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2 BOARD OF COUNTY COMMISSIONERS
3 LEWIS COUNTY, WASHINGTON
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6 RE: Resolution Authorizing
7 Lewis County to Enter into
8 An Interlocal Agreement with
9 The Lewis County Public Facilities District
10

RESOLUTION NO. 07-282

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12 A RESOLUTION authorizing Lewis County by and through the Board of County
13 Commissioners (hereafter BOCC) to enter into an interlocal agreement with the Lewis
14 County Public Facilities District.
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16 WHEREAS, RCW 36.100 authorizes the Lewis County Public Facilities District to
17 enter into an interlocal agreement; and
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19 WHEREAS, the Lewis County Public Facilities District was lawfully created by
20 Resolution 07-247; and
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22 WHEREAS, the BOCC finds it to be in the public interest to enter into an
23 interlocal agreement with the Lewis County Public Facilities District;
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25 NOW, THEREFORE, BE IT RESOLVED:
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27 Section 1. Interlocal Agreement. Lewis County is hereby authorized to enter into
28 an interlocal agreement with the Lewis County Public Facilities District. The interlocal
29 agreement complies with RCW 39.34, the Interlocal Cooperation Act, and is attached
30 and herein incorporated by reference.
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32 Section 2. Severability. If any section, sentence, clause, or phrase of this
33 Resolution should be held invalid or unconstitutional by a court of competent jurisdiction
34 such invalidity or unconstitutionality shall not affect the validity of the constitutionality of
35 any other section, sentence, clause, or phrase of this Resolution.
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37 Section 3. Effective Date. This Resolution shall go into effect immediately upon
38 adoption.
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40 ADOPTED this 01 day of October, 2007.
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1 ATTEST:

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Karri Muu
Clerk of the Board

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8 Approved as to form only:

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[Signature]
Deputy Prosecuting Attorney

13

14

Board of County Commissioners
Lewis County, Washington

[Signature]
Chairperson

[Signature]
Member

[Signature]
Member

**INTERLOCAL AGREEMENT REGARDING THE PROPOSALS FOR THE
FINANCING, DEVELOPