the CEC property and proposed building.

Task 2.4. Development of Design Alternatives.

Deliverable 2.4. Provide at least three Schematic Design (SD) alternatives and cost estimates for each alternative, and conduct public process to review and evaluate alternatives.

Task 2.5. Develop Preferred Alternative SD.

Deliverable 2.5. Based on feedback from the public and City Council and review of cost estimates, develop a preferred alternative SD and present to the City Council.

Task 2 City Council Action. City to review preferred alternative with public entities and decide whether to accept additional \$600,000 (estimated) for Task 3.

Task 3. Prepare 60% Design Development, Cost Estimates, and Shoreline Permit Submittal. \$600,000 (estimated) (9-12 Months)

Task 3.1. Prepare 60% Design Development (DD) plans and Shoreline Development Phasing Plan (SDPP).

Deliverable 3.1. 60% Design Development (DD) Plans for site improvements and building, finalize reports from Task 2.2. Develop SDPP [Phase 1 CEC building and landscape/hardscape, Phase 2 shoreline restoration, Phase 3 overwater structure(s)]. Finalize all technical reports. Prepare Environmental Checklist. Prepare Traffic Impact Analysis/Parking Analysis. Prepare complete application for Shoreline Substantial Development Permit (and Shoreline Variance if required).

Task 3.2. Cost Estimates.

Deliverable 3.2. Consultant to provide cost estimates for completion of plans, specifications and bid documents for three phases of project and for construction of each phase of project.

Task 3.3. Operations and Maintenance Costs and Responsibilities.

Deliverable 3.3. Determine estimated facility operating costs and tenant responsibilities. Work with partners to identify operational cost responsibilities.

Task 3 City Council Action: City to review plans and funding requirements with any project partners and decide whether to accept additional \$1,500,000 (estimated) for Tasks 4 and 5.

Task 4. Property Acquisition. \$1,000,000 (estimated)

Task 4.1. Acquire any needed property or easements.

Deliverable 4.1. Property or easements as needed.

Task 5. Shoreline Permits, 100% Ad Ready Construction Documents (PS&E) and Complete Applications for Development. \$500,000 (estimated) (6-12 months)

Task 5.1. Prepare Shoreline Substantial Development Permit (SSDP) application, submit, and provide support.

Deliverable 5.1. Attend meetings and provide support for (SSDP) application.

Task 5.2. Prepare 100% ad ready construction documents (PS&E) for each phase of the approved shoreline phasing plan (CEC, over water structures (such as a pier), Shoreline Restoration).

Deliverable 5.2. 100% ad ready construction documents (PS&E).

Task 5.3. Prepare complete applications for building permits, land disturbing activity permits (LDAP), and stormwater drainage permits (SDP). Prepare and file JARPA application.

Deliverable 5.3. Complete application submittal packages.

Task 5.4. Prepare plans for any offsite Improvements (if required under SEPA, SSDP, or as conditions of other permit approvals).

Deliverable 5.4. Provide permit application submittal packets for offsite improvements.

Task 5 City Council Action: City to review plans and funding requirements with project partners and decide whether to accept additional funds for Task 7. The City and its partners shall raise the remaining funds or secure commitments for the full funding of Task 7 prior to accessing additional KPFDF funds.

Task 6. Secure Funding for Construction and Term Financing – As an alternative to the KPFDF issuing bonds to cover the remaining \$9.5M commitment.

Task 6.1. KPFDF commits percentage of sales tax rebate revenue sufficient to fund required debt service coverage based on issuer's credit rating.

Deliverable 6.1. KPFDF commitment of sales tax rebate revenue to satisfy bonding requirements.

Task 6.2. Identify debt issuing entity.

Deliverable 6.2. City, County, or Port of Bremerton identified as debt issuer.

Task 6.3. Quantify debt service needs and costs based on borrowing entity and structure.

Deliverable 6.3. Construction draw schedule, term debt service schedule, interest costs and other financing costs.

Task 6.4. Define borrowing structure.

Deliverable 6.4. Define timing and borrowing amounts needed to fund construction, needed amortization of term financing and any pledges to enhance credit of debt issuance to reduce interest costs.

(Note: A binding commitment of sales tax rebate revenue will be necessary to quantify the amount of debt that can be issued. This amount should be set based on estimated required debt service coverage plus some allowance for changes in interest rates from current rates. Should the borrower require less than the committed amount, the commitment amount shall then be reduced to match the final required debt service coverage.)

Task 6.5. Borrowing entity secures financing at lowest true interest cost (TIC) available in the market.

Deliverable 6.5. Borrowing entity issues debt or obtains binding commitment for debt placement.

Comment: Borrower should evaluate either public debt issuance or commitment from private purchaser.

Task 7. CEC (excludes shoreline restoration and overwater structures) Project Management, Bid Support/Bid Award, Construction Administration/Construction Management, A&E Support, Construction. \$16,000,000 to \$20,000,000 (\$9,500,000 of Task 7 cost from KPF)

Task 7.1. Project management

Deliverable 7.1. Overall project management and oversight.

Task 7.2. Bid support/Bid award

Deliverable 7.2. A&E of record provides bid support (requests for information responses, construction document amendments, bid tabulations, etc.)

Task 7.3. Construction administration/Construction management

Deliverable 7.3. Daily inspection reports, documentation as required, scheduling, certified payrolls, progress billing approval, etc.)

Task 7.4. A&E support

Deliverable 7.4. A&E of record to provide technical assistance and direction during construction.

Task 7.5. CEC construction phase.

Deliverable 7.5. Construction contract.

Task 7.6. Miscellaneous.

Deliverables 7.6. Required connection fees, impact fees and permit fees paid. Construction staking, surveying, materials testing, special inspections provided.

Task 8. City to Complete Shoreline Restoration and Overwater Structures (No further KPF involvement)