

**INTERLOCAL AGREEMENT REGARDING
FUNDING, DEVELOPMENT, AND OPERATION
OF THE NORTH KITSAP REGIONAL CENTER**

This Interlocal Agreement ("Agreement") is entered as of December 11, 2003, between 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 corporation duly organized and existing under the laws of the State of Washington, as established by Kitsap County pursuant to Chapter 36.100 RCW.

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; and

WHEREAS, RCW 35.57.020 defines "regional center" to include special events centers and facilities available to the public and used for community events, sporting events, trade shows, and artistic, musical, theatrical, 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 Ten Million Dollars (\$10,000,000); 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 tax payers; 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 NKSD is authorized by Chapter 28A.335 and Chapter 28A.320 RCW to acquire, lease, and operate school buildings and related facilities; and

WHEREAS, the NKSD has undertaken the design, development, construction, and improvement of certain facilities collectively known as the North Kitsap Regional Center, which construction, improvements, and

rehabilitation commenced after July 25, 1999, and the costs of which exceed Ten Million Dollars (\$10,000,000); and

WHEREAS, the North Kitsap Regional Center includes the North Kitsap Community Pool, North Kitsap High School gymnasium, stadium, and track, and Poulsbo Junior High and Community Auditorium, which facilities are used for purposes qualifying the North Kitsap Regional Center as a "special events center" within the meaning of RCW 35.57.020, including uses such as community events, sporting events, artistic, musical, theatrical and other cultural exhibitions, presentations, and performances; and

WHEREAS, the NKSD intends to further develop the North Kitsap Regional Center for the benefit of the residents of Kitsap County; and

WHEREAS, the PFD wishes to be a participant in the NKSD's North Kitsap Regional Center; and

WHEREAS, RCW 36.100.030 authorizes a county "public facilities district to enter into agreements under Chapter 39.34 RCW for the joint provision and operation of [special events centers] and may enter into contracts under Chapter 39.34 RCW where any party to the contract provides and operates such facilities for the other party or parties to the contract"; and

WHEREAS, RCW 28A.320.010 empowers the NKSD as a body corporate possessing all the usual powers of a public corporation that may transact all business necessary for maintaining school and may enter into such obligations as are authorized therefor by law; RCW 28A.320.015 empowers the NKSD's board of directors to exercise broad discretion to adopt policies that promote its efficient management and operation; RCW 28A.320.035 authorizes the NKSD's board of directors to contract, among other things, with other public organizations, agencies to implement the board's powers and duties; RCW 28A.335.090, .100, and .170 authorize the NKSD to lease its property; RCW 28A.335.190 authorizes the NKSD to competitively bid for the procurement of furniture, supplies, equipment, building, improvements, or repairs, or other work; RCW 28A.335.150 authorizes the NKSD to allow the use of and rent athletic facilities for athletic events and purposes; and RCW 28A.335.010 authorizes the NKSD to maintain, repair, furnish and insure educational facilities; and

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

WHEREAS, the PFD and the NKSD intend that the North Kitsap Regional Center will be acquired, constructed, installed, improved, maintained, and operated as both a "special events center" within the meaning of RCW 36.100.030(1) and RCW 35.57.020(1) and a school district educational facility within the meaning of RCW 28A.335.100, 28A.320.010, .015, and .035; and

WHEREAS, in consideration of the NKSD's commitment to develop, design, construct, equip, operate, and maintain the North Kitsap Regional Center upon the terms and conditions set forth herein and the PFD's financial commitments as set forth herein;

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

AGREEMENT

Article I: Development and Operation of the Regional Center

Section 1.01. Establishment of Regional Center. The improvements and facilities constructed or presently under construction by NKSD, as identified in attached Exhibit A, together with such additional facilities to be constructed pursuant to this Agreement, as identified in attached Exhibit B, are hereinafter identified as the " North Kitsap Regional Center " that is the subject of this Agreement.

