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*Contract*  
COB's Document  
eRouter

Tracking Number: AMHW-5MQSPH  
Type: Interlocal Operating Agreement  
Dept: mayor  
Title: Bellingham-Whatcom Public Facilities District

Comments / Special Instructions:

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Routing List:

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Document eRouter: In Process

Approvers	Title	Assigned	Notified	Received	Status Changed	Status
Kerry L Messer	Legal Administrative Assistant	05/20/2003	05/20/2003	-	-	-
Renie B Hill	Executive Receptionist/Secretary	-	-	-	-	-
Kristina J Bowker	1/2	-	-	-	-	-
Marc L Hagen	Office Technician	-	-	-	-	-
	Office Assistant I/PT	-	-	-	-	-

5/27

Approval Cycle Settings

<input checked="" type="checkbox"/>	Approval conditions:	100 % approval
<input checked="" type="checkbox"/>	Routing method	Serial (one at a time)
<input checked="" type="checkbox"/>	Approvers	Grp_eRouter
<input checked="" type="checkbox"/>	Allow Approver comments	Yes
<input checked="" type="checkbox"/>	Automatically Delegate to Assistant...	Yes
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	Days until skipped/delegated	30 Days
		30 Days

Notification

Access

5/28/03 Rec'd Finance  
5/29/2003

Approval Cycle by City of Bellingham

**INTERLOCAL OPERATING AGREEMENT BETWEEN  
THE CITY OF BELLINGHAM  
AND  
THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT**

**THIS INTERLOCAL OPERATING AGREEMENT** is made by and between the **CITY OF BELLINGHAM**, a Washington Municipal Corporation ("City") and the **BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT**, a Washington Municipal Corporation ("District"), to facilitate the financing, design, construction, remodel, operation and maintenance of a Regional Center in the City, with associated improvements including parking facilities ("Regional Center") pursuant to RCW 39.34, RCW 35.57, and RCW 35.59.

**RECITALS**

**WHEREAS**, the City of Bellingham and Whatcom County have by ordinance, created the Bellingham-Whatcom Public Facilities District pursuant to RCW 35.57, as amended by Chapter 363, Laws of 2002, to facilitate the construction and operation of a Regional Center; and

**WHEREAS**, the City and County have agreed that the effective operation of the District requires that one entity be responsible for design, development, oversight and management of the District, and to that end the parties have entered into an interlocal agreement which provides that the City shall contract with the Public Facilities District for the operation and management of the facilities as provided in RCW 35.57.020 (4); and

**WHEREAS**, the District Charter provides that the District will consider, analyze, and identify a regional center project(s) that may be designed, constructed, or remodeled by the District in compliance with RCW 35.57.020; and

**WHEREAS**, the District Charter provides that the District will enter into an agreement or agreements with the City of Bellingham for the design, development, construction, and operation of the Regional Center which shall provide that: the City shall advertise for, select, and enter into agreements with the contractor or contractors for the design, development, and construction of the Regional Center; the City shall oversee the design, development and construction of the Regional Center; and the City shall manage and administer the contracts relative to the design, development, and construction of the Regional Center, which development may include a public/private partnership, and

**WHEREAS**, the District Charter also provides that the Public Facilities District will assist in financing the construction and operation of the Regional Center by imposing a State sales and use tax credit of 0.033 percent within the District as well as admission and parking taxes, and

**WHEREAS**, the City and the District have agreed that the District will, in consideration for the City's agreement to use these funds for the design, construction, and operation of the Regional Center in the City of Bellingham, pay its revenues collected and received which are generated from the State sales and use tax and admission and parking taxes to the City for deposit in a special revenue fund to service the debt issued by the City for the design and construction of the Regional Center as well as payment of management and operating expenses and the expenses of the District, and

**WHEREAS**, the City and the District, as public agencies, have authority pursuant to RCW 39.34 to enter into interlocal agreements to provide services and facilities through the joint and cooperative exercise of power, privilege, and authority, and

**WHEREAS**, the City and the District understand and agree that the development of the Regional Center is a joint project that will serve many of the purposes defined in RCW 35.59.010, the multi-purpose community center statute, and that the City may condemn property that the District may lease or purchase to assist in the development of the Regional Center project; and

**WHEREAS**, the City and the District understand and agree that the District will have no obligation to issue bonds to support the design, development, or construction of the Regional Center and that the City may, upon the approval of the City Council, issue such bonds for which there will be no recourse against the District for payment there for, and

**WHEREAS**, the City and the District desire to enter into an interlocal operating agreement for the purpose of setting forth in writing their mutual agreement and undertakings by which they will, contingent upon adequate funding sources, undertake to finance and commence construction, operation, and maintenance of a Regional Center in the City of Bellingham,

**NOW, THEREFORE**, pursuant to RCW 39.34 and in consideration of the mutual understanding, undertaking, and promises contained herein inclusive of the recitals above, and the benefits to be realized by each party and by the general public from the creation and operation of the Regional Center, the City and the District agree as follows:

- 1. PURPOSE, INTENT, AND UNDERSTANDING.** The purpose of this interlocal operating agreement is to set forth in writing the terms and conditions under which the City and the District will, contingent upon adequate funding sources, undertake to finance, design,

construct, operate, and maintain a Regional Center in the City of Bellingham, with construction to commence before January 1, 2004.

**1.1** It is understood and agreed by the parties that the District will consider, analyze, and identify a regional center project(s).

**1.2** It is understood and agreed by the parties that the City of Bellingham, in consultation with the District, will be responsible for and make decisions relative to the design, construction, operation, management, and any future expansion of the Regional Center; that the City will advertise for, select, and enter into agreements with the contractors for the design and construction of the Regional Center; that the City will administer and manage the contracts for the design and construction of the Regional Center; that the City will directly or through third parties manage and operate the Regional Center and make all decisions relative to the management and operation of the Regional Center. It is understood that the District will not be a party to the above agreements.

**1.3** It is understood and agreed by the parties that the City of Bellingham may exercise its power of eminent domain for a multi-purpose community center (RCW 35.59), or for a public use (RCW 8.12) and such property may then be leased to or purchased by the District for purposes of constructing a Regional Center.

**1.4** It is understood that the Regional Center will be located in the Civic Center area of the City of Bellingham and that it may include a parking component to accommodate parking needs for the Center.

**1.5** It is understood that the District will retain ownership of all property, including but not limited to personal and real property acquired with funds collected from the sales and use tax authorized pursuant to RCW 35.57 and RCW 82.14.390, until such time as the District is dissolved pursuant to BMC 2.94.060 and the interlocal agreement between the City and County. It is understood that upon dissolution of the District the City will obtain title to all District real and personal property.

**1.6** It is understood that this interlocal operating agreement is entered into by the City of Bellingham in reliance upon the assurances and covenants of the District that it will timely and lawfully impose the allowed State sales and use tax and the parking and admissions taxes and continue to collect revenues available to the District and pay these funds to the City of Bellingham for placement in a special revenue fund to be administered by the City Finance Department for the purpose of funding construction, management, and operation of the Regional Center.

1.7 This agreement is entered into by the District with the specific understanding and relying on the assurances and covenants of the City of Bellingham that the agreement of the District to contribute its revenues to the special revenue fund to be administered by the City Finance Department is based upon the City's commitment to use those funds to cause construction of the Regional Center and to fund and support the management and operation of the Regional Center.

1.8 It is further understood that the City of Bellingham may issue bonds for the construction of the Regional Cultural Center and that the obligation of the City to construct the Regional Center is contingent upon the City issuing bonds for this purpose. It is further understood that the revenues collected by the District will be used first to service the bond debt issued by the City for the design and construction of the Regional Center.

**2. TERM.**

2.1 This agreement shall be effective upon the date that the City and the District have signed the Agreement and shall remain in force until the later of: (a) twenty-five years (25) from the date that the taxes the District imposes pursuant to RCW 82.14.390 commence being collected by the District; or (b) as provided in BMC 2.94.060, Dissolution of the District.

2.2 This agreement shall terminate under circumstances where both parties mutually agree in writing that by operation of law, court order, or as a result of other facts and circumstances whether within the control of the parties or not, it is impossible or impractical to finance, design, develop, or construct, manage, or operate the Regional Center, the parties agree to meet and enter into good faith negotiations regarding whether the Project has become impossible or impractical.

2.3 This agreement contains the entire agreement between the parties hereto and shall not be modified or amended in any manner except by an instrument in writing executed by the parties.

**3. ADMINISTRATION.** For purposes of communicating between the District and the City and administering their cooperative undertakings in this Agreement, the President of the District Board shall be the District's lead person and the Mayor shall designate a lead person for the City.

**4. RIGHTS, DUTIES, AND OBLIGATIONS.** The Parties mutually agree as follows:

**4.1 District.**

a. The District shall, upon collection, pay or cause to be paid all funds collected by or on behalf of the District from the State sales and use tax and admission and parking taxes imposed by the District, and from any other sources, to the City of Bellingham for deposit in the Public Facilities District special revenue fund. Such funds shall be used primarily for the debt service for bonds issued by the City of Bellingham to fund the design, development and construction of the Regional Center inclusive of costs of pre-development and property acquisition. The duration of the District's obligations described above shall be consistent with the duration of the debt obligation of the City for the bonds issued but shall be no longer than the maximum time period allowed by law.

b. The District may undertake fundraising from public or private sources to obtain gifts, grants and donations for the purpose of a Regional Center.

c. The District shall have the right, subject to City Council approval, to lease, purchase and own real property to accomplish the purposes of the Public Facilities District.

d. The District shall have the right, for purposes of determining compliance with the Interlocal Operating Agreement, to periodically review documents relative to the expenditure by the City of funds paid by the District to the City for deposit into the Public Facilities District special revenue fund.

e. The District shall have the right, for purposes of determining compliance with this Agreement, to review reports prepared by or on behalf of the City of Bellingham relative to the status of the construction of the Regional Center. Such reports will generally include a description of the progress of the work and completion dates relative to the construction schedule.

f. The District shall have the right, for purposes of determining compliance with this Agreement, to review annual reports prepared by or on behalf of the City, which pertain to the management and operation of the Regional Center.

g. The District shall have the right to exercise any of the remedies provided herein in the event of a material breach of this agreement by the City of Bellingham.

#### **4.2 City of Bellingham.**

a. The City will, contingent upon available funding and City Council approval of issuance of bonds, be responsible for the design, development, and construction of a Regional Center in the Civic Center area of Bellingham. These facilities will be operated and maintained by the City for the duration of the obligation of the District as a Regional Center and upon dissolution of the District shall become the property of the City of Bellingham.

b. The funds received by the City of Bellingham from the District shall be deposited into the Public Facilities District special revenue fund and shall be used exclusively for (1) debt service of the bonds issued by the City for site assembly, pre-development activities, the design and construction of the Regional Center, (2) payment of expenses for the management and operation of the Regional Center inclusive of maintenance, repair, and improvements, and (3) payment of expenses of the District as authorized pursuant to the District Charter or this Agreement. The duration of the District's obligations described above shall be consistent with the duration of the debt obligation of the City for the bonds issued but shall be no longer than the maximum time period allowed by law. The City shall, upon invoice from the District, pay from the Public Facilities District special revenue fund, the reasonable expenses of the District as authorized pursuant to the District Charter or this Agreement.

c. The City may provide interim financing for the payment of the costs and expenses associated with the pre-construction activities, site assembly, design, development, and construction of the Regional Center. Repayment shall be made first from revenues collected by the Public Facilities District, then from bonds issued and guaranteed by the City.

d. The City may exercise its power of eminent domain as necessary for the acquisition of property, and property acquired through eminent domain may be leased or sold to the District for construction of the Regional Center.

e. The City shall provide services to the District as follows: provision of meeting space, clerical services, administration services, and financial services to provide for the custody, investment, and accounting of all funds of the District and shall assist in the administration of the financial affairs of the District. The District shall reimburse the City for its reasonable costs as soon as practicable.

f. The City, without limiting such immunities as the District or other persons may have under applicable law, shall have no monetary recourse whatsoever against the District or its officials or directors for any loss or

damage arising out of the District, its officers or directors, exercising their authority pursuant to this agreement or the District Charter.

**g.** The City of Bellingham shall indemnify and hold harmless the District, its officers and directors, from and against any and all claims, demands or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the District or any third party arising out of, or by reason of, or resulting from the acts, errors or omissions of the District, its officers or directors related to or in any way arising out of the performance of their duties under this agreement or the District Charter. Provided that, the indemnity provided herein shall apply only to those claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees which exceed the dollar limits as set forth in any public liability insurance policy obtained by the District, and only for the amounts which exceed those limits.

## **5. REMEDIES.**

**5.1 Remedies Available.** The City and the District have the right to exercise any or all of the following remedies, singly or in combination, in the event that the City or the District 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.

**5.2 Procedure.** Before exercising any of the available remedies the party alleging the breach shall follow the procedure below.

- a. Notice of Violation.** In the event that one party believes that the other party has not complied with the terms of this agreement and is in default, 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 10 days from receipt of the 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 within the 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 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.

**6. NOTICES.** All notices which may be or are requested to be given pursuant to this agreement shall be deemed given when hand delivered or when deposited in the United States Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the parties at the following addresses unless otherwise provided for herein:

To the City: Mayor, 210 Lottie Street, Bellingham, WA 98225

With a copy to: City Attorney, 210 Lottie Street, Bellingham, WA 98225

To District: President of the Bellingham-Whatcom Public Facilities District

With a copy to: Attorney for the Public Facilities District

**7. WAIVER.** The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act, or an identical act required to be performed at a later time. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies unless they are expressly excluded.

**8. VENUE.** The venue for any dispute related to this Agreement shall be Whatcom County, Washington.

**9. EXCULPATION.** Notwithstanding anything contained to the contrary in any provision of this Agreement, it is specifically agreed and understood that there shall be absolutely no personal liability on the part of any individual officers or directors of the City

or the District with respect to any of the obligations, terms, covenants, and conditions of this Agreement.

**10. GENERAL PROVISIONS.** This Agreement contains all of the agreements of the City and the District with respect to any matter covered or mentioned in this Agreement, and no prior agreement shall be effective for any purpose. No provision of this Agreement may be amended or modified except by written agreement signed by both parties.

**11. SEVERABILITY.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the day and year first written above.


EXECUTED THIS 27<sup>th</sup> day of May, 2003.

CITY OF BELLINGHAM

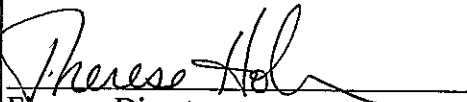
  
Mayor

STATE OF WASHINGTON )  
COUNTY OF WHATCOM ) ss.

On this 27<sup>th</sup> day of May, 2003, before me personally appeared Mark Asmundson, Mayor, to me known to be the person individually or jointly described in and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

  
NOTARY PUBLIC in and for the State  
of Washington, ~~residing at~~  
My commission expires: 3/24/04  
J. LYNNE WALKER

Attest:

  
Finance Director

Interlocal Operating Agreement Between the City of  
Bellingham and the Bellingham-Whatcom Public  
Facilities District - 9  
PFD/City-PFD Interlocal

NOTARY PUBLIC  
STATE OF WASHINGTON  
J. LYNNE WALKER  
My Appointment Expires  
MARCH 24, 2004

City of Bellingham  
CITY ATTORNEY  
210 Lottie Street  
Bellingham, Washington 98225  
Telephone (360) 676-6903

Approved as to form:

*James Bisington*  
Office of the City Attorney

EXECUTED this 20<sup>th</sup> day of May, 2003.

**BELLINGHAM-WHATCOM  
PUBLIC FACILITIES DISTRICT**

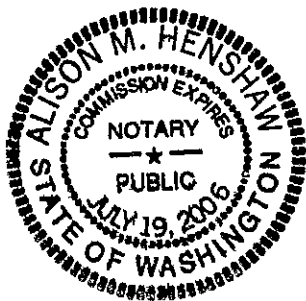
*Dunham Gooding*  
Dunham Gooding, President

Approved as to form:

*Heather*  
Attorney for Bellingham-Whatcom  
Public Facilities District

STATE OF WASHINGTON )  
COUNTY OF WHATCOM ) ss.

On this 20<sup>th</sup> day of May, 2003, before me personally appeared Dunham Gooding, to me known to be the person individually or jointly described in and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



*Alison M. Henshaw*  
NOTARY PUBLIC in and for the State  
of Washington, residing at Bellingham  
My commission expires: 7/19/06

Interlocal Operating Agreement Between the City of  
Bellingham and the Bellingham-Whatcom Public  
Facilities District - 10  
PFD/City-PFD Interlocal

**City of Bellingham**  
CITY ATTORNEY  
210 Lottie Street  
Bellingham, Washington 98225  
Telephone (360) 676-6903