

COPY

**Interlocal Agreement for Project Funding
For North Kitsap Regional Events Center Phase I and Phase II,
North Kitsap High School Stadium
And Strawberry Field Modernization Projects**

This Interlocal Agreement ("Agreement") is entered into as of May 21, 2007, among the North Kitsap School District, a school district duly organized and existing under the laws of the State of Washington ("NKSD") and the Kitsap Public Facilities District ("PFD"), a municipal organization duly organized and existing under the laws of the State of Washington, Kitsap County ("the County"), a municipal corporation organized and operating pursuant to the Constitution and laws of the State of Washington, and the City of Poulsbo ("City"), a Washington city duly organized and existing under the laws of the State of Washington.

RECITALS

WHEREAS, the Kitsap County Commissioners established the PFD pursuant to Chapter 36.100 RCW 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 with both public and private funds; and

WHEREAS, the NKSD and the PFD entered into that certain Interlocal Agreement Regarding Funding, Development, and Operation of the North Kitsap Regional Center as of December 11, 2003; whereby the parties agreed that the North Kitsap Regional Events Center would be acquired, constructed, installed, improved, maintained, and operated as both a school district educational facility within the meaning of RCW 28A.335.100, 28A.320.010, .015, and .035 and a "special events" center within the meaning of RCW 36.100.030(1), and RCW 35.57.020(1); and

WHEREAS, the NKSD and the PFD expressly contemplated in Section 2.02 of the Interlocal Agreement that additional development and construction of the North Kitsap Regional Events Center might be financed by those parties and additional private or public participants; and

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

WHEREAS, RCW 39.34.030 authorizes the NKSD, the PFD, the County, and the City to enter into an interlocal agreement to undertake jointly actions that each could take on its own; and

WHEREAS, the NKSD, the PFD, the County, and the City entered into that certain Interlocal Agreement Regarding Funding for Master Planning and Conceptual Site Plan Services for North Kitsap Regional Events Center as of November 7, 2005; and

WHEREAS, the North Kitsap High School Stadium and the Strawberry Field, which are both components of the North Kitsap Regional Events Center, are owned by the NKSD and are primarily and regularly used for school district purposes; and

WHEREAS, the NKSD, the PFD, the County, and the City have committed to contribution of funds for the development of the North Kitsap High School Stadium and Strawberry Field Modernization through each agency's independent governing body actions, by the North Kitsap Board of Directors action dated _____, the Public Facilities District action dated _____, the City of Poulsbo Council action dated _____, and the Kitsap County Board of Commissioners action dated _____, and included herein as Exhibits I through IV; and

WHEREAS the NKSD, the PFD, the County, and the City desire to enter into an agreement defining and assuring the circumstances under which the proposed NK REC Phase I project for the North Kitsap High School Stadium field and Phase II project for the Strawberry Field will be funded;

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

A G R E E M E N T

1. Scope

The parties agree that the scope of the projects will be for modernization of both the NKHS Stadium Field, the Strawberry Field fields #8 and #10, and trail and parking in the vicinity of Strawberry Field to the extent that the project bidding will allow, and scope and MACC (Maximum Allowable Construction Costs) as concluded in the architectural agreement with Bruce Dees and Associates dated May, 2007.

2. Funding

The parties agree that funding for the NK REC Phase I and Phase II projects for the North Kitsap High School Stadium, and Strawberry Field Modernization, has been committed to by the partnering agencies in the following amounts:

- A. Public Facilities District - \$900,000 (\$650,000 to Phase I; \$250,000 to Phase II)
- B. Kitsap County - \$300,000
- C. City of Poulsbo - \$150,000 (Proposed Additional Funding of \$150,000 in 2008)
- D. North Kitsap School District - \$150,000 cash, use of property during term-of agreement, existing lights and stadium, plus up to \$50,000 project/construction management costs as required.

Total funding in the amount of \$1,550,000 is available for the Phase I and Phase II projects.