Section 1.02. Joint Development of the North Kitsap Regional Center. The NKSD and the PFD intend to develop the North Kitsap Regional Center, in accordance with this Agreement, as both an educational facility within the meaning of RCW 28A.335.100, 28A.320.010, .015, and .035 and as a "regional center" and "special events center" within the meaning of RCW 36.100.030 and RCW 35.57.020. The North Kitsap Regional Center is intended to serve the NKSD, the residents of Kitsap County, as well as the broader population in the region and the State.

Section 1.03. Agreement to Provide Services and Make North Kitsap Regional Center Available. The NKSD will own and operate the North Kitsap Regional Center site and all improvements thereon. The NKSD will provide, through the North Kitsap Regional Center, services to the PFD in the form of making the North Kitsap Regional Center available to members of the general public. The North Kitsap Regional Center shall be made available for use by the residents of Kitsap County and other members of the general public under such policies and at such rates as are established by the NKSD. The NKSD will also make the North Kitsap Regional Center facilities available for use by the PFD and other governmental and non-profit entities at special or no charge rates, recognizing that such special or no charge rates may only be available at certain specified times.

Section 1.04. Lead Agency Responsibilities. The NKSD, on behalf of the District and itself, will (i) be the agency with the primary responsibility for the development of the North Kitsap Regional Center as both an educational facility within the meaning of RCW 28A.335.100, 28A.320.010, .015, and .035 and a "regional center" within the meaning of RCW 36.100.030 and RCW 35.57.020; (ii) finance (in conjunction with the PFD), acquire, design, construct, own, operate, and maintain the North Kitsap Regional Center; and (iii) otherwise administer

the development and operation of the North Kitsap Regional Center for the benefit of itself and the PFD and in cooperation with the PFD.

Article II: Financing of the North Kitsap Regional Center

Section 2.01. Current Construction. Upon execution of this Agreement, the PFD shall pay NKSD the sum of Five Thousand Dollars (\$5,000) as payment toward the costs incurred and to be incurred by NKSD for facilities constructed or under construction as part of the current phase of the improvements to the North Kitsap Regional Center, which improvements are identified in attached Exhibit A. The NKSD shall be responsible for all other costs and expenses associated with, as well as the management of, the improvements constructed as part of this phase of the North Kitsap Regional Center.

Section 2.02. Additional Development and Construction. The PFD and the NKSD recognize and acknowledge that, with exception of the funds identified in Section 2.01 above, that current Sales Tax revenues to which the PFD is entitled have already been committed to the Kitsap Fairgrounds & Events Center and the Kitsap Conference Center, both of which facilities are regional centers within the meaning of RCW 36.100.030 and RCW 35.57.020. The parties also recognize and acknowledge, however, that, barring unforeseen economic conditions, that the PFD is likely to collect Sales Tax revenues in an amount exceeding those necessary to pay for the Kitsap Fairgrounds & Events Center, the Kitsap Conference Center, and the PFD's associated administrative expenses. If such excess Sales Tax revenues become available to the PFD, the NKSD may apply to the PFD for additional funding for the future enhancements and improvements to the North Kitsap Regional Center for those components identified in attached Exhibit B and the PFD shall consider such application in good faith. If the PFD resolves to provide additional funds to NKSD for the North Kitsap Regional Center, any such additional funding shall be provided to NKSD upon such terms and conditions as the parties may agree upon at that time. These future enhancements and improvements may be financed and constructed with the assistance of additional private or public participants. Nothing in this Agreement shall bind the PFD to provide additional funding for the future enhancements and improvements identified in attached Exhibit B.

Section 2.03. Local Match Requirement. Under RCW 82.14.390, the NKSD is required to provide a local match from public or private sources equal to thirty-three percent (33%) of the Sales Tax collected by the PFD and provided to the NKSD under this Agreement. Under RCW 82.14.390(3), this local match may be in the form of public or private donations of cash, in kind contributions used in all phases of the development or improvement of the North Kitsap Regional Center, land that is donated and used for the siting of the North Kitsap Regional Center, cash or in kind contributions from public or private foundations, or amounts attributed to private sector partners. The parties recognize and acknowledge that since July 25, 1999, the NKSD has already contributed in excess of Ten Million Dollars (\$10,000,000) toward the development, design, and construction of the improvements to the North Kitsap Regional Center identified in attached Exhibit A. The parties agree that if additional funds are provided in

the future by the PFD for the design, development, and construction of the improvements identified in attached Exhibit B, that the match requirements of RCW 82.14.390(3) must still be met, but that the amounts already contributed by the NKSD toward the development, design, and construction of the improvements to the North Kitsap Regional Center will apply toward that match requirement.

