

**CITY OF BLAINE
REQUEST FOR COUNCIL ACTION
MEETING DATE:**

SUBJECT: Interlocal Agreement City of Bellingham/Whatcom County Public Facility District

SUBMITTING DEPT: City Manager

PREPARED BY: Gary Tomsic

AGENDA LOCATION: Comments/Communications Consent Committee Reports
Unfinished Business New Business Public Hearing Standing Committees

ATTACHMENTS: Draft Agreement and copy of RCW

ANALYSIS/SUMMARY: The City of Bellingham has requested that all of the County's small cities, by interlocal agreement, become part of the Public Facilities District that was created by Bellingham and Whatcom County. The PFD was created to build the new children's museum, art gallery and improvements to Mt. Baker Theatre. The projects are partially funded from a sales tax rebate on the State's portion of sales within the District. Though the current district does not include the small cities, the City of Bellingham has been receiving funds based on total county sales rather than just the City of Bellingham and unincorporated county. The choices are to refund the money or have the small cities join. The City is asking that we join the Public Facility District and has offered to create a position on the board for Small Cities. Either Mayor Douglas or the Finance Director will be at the meeting to present their request.

RECOMMENDATION: Waive 2nd Reading: (Include conditions of approval if applicable) Staff recommends that City Council Approve

FISCAL ANALYSIS: This will have now impact on our sales tax collections.

REVIEWED BY:

City Manager _____ Finance Dir. _____ City Clerk _____

COUNCIL ACTION:

Approved Denied Tabled/Deferred Assigned to: _____

COUNCIL ACTION: _____

**REVISION AND RESTATEMENT OF THE INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BELLINGHAM AND WHATCOM COUNTY, TO
EXPRESSLY INCLUDE THE CITIES OF BLAINE, EVERSON, FERNDALE,
LYNDEN, NOOKSACK, AND SUMAS, AS PARTIES TO THE PUBLIC FACILITIES
DISTRICT FOR A REGIONAL CENTER IN WHATCOM COUNTY**

This revised and restated **INTERLOCAL AGREEMENT** is made and entered into by and between the cities of Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, Sumas, and Whatcom County, political subdivisions of the State of Washington, pursuant to the Interlocal Cooperation Act, RCW 39.34.

RECITALS

WHEREAS, on July 31, 2002, the City of Bellingham and Whatcom County entered into an Interlocal Agreement regarding the creation and joint operation of a Public Facilities District (the "District") for a Regional Center (the "Regional Center"), pursuant to RCW 35.57 as amended by Chapter 363, Laws of 2002; and

WHEREAS, the City and County had previously formed separate Districts; the City, pursuant to RCW 35.57 (before it was amended to allow a joint City-County district) and RCW 36.100 (which provides that a County can form a district coextensive with the boundaries of the County); and

WHEREAS, RCW 36.100 authorizes the County to form a District with boundaries that would be co-extensive with the boundaries of the County, while the statute authorizing the City to form a District, RCW 35.57, provides that the boundaries of the District shall not include incorporated towns or cities that are not parties to the agreement for the creation and joint operation of the district; and

WHEREAS, the District's projects are funded by a Washington State sales tax revenue rebate; and

WHEREAS, expressly including sales tax revenues received by the cities of Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas, increases the base on which the sales tax revenue rebate is calculated; and

WHEREAS, the cities of Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas are not eligible to receive the sales tax revenue rebate that goes to the Public Facilities District; and

WHEREAS, City of Bellingham and Whatcom County wish to clarify that the cities of Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas should be expressly included as parties to the agreement for the creation and joint operation of the District as provided in

RCW 35.57.010 (2) (b) since the Regional Center is intended to be a Countywide project that serves a regional population, including residents of all Whatcom County cities; and

WHEREAS, the Regional Center project identified by the Public Facilities District Board includes renovations to the Mount Baker Theatre as well as the construction of a new Art and Children's Museum; and

WHEREAS, the cities of Whatcom County recognize the public benefits of a public facilities district created to facilitate the construction and operation of a Regional Center located in the City of Bellingham consisting of a museum facility hosting art and children's exhibitions and the renovations of an historic theatre that will be used by visitors from across Whatcom County and beyond; and