3. Collection of Funds

The North Kitsap School District will forward invoicing for funding from the partner agencies for the full amount from Kitsap County and the City, and will forward two invoices in the amount of \$350,000 and \$300,000, for the Phase I project, and a third invoice for \$250,000 for the Phase II project, to the PFD. The first invoices to each of the partnering agencies will be sent immediately upon completion of this agreement. The second invoice to the PFD will be sent at the time between the project bid opening and the construction contract is to be awarded, to assure that adequate funding is in the project to cover the contract. The third invoice will be sent at a time later when the Phase II project moves forward with design.

4. **Interlocal Agreement Unaffected.**

The parties agree that the certain Interlocal Agreement Regarding Funding, Development, and Operation of the North Kitsap Regional Center entered into as of December 11, 2003, between the NKSD and the PFD is not modified or affected by this Agreement.

5. **Hold Harmless and Indemnity Agreement.**

Each party (the "Indemnitor") agrees to defend, indemnify and save harmless each other (the "Indemnitees"), their board or counsel members, officers, agents and employees, from and against all loss or expense including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims for damages, penalties or other relief based upon the Indemnitor's alleged negligence, or wrongful conduct, except for the injuries, penalties and damages caused by the sole negligence or wrongful conduct of the Indemnitor. Such claims for damages or other relief include, but are not limited to those for personal or bodily injury including death for such injury, property damage, torts, defamation [and] penalties imposed by any agency of the state or federal government for failure to comply with applicable law in the performance of this Agreement. If the claim, suit or action involves concurrent negligence of the parties, the indemnity provisions provided herein shall be applicable only to the extent of the percentage of each party's negligence. It is further and expressly understood that the indemnification provided herein constitutes each party's waiver of immunity under Industrial Insurance Title 51 RCW, solely for the purposes of this indemnification. The parties have mutually negotiated this waiver. The provisions of this section shall survive the expiration or termination of this Agreement.

6. **Insurance.**

Each party shall be responsible for obtaining its own insurance.

7. **Nondiscrimination.**

The parties to this Agreement declare that they are committed to the principle of equal opportunity consistent with applicable laws.

8. **Audits and Inspections.**

The records and documents with respect to all matters covered by this Agreement shall be subject to inspection, review or audit by each of the parties during the term of the Agreement and for three years after termination.

9. **Administrator.**

This Agreement does not establish or create a separate legal entity or a joint board. Except as provided in this Agreement, the NKSD continues to act as the administrator (within the meaning of RCW 39.34.030(4)) of the cooperative undertaking for the provision and operation of the North Kitsap Regional Events Center, Phase I and Phase II facilities.

10. **Filing of Agreement.**

The PFD 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.

11. **Available 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.

12. **Procedure.**

Before exercising any of the available 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.

13. **Supplemental Documents.**

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

14. **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.

15. 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: *Warren Van Zee*
Linda-Berry-Maraist, Chair
Kitsap Public Facilities District
9657 Levin Road NW, Suite 260
Silverdale, WA 98383
and *Michelle Wabton, Executive Director*
~~Anne-S. Blair, Administrator~~
Kitsap Public Facilities District
9657 Levin Road NW, Suite 260
Silverdale, WA 98383

To County: Chris Endresen, Chair
Kitsap County Board of Commissioners
Kitsap County
614 Division Street, MS 7
Port Orchard, WA 98366
and
Nancy Buonanno Grennan, Administrator
Kitsap County
614 Division Street, MS 7
Port Orchard, WA 98366

To NKSD: Eugene Medina, Superintendent
North Kitsap School District
18360 Caldart Avenue NE
Poulsbo, WA 98370
and
Robin Shoemaker, Director Capital Program
North Kitsap School District
18360 Caldart Avenue NE
Poulsbo, WA 98370

To City: The Honorable Kathryn Quade
 Mayor, City of Poulsbo
 PO Box 98
 Poulsbo, WA 98370

 and

 Mary McCluskey, Director
 Poulsbo Parks Department
 PO Box 98
 Poulsbo, WA 98370

16. 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.

17. Modification.

This Agreement represents the entire agreement between the parties. This Agreement may be amended at any time by written agreement of the duly authorized representative of all parties. 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.

18. 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.

19. Assignment.

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

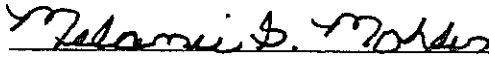
20. Complete Agreement.

This Agreement represents the entire agreement between the parties hereto concerning the subject matter hereof. This Agreement may not be amended except as provided herein.

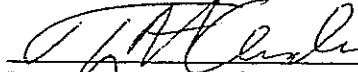
21. Execution in Counterparts.

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.

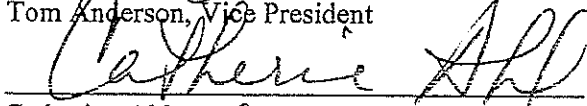
NORTH KITSAP SCHOOL DISTRICT BOARD OF DIRECTORS



Melanie Mohler, President



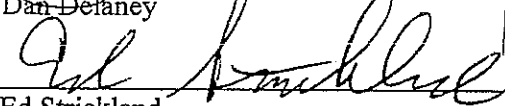
Tom Anderson, Vice President



Catherine Ahl



Dan DeTaney



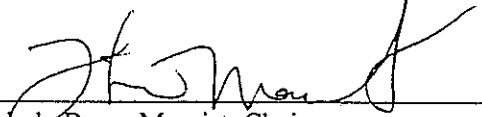
Ed Strickland

Attest:



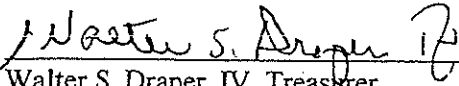
Eugene Medina, Secretary to the Board of Directors

KITSAP PUBLIC FACILITIES DISTRICT



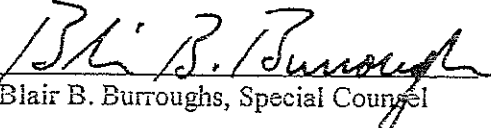
Linda Berry-Maraist, Chair

Attest:



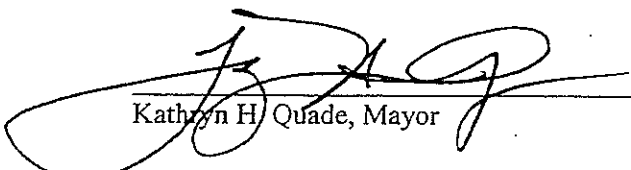
Walter S. Draper, IV, Treasurer

Approved as to form:



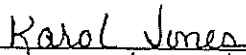
Blair B. Burroughs, Special Counsel

CITY OF POULSBO



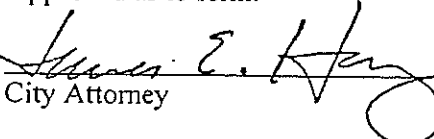
Kathryn H. Quade, Mayor

Attest:




City Clerk Karol Jones


Approved as to form:

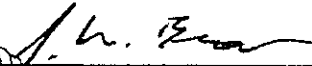


City Attorney

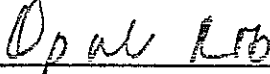
KITSAP COUNTY BOARD OF
COMMISSIONERS

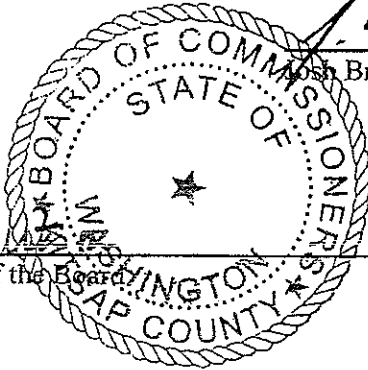

Chris Endresen, Chair


Jan Angel, Commissioner


Josh Brown, Commissioner

5/21/07
Attest:


Opal Robertson, Clerk of the Board



Approved as to form:

Kevin Howell, Deputy Prosecuting Attorney