Article III: Administration

Section 3.01. Administrator. This Agreement does not establish or create a separate legal entity or a joint board. The NKSD shall be the administrator (within the meaning of RCW 39.34.030(4)) of this cooperative undertaking for the provision and operation of the North Kitsap Regional Center including any of the following: acquiring, designing, constructing, owning, remodeling, maintaining, equipping, re-equipping, repairing, financing, managing, scheduling, and operating the North Kitsap Regional Center as provided for in this Agreement.

Section 3.02. Non-Discrimination. The NKSD shall administer the provision and operation of the North Kitsap Regional Center in such a manner as to provide residents of the NKSD and the County with access to the North Kitsap Regional Center without regard to their place of residence. The NKSD shall not discriminate with respect to fees charged, conditions for use, attendance, or other access to the North Kitsap Regional Center on the basis of such residency.

Section 3.03. Insurance. The NKSD agrees to acquire and maintain insurance on the North Kitsap Regional Center 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 North Kitsap Regional Center against loss. In the event of any loss or damage, the NKSD 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 and educationally viable. Insurance described in this Section shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the NKSD, or in the form of self-insurance by the NKSD. The NKSD shall establish such funds or reserves that it deems are necessary to provide for its share of any such self-insurance.

Section 3.04. Environmental Law Compliance. The NKSD shall be responsible for complying with all environmental laws applicable to the North Kitsap Regional Center construction. This includes, but is not limited to, County or City 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 NKSD shall be the nominal lead agency, whereby the NKSD shall be responsible for complying with the duties of the lead agency under all applicable SEPA rules.

Section 3.05. Maintenance and Operation. The NKSD shall manage, operate, and maintain the North Kitsap Regional Center at all times in a safe and clean manner. The NKSD shall provide (either directly or by contract) all management, supervision, personnel, materials, equipment, services, and supplies necessary to operate, maintain, and repair the North Kitsap Regional 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 North Kitsap Regional Center to any person or property. The NKSD shall comply with all applicable laws and ordinances in constructing, operating, and maintaining the North Kitsap Regional Center. The NKSD shall undertake all modifications to the North Kitsap Regional Center required to comply with all applicable laws, regulations, judgments, and orders.

Section 3.06. Appointment as Agent. Except with respect to the express undertakings of the PFD in this Agreement, the PFD hereby appoints the NKSD as its agent with respect to the provision, construction, and operation of the North Kitsap Regional Center, 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 those improvements reflected in attached Exhibit A.

Article IV: Indemnity and Hold Harmless

Section 4.01. NKSD Obligations. The NKSD shall defend, indemnify, and hold the PFD, and its respective elected officials, officers, employees, and agents ("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 North Kitsap Regional Center, except for claims arising from the sole negligence of any Indemnitee. In the case of concurrent negligence of the NKSD and an 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 Indemnitees under the circumstances described in this Section 4.01.

Section 4.02. PFD Obligations. The PFD shall defend, indemnify, and hold the NKSD, and its respective elected officials, officers, employees, and agents ("Indemnitees") 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 Indemnities.

Article V: Interlocal Cooperation Act

Section 5.01. 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 28A.335.035; 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 28A.335.035 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 28A.335.035 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 NKSD's Executive Director of Finance and Operations, and in her absence, its Superintendent, is appointed as the "administrator" within the meaning of RCW 39.34.030(4)(a) responsible for administering the NKSD'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) responsible for administering the PFD's rights and duties set forth in this Agreement;

C. Article I and Section 1.03 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 NKSD 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.

Article VI: Remedies

Section 6.01. 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 which reasonably lends itself to such remedy.

Section 6.02. 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.

