

**THIRD AMENDED
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 non-charter 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 Port Orchard Community 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," as amended 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.

WHEREAS, the City and the District previously amended the Agreement on July 27, 2020, First Amendment, and further amended the Agreement on or about 8/27/2021 and now agree to a further amendment (“Third Amendment”) herein.

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 and has been awarded by the District, 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," as amended

3. **Port Orchard Obligations.** Port Orchard shall undertake the "Agreement Tasks", as set forth in Attachment "B", except for those assigned to the District in the attachment or this Agreement. 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. However, all invoiced or out-of-pocket expenses related to the project, except staff salary, benefits, and overhead costs, are eligible for reimbursement. This includes but is not limited to advertising, permitting, connection fees, testing, sub-consulting, and construction.

3.2 **Reporting.** Port Orchard shall regularly (not less than quarterly) meet with the District to evaluate the progress of its Agreement Tasks. The meetings can be held remotely as needed, consistent with applicable Open Public Meetings Act (OPMA) requirements.

3.3 **Timing of Agreement Tasks.** The anticipated timing of the Agreement Tasks is set forth in Attachment "B," as amended.

3.4 **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 (Task 6), 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 Accounting and Reporting. Port Orchard intends to utilize its existing accounts and fund structure to manage this project. However, Port Orchard will demonstrate the capability to separately account and report all activity, funds, and expenses related to this project. All funds related to this grant will be tracked under a separate project or account number and separately reported to the PFD.

5.2 Advance Deposits. The District agrees to provide an initial payment of \$200,000 ("Initial Payment") to Port Orchard for cash flow purposes to allow Port Orchard to begin the project and process invoices that are consistent with the approved contract and subtasks in a timely manner. Port Orchard will follow the identified procedures, for seeking reimbursements for expenses in this Agreement thereafter.

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 salary, benefits, and overhead but all other out-of-pocket expenses related to the project are eligible for reimbursement.

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 or as specified in Task 3 of attachment B, as amended. 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 promptly, 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 Port Orchard Matching Contributions. All accounting of staff time, Port Orchard

expenses including consultant fees, and Port Orchard contributions directly related to the project will be considered as part of the matching element of this project for District funding.

5.8 Final Accounting. Within sixty (60) 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 (as measured by the deadlines set out in Attachment “B” as amended) 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 is 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 Putaansuu, Mayor
City of Port Orchard
216 Prospect Street
Port Orchard, WA 98366
Phone: 360-876-4407
Email: rputaansuu@cityofportorchard.us

For the District: Russ Shiplet
Executive Director
Kitsap Public Facilities District
9230 Bay Shore Drive NW, Suite 101
Silverdale, WA 98383
Phone: 360-698 1885
Email: execdirector@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 may 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 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 that are incorporated into this Agreement, contains all 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 has 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

DocuSigned by:
Robert Putaansuu
F69E88B5D0E74EF...
By: Robert Putaansuu
Its: Mayor
Date: May 11, 2022

Daron Jagodzinske
By: Daron Jagodzinske
Its: Chair
Date: April 28, 2022

ATTEST:

Patrick Hatchel
By: Patrick Hatchel

APPROVED AS TO FORM:

Brian Lawler
Brian E. Lawler, District Legal Counsel



ATTACHMENT "A"

PROJECT SUMMARY/DESCRIPTION

The City of Port Orchard proposes to construct an approximately 24,000 square foot Port Orchard Community Events Center (POCEC) building including adjacent site improvements. The POCEC 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. Consultant Selection and Contract. \$0 (8 months (from December 2019))

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

Deliverable 1.1. Professional services contract. The consultant selection will be made for all project phases. The contract will be phased as each subsequent scope of work is developed based on the results of previous tasks. The contract(s) will be approved in phases. The District reserves the right to review and approve the City's selection of consultants, such approval not to be unreasonably withheld.

Task 2. Project Management, Planning, Outreach, Design, and Cost Estimates. \$400,000 (16 Months)

Task 2.1. Prepare draft management plan.

Deliverable 2.1. Draft Management Plan.

Task 2.2. Draft Goals and Objectives.

Deliverable 2.2. Establish written project goals and objectives for the SKCEC including user identification.

Task 2.3. Initiate public outreach, prepare draft concept plan, and draft space programming. Deliverable 2.3. Draft Concept Plan and Space Programming Report.

Task 2.4. Space Programming and Needs Assessment.

Deliverable 2.4. Preliminary Space Programming and Needs Report.

Task 2.5. Analyze sites and select preferred location.

Deliverable 2.5. Evaluate 3 sites for SKCEC construction consideration and prepare design schemes for each site. Prepare report with alternatives for City Council decision on site selection.

Task 2.6. Prepare Market Analysis, Financial Viability, and Risk Assessment for preferred site.

Deliverable 2.6. Feasibility Report.

Task 2.7. Perform additional public outreach for the preferred alternative.

Deliverable 2.7. Summary of public input.

Task 2.8. Finalize Space Programming and Needs Assessment.

Deliverable 2.8. Provide preliminary SKCEC monetary operational feasibility report and final space programming report.

Task 2.9. Preferred Alternative Site Analysis.

Deliverable 2.9. Prepare a technical report(s) to inform architectural and site design. This may include (depending on site selection) a geotechnical report, phase 2 environmental assessment, biological evaluation, topographic survey, archeological and cultural resources report, and shorelines mitigation and engineering report.

Task 2.10. Property Ownership/Master Plan.

Deliverable 2.10. Provide information to City consultant concerning the downtown master plan. Assist the City to determine SKCEC property and building ownership.

Task 2.11. Schematic Design.

Deliverable 2.11. Provide preliminary schematic design to 25%. Prepare project cost estimates and scope of work for subsequent task(s).

Task 2.12. City Council Action. City to review all deliverables and decide whether to accept an additional \$600,000 (estimated) for Task 4.

Task 3. Property Acquisition. \$1,000,000

Task 3.1. Acquire property from Kitsap Bank for the Project for \$2.5 M with funding of \$1.2 M from the Washington State Department of Commerce; \$1.0 M from the District; and \$300,000 from the City.

Deliverables for release of funding from District.

- Signed purchase and sale agreement with Kitsap Bank for a not to exceed the purchase price of \$2.5 M.
- Assignment of DNR lease from Kitsap Bank, including any assignment approval from DNR.
- Satisfaction of all conditions for \$1.2 M Department of Commerce Grant, as set forth on June 21, 2021. Email from Beth Robinson to Nick Bond, City of Port Orchard, a copy of which is attached hereto as Exhibit 1 to this Attachment B.
- Availability of at least \$300,000 in City funds.
- Establishment of closing escrow.
- NOTE: The District shall deposit funds into closing escrow with instructions that if for any reason, the purchase of the Kitsap Bank property does not close, the District funds are to be returned to the District.

Task 4. Prepare 60% Design Development, Cost Estimates, and Shoreline Permit Submittal. \$620,000 (estimated) (9-12 Months)

Task 4.1. Prepare 60% Design Development (DD) plans and Shoreline Substantial Development Permit Application (SSDP).

Deliverable 4.1. 60% Design Development (DD) including:

- Design Development Documents
- SEPA Checklist
- Traffic Impact and Parking Analysis
- Applications for Shoreline Substantial Development Permit (SSDP)
- Assessment of seawall adjacent to the CEC Site.

Task 4.2. 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 the project.

Task 4.3. 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 4.4 City Council Action: City to review plans and funding requirements with any project partners and decide whether to accept additional \$770,000 for Task 5.

Task 5. Shoreline Permits, 100% Ad Ready Construction Documents (PS&E) and Complete Applications for Development. \$770,000. (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, overwater 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 if required.

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 KPFDD funds.

Task 6. Market Analysis, Financial Viability, and Risk Assessment in accordance with KPFDD guidelines (KPFDD to select).

Deliverable 6. KPFDD's portion of the feasibility study report.

Task 7. Secure Funding for Construction and Term Financing - As an alternative to the KPFDD issuing bonds to cover the remaining \$9.21M commitment.

Task 7.1. KPFDD commits percentage of sales tax rebate revenue sufficient to fund required debt service coverage based on issuer's credit rating.

Deliverable 7.1. KPFDD commitment of sales tax rebate revenue to satisfy bonding requirements.

Task 7.2. Identify debt issuing entity.

Deliverable 7.2. City, County, or Port of Bremerton identified as debt issuer.

Task 7.3. Quantify debt service needs and costs based on borrowing entity and structure.

Deliverable 7.3. Construction draw schedule, term debt service schedule, interest costs and other financing costs.

Task 7.4. Define borrowing structure.

Deliverable 7.4. 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 7.5. Borrowing entity secures financing at lowest true interest cost (TIC) available in the market.

Deliverable 7.5. 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 8. 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 (\$ \$9,210,000 of Task 8 cost from KPFDD)

Task 8.1. Project management

Deliverable 8.1. Overall project management and oversight.

Task 8.2. Bid support/Bid award

Deliverable 8.2. A&E of record provides bid support (requests for information responses, construction document amendments, bid tabulations, etc.)

Task 8.3. Construction administration/Construction management

Deliverable 8.3. Daily inspection reports, documentation as required, scheduling, certified payrolls, progress billing approval, etc.)

Task 8.4. A&E support

Deliverable 8.4. A&E of record to provide technical assistance and direction during construction.

Task 8.5. CEC construction phase.

Deliverable 8.5. Construction contract.

Task 8.6. Miscellaneous.

Deliverables 8.6. Required connection fees, impact fees and permit fees paid. Construction staking, surveying, materials testing, special inspections provided.

Task 9. City to Complete Shoreline Restoration and Overwater Structures (No further KPFDD involvement)

**ATTACHMENT “B”
EXHIBIT 1**

June 21, 2021

Nick Bond
City of Port Orchard
210 Prospect Street
Port Orchard, WA 98366

Dear Nick:

Congratulations! Governor Inslee recently signed the 2021-23 State Capital Budget, which includes an appropriation of \$1,236,000.00 for the South Kitsap Community Events Center (Port Orchard) Project. The Department of Commerce, which will administer the project, will retain two percent (up to a maximum of \$50,000) to cover our administrative costs. Accordingly, your net grant award will be \$1,211,280.00.

Prior to receiving funds, your organization will need to fulfill the following requirements:

- Provide documentation of your organization’s financial ability to complete the project. All funds from sources other than the state must be expended, raised, or secured by documented pledges or loans.
- For nonprofit grantees, any property relevant to the project must be owned or secured by a long-term lease that remains in effect for a minimum of ten years following the final payment date. A lien on owned property is also required when receiving grants over \$500,000.
- Prevailing wages must be paid for all construction labor costs incurred as of May 18, 2021.
- Review by the Washington State Department of Archaeology and Historic Preservation and any affected Tribes (Governor’s Executive Order 21-02).
- Your project may also need to comply with the state’s green buildings standards (RCW 39.35D).

Please fill out the linked [Contract Readiness Survey](#) and submit at your earliest convenience. Also enclosed is a comprehensive set of contracting guidelines to assist you with the process. If you have any questions or need additional information, please contact your Project Manager, Beth Robinson, at (360) 549-6260 or Beth.Robinson@commerce.wa.gov.

Sincerely,

Beth Robinson
Program Manager
Department of Commerce
Local Government Division
Capital Programs Unit
PO Box 42525
Olympia WA 98504-2525
Cell Phone: 360-549-6260