WHEREAS, citizens of all ages throughout Whatcom County, including residents, families, and schools within the small cities, participate in educational, artistic, cultural, and other similar enriching activities provided by Regional Center facilities; and

WHEREAS, the legislative bodies of the cities of Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas find that the Whatcom Museum of History and Art, including the new Art and Children's Museum facility, and the renovated Mount Baker Theatre provide educational, artistic, and cultural opportunities for their citizens; and

WHEREAS, the cities executing this revised and restated Interlocal Agreement, and the County, all agree that continued effective operation of the District requires that one entity continue to have responsibility for the oversight and management of the Public Facilities District, and the cities agree that the City of Bellingham will continue in that role pursuant to the terms of the *Interlocal Operating Agreement Between the City of Bellingham and the Public Facilities District* dated May 20, 2003;

NOW, THEREFORE, it is agreed by and between the parties as follows:

1. PURPOSE. The purpose of this agreement is to revise and restate the Interlocal Agreement Between the City of Bellingham and Whatcom County Regarding the Creation and Joint Operation of a Public Facilities District for a Regional Center to expressly include the cities of Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas, as parties to the Interlocal Agreement dated July 31, 2002.

2. APPOINTMENT OF DISTRICT BOARD. The legislative authorities of the cities and of Whatcom County will appoint the seven (7) members of the District Board of Directors as provided in RCW 35.57.010 (3) (c). Board members will be nominated by the parties to the agreement in the following manner: The term of one board member is set to expire in 2008. The small cities shall meet and nominate a member to fill that open position in 2008. The legislative authorities of the small cities shall appoint the small cities

representative. The small cities will continue to fill that position on the Public Facilities Board as a vacancy occurs or the term expires. The remainder of the positions will be filled by the City of Bellingham and Whatcom County as provided in section 3 of the Interlocal Agreement dated July 31, 2002, which provides that board members will be jointly nominated by the Mayor and the County Executive and approved by a majority vote of both legislative authorities. No board members may be members of their respective legislative authorities.

3. SMALL CITIES RESPONSIBILITIES. The parties agree that the small cities shall be responsible for working with the City of Bellingham and Whatcom County in good faith toward the appointment of one of the Public Facilities District Board members as provided by state law and this agreement. It is intended by the parties that the small cities have no other responsibilities to be performed under this agreement except as may be necessary to facilitate the payment, to the benefit of the District, of the small cities portion of the sales and use tax authorized pursuant to RCW 82.14.390.

4. RATIFICATION OF EXISTING INTERLOCAL. Except as specifically provided herein, the parties agree that the terms and conditions of the Interlocal Agreement Between the City of Bellingham and Whatcom County Regarding the Creation and Joint Operation of a Public Facilities District for a Regional Center dated July 31, 2002, shall continue in full force and effect, and shall be deemed effective as of July 31, 2002. All actions taken by any persons prior to the effective date of this agreement but consistent with its provisions are ratified, approved, and confirmed with respect to all parties executing this revised and restated Interlocal Agreement.

DATED this ____ day of SEPTEMBER, 2007, for the **CITY OF BELLINGHAM:**

Mayor

Attest:

Finance Director

Approved as to form:

Departmental Approval:

Office of the City Attorney

DATED this ____ day of September, 2007, for **WHATCOM COUNTY:**

Whatcom County Executive

Approved as to form:

Office of the Prosecuting Attorney

DATED this ____ day of September, 2007, for the **CITY OF BLAINE:**

Mayor

Attest:

City Clerk

DATED this ____ day of September, 2007, for the **CITY OF EVERSON:**

Mayor

Attest:

Revision of Interlocal Agreement
Re Public Facilities District - 4

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

DATED this ____ day of September, 2007, for the **CITY OF FERNDALE:**

Mayor

Attest:

DATED this ____ day of September, 2007, for the **CITY OF LYNDEN:**

Mayor

Attest:

Approved as to form:

City Clerk

Office of the City Attorney

DATED this ____ day of September, 2007, for the **CITY OF NOOKSACK:**

Mayor

Attest:

City Clerk/Treasurer

DATED this ____ day of September, 2007, for the **CITY OF SUMAS:**

Mayor

Attest:

Approved as to form:

Office of the City Attorney

Chapter 35.57 RCW Public facilities districts

Chapter Listing

RCW Sections

- [35.57.010](#) Creation -- Board of directors -- Corporate powers.
 - [35.57.020](#) Regional centers -- Charges and fees -- Powers.
 - [35.57.030](#) General obligation bonds.
 - [35.57.040](#) Authorized charges, fees, and taxes -- Gifts.
 - [35.57.050](#) Travel, expense reimbursement policy -- Required.
 - [35.57.060](#) Expenditure of funds -- Purposes.
 - [35.57.070](#) Service provider agreements.
 - [35.57.080](#) Purchases and sales -- Procedures.
 - [35.57.090](#) Revenue bonds -- Limitations.
 - [35.57.100](#) Tax on admissions.
 - [35.57.110](#) Tax on vehicle parking charges.
 - [35.57.900](#) Severability -- 1999 c 165.
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35.57.010

Creation — Board of directors — Corporate powers.

*** CHANGE IN 2007 *** (SEE 2388.SL) ***

(1)(a) The legislative authority of any town or city located in a county with a population of less than one million may create a public facilities district.

(b) The legislative authorities of any contiguous group of towns or cities located in a county or counties each with a population of less than one million may enter an agreement under chapter 39.34 RCW for the creation and joint operation of a public facilities district.

(c) The legislative authority of any town or city, or any contiguous group of towns or cities, located in a county with a population of less than one million and the legislative authority of a contiguous county, or the legislative authority of the county or counties in which the towns or cities are located, may enter into an agreement under chapter 39.34 RCW for the creation and joint operation of a public facilities district.

(2)(a) A public facilities district shall be coextensive with the boundaries of the city or town or contiguous group of cities or towns that created the district.

(b) A public facilities district created by an agreement between a town or city, or a contiguous group of towns or cities, and a contiguous county or the county in which they are located, shall be coextensive with the boundaries of the towns or cities, and the boundaries of the county or counties as to the unincorporated areas of the county or counties. The boundaries shall not include incorporated towns or cities that are not parties to the agreement for the creation and joint operation of the district.

(3)(a) A public facilities district created by a single city or town shall be governed by a board of directors consisting of five members selected as follows: (i) Two members appointed by the legislative authority of the city or town; and (ii) three members appointed by legislative authority based on recommendations from local organizations. The members appointed under (a)(i) of this subsection, shall not be members of the legislative authority of the city or town. The members appointed under (a)(ii) of this subsection, shall be based on recommendations received from local organizations that may include, but are not limited to the local chamber of commerce, local economic development council, and local labor council. The members shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(b) A public facilities district created by a contiguous group of cities and towns shall be governed by a board of directors consisting of seven members selected as follows: (i) Three members appointed by the legislative authorities of the cities and towns; and (ii) four members appointed by the legislative authority based on recommendations from local organizations. The members appointed under (b)(i) of this subsection shall not be members of the legislative authorities of the cities and towns. The members appointed under (b)(ii) of this subsection, shall be based on recommendations received from local organizations that include, but are not limited to the local chamber of commerce, local economic development council, local labor council, and a neighborhood organization that is directly affected by the location of the regional center in their area. The members of the board of directors shall be appointed in accordance with the terms of the agreement under chapter 39.34 RCW for the joint operation of the district and shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(c) A public facilities district created by a town or city, or a contiguous group of towns or cities, and a contiguous county or the county or counties in which they are located, shall be governed by a board of directors consisting of seven members selected as follows: (i) Three members appointed by the legislative authorities of the cities, towns, and county; and (ii) four members appointed by the legislative authority based on recommendations from local organizations. The members appointed under (c)(i) of this subsection shall not be members of the legislative authorities of the cities, towns, or county. The members appointed under (c)(ii) of this subsection shall be based on recommendations received from local organizations that include, but are not limited to, the local chamber of commerce, the local economic development council, the local labor council, and a neighborhood organization that is directly affected by the location of the regional center in their area. The members of the board of directors shall be appointed in accordance with the terms of the agreement under chapter 39.34 RCW for the joint operation of the district and shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(4) A public facilities district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(5) A public facilities district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(6) A public facilities district may acquire and transfer real and personal property by lease, sublease, purchase, or sale. No direct or collateral attack on any public facilities district purported to be authorized or created in conformance with this chapter may be commenced more than thirty days after creation by the city and/or county legislative authority.

[2002 c 363 § 1; 1999 c 165 § 1.]

35.57.020

Regional centers — Charges and fees — Powers.

(1) A public facilities district is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more regional centers. For purposes of this chapter, "regional center" means a convention, conference, or special events center, or any combination of facilities, and related parking facilities, serving a regional population constructed, improved, or rehabilitated after July 25, 1999, at a cost of at least ten million dollars, including debt service. "Regional center" also includes an existing convention, conference, or special events center, and related parking facilities, serving a regional population, that is improved or rehabilitated after July 25, 1999, where the costs of improvement or rehabilitation are at least ten million dollars, including debt service. A "special events center" is a facility, available to the public, used for community events, sporting events, trade shows, and artistic, musical, theatrical, or other cultural exhibitions, presentations, or performances. A regional center is conclusively presumed to serve a regional population if state and local government investment in the construction, improvement, or rehabilitation of the regional center is equal to or greater than ten million dollars.

(2) A public facilities district may enter into contracts with any city or town for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW.

(3) A public facilities district may impose charges and fees for the use of its facilities, and may accept and expend or use gifts, grants, and donations for the purpose of a regional center.

(4) A public facilities district may impose charges, fees, and taxes authorized in RCW 35.57.040, and use revenues derived therefrom for the purpose of paying principal and interest payments on bonds issued by the public facilities district to construct a regional center.

(5) Notwithstanding the establishment of a career, civil, or merit service system, a public facilities district may contract with a public or private entity for the operation or management of its public facilities.

(6) A public facilities district is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any regional center.

(7) A city or town in conjunction with any special agency, authority, or other district established by a county or any other governmental agency is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any regional center funded in whole or in part by a public facilities district.

[2002 c 363 § 2; 2002 c 218 § 25; 1999 c 165 § 2.]

Notes:

Reviser's note: This section was amended by 2002 c 218 § 25 and by 2002 c 363 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability -- Savings -- Construction -- 2002 c 218: See notes following RCW 35.81.005.

35.57.030

General obligation bonds.

(1) To carry out the purpose of this chapter, a public facilities district may issue general obligation bonds, not to exceed an amount, together with any outstanding nonvoter-approved general obligation indebtedness, equal to one-half of one percent of the value of the taxable property within the district, as the term "value of the taxable property" is defined in RCW 39.36.015. A facilities district additionally may issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to one and one-fourth percent of the value of the taxable property within the district, as the term "value of the taxable property" is defined in RCW 39.36.015, when authorized by the voters of the public facilities district pursuant to Article VIII, section 6 of the state Constitution, and to provide for the retirement thereof by taxes authorized in chapter 165, Laws of 1999.

(2) General obligation bonds may be issued with a maturity of up to thirty years, and shall be issued and sold in accordance with the provisions of chapter 39.46 RCW.

(3) The general obligation bonds may be payable from the operating revenues of the public facilities district in addition to the tax receipts of the district.

[1999 c 165 § 3.]

35.57.040

Authorized charges, fees, and taxes — Gifts.

(1) The board of directors of the public facilities district may impose the following for the purpose of funding a regional center:

(a) Charges and fees for the use of any of its facilities;

- (b) Admission charges under RCW [35.57.100](#);
- (c) Vehicle parking charges under RCW [35.57.110](#); and
- (d) Sales and use taxes authorized under RCW 82.14.048 and 82.14.390.

(2) The board may accept and expend or use gifts, grants, and donations for the purpose of a regional center. The revenue from the charges, fees, and taxes imposed under this section shall be used only for the purposes authorized by this chapter.

[1999 c 165 § 4.]

35.57.050 **Travel, expense reimbursement policy — Required.**

The board of directors of the public facilities district shall adopt a resolution that may be amended from time to time that shall establish the basic requirements governing methods and amounts of reimbursement payable to such district officials and employees for travel and other business expenses incurred on behalf of the district. The resolution shall, among other things, establish procedures for approving such expenses; the form of the travel and expense voucher; and requirements governing the use of credit cards issued in the name of the district. The resolution may also establish procedures for payment of per diem to board members. The state auditor shall, as provided by general law, cooperate with the public facilities district in establishing adequate procedures for regulating and auditing the reimbursement of all such expenses.

[1999 c 165 § 5.]

35.57.060 **Expenditure of funds — Purposes.**

The board of directors of the public facilities district shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining a regional center. Nothing contained in this section may be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a district election.

[1999 c 165 § 6.]

35.57.070 **Service provider agreements.**

The public facilities district may secure services by means of an agreement with a service provider. The public facilities district shall publish notice, establish criteria, receive and evaluate proposals, and negotiate with respondents under requirements set forth by district resolution.

[1999 c 165 § 7.]

35.57.080**Purchases and sales — Procedures.**

In addition to provisions contained in chapter 39.04 RCW, the public facilities district is authorized to follow procedures contained in RCW 43.19.1906 and 43.19.1911 for all purchases, contracts for purchase, and sales.

[1999 c 165 § 8.]

35.57.090**Revenue bonds — Limitations.**

(1) A public facilities district may issue revenue bonds to fund revenue-generating facilities, or portions of facilities, which it is authorized to provide or operate. Whenever revenue bonds are to be issued, the board of directors of the district shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on such revenue bonds shall exclusively be payable. The board may obligate the district to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements, projects, or facilities, and all related additions, that are funded by the revenue bonds. This amount or proportion shall be a lien and charge against these revenues, subject only to operating and maintenance expenses. The board shall have due regard for the cost of operation and maintenance of the public improvements, projects, or facilities, or additions, that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues than in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. The board may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(2) Revenue bonds issued under this section shall not be an indebtedness of the district issuing the bonds, and the interest and principal on the bonds shall only be payable from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created under RCW 39.44.140. The owner or bearer of a revenue bond or any interest coupon issued under this section shall not have any claim against the district arising from the bond or coupon except for payment from the revenues lawfully pledged to meet the principal and interest requirements and any reserves created under RCW 39.44.140. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each bond issued under this section.

(3) Revenue bonds with a maturity in excess of thirty years shall not be issued. The board of directors of the district shall by resolution determine for each revenue bond issue the amount, date, form, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, and covenants including the refunding of existing revenue bonds. Facsimile signatures may be used on the bonds and any coupons. Refunding revenue bonds may be issued in the same manner as revenue bonds are issued.

[1999 c 165 § 9.]

35.57.100**Tax on admissions.**

A public facility district may levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid by the person who pays an admission charge to a regional center. This includes a tax on persons who are admitted free of charge or at reduced rates if other persons pay a charge or a regular higher charge for the same privileges or accommodations.

The term "admission charge" includes:

- (1) A charge made for season tickets or subscriptions;
- (2) A cover charge, or a charge made for use of seats and tables reserved or otherwise, and other similar accommodations;
- (3) A charge made for food and refreshment if free entertainment, recreation, or amusement is provided;
- (4) A charge made for rental or use of equipment or facilities for purposes of recreation or amusement; if the rental of the equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge;
- (5) Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile.

[1999 c 165 § 10.]

35.57.110

Tax on vehicle parking charges.

A public facility district may levy and fix a tax on any vehicle parking charges imposed at any parking facility that is owned or leased by the public facility district as part of a regional center. No county or city or town within which the regional center is located may impose a tax of the same or similar kind on any vehicle parking charges at the facility. For the purposes of this section, "vehicle parking charges" means only the actual parking charges exclusive of taxes and service charges and the value of any other benefit conferred. The tax authorized under this section shall be at the rate of not more than ten percent.

[1999 c 165 § 11.]

35.57.900

Severability — 1999 c 165.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1999 c 165 § 23.]