Article VII: Miscellaneous

Section 7.01. Supplemental Documents. The parties agree to complete and execute all supplemental documents necessary or appropriate to implement fully the terms of this Agreement.

Section 7.02. Duration of Agreement. This Agreement shall continue in full force and effect until such time as the PFD is no longer legally entitled to collect Sales Tax or until terminated by agreement of the parties.

Section 7.03. 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.

Section 7.04. 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 NKSD: Superintendent
 and
 Executive Director of Finance & Operations
 North Kitsap School District
 18360 Caldart Avenue NE
 Poulsbo, WA 98370

Section 7.05. 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.

Section 7.06. Modification. This Agreement represents the entire agreement between the 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.

Section 7.07. 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.

Section 7.08. Assignment. The rights granted by this Agreement may not be assigned without the written consent of all the parties hereto.

Section 7.09. 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.

Section 7.10. 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.

Exhibit B

North Kitsap High School:

NKHS Gymnasium – upgrades and improvements or replace existing vocational building to create a recreational and community multi-purpose center. Possible uses include, but are not limited to, meetings, preschool, volleyball, and basketball.

NKHS Stadium and Track – upgrades and improvements, including but not limited to, replacing stadium lights, adding removable stage, and improving football stadium field to allow for expanded use.

NKHS Ball Fields – upgrades and improvements

Poulsbo Junior High Building III Community Center:

North Kitsap Community Pool – upgrades and improvements, maintenance and operational support.

North Kitsap Community Auditorium – upgrades and improvements, including complete replacement of old auditorium chairs.

Poulsbo Junior High – upgrades and improvements.

Poulsbo Junior High Ball Fields and adjacent ball fields – upgrades and improvements

Exhibit A

North Kitsap High School:

NKHS Gymnasium – Complete replacement of gym flooring and bleachers, modernized and enlarged locker room areas and restrooms, addition of PE classroom and weight training room, upgraded mechanical and electrical systems, and replaced acoustical ceiling and ductwork.

Poulsbo Junior High Building III Community Center:

North Kitsap Community Pool – Major renovation: replaced wood frame with steel and concrete masonry, new heating and ventilation system, replaced plumbing and pool filtration system, replaced pool lining, renovated locker room interiors and shower areas, improved lighting, created additional pool storage area, renovated aquatics classroom, office, and staff changing areas.

North Kitsap Community Auditorium - Major renovation: new heating and ventilation system, new lobby and elevator entry, new carpet, added restroom, added separate entry from the pool, added ticket sales area, and added music classroom lockers.

Approved as to form:

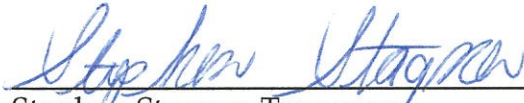
_____, Special Counsel

Section 7.11. 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.

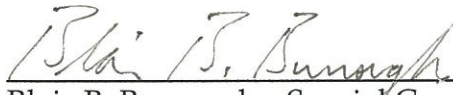
KITSAP PUBLIC FACILITIES DISTRICT


Walter S. Draper IV, Chair

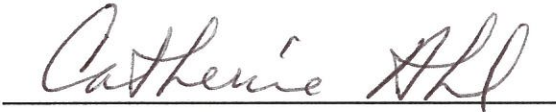
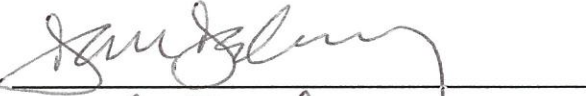
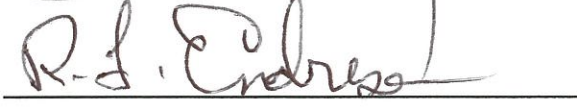
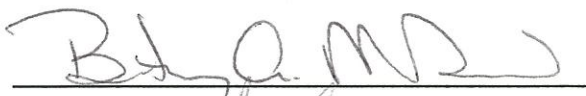

Attest:


Stephen Stagner, Treasurer

Approved as to form:


Blair B. Burroughs, Special Counsel

NORTH KITSAP SCHOOL DISTRICT
BOARD OF DIRECTORS

Attest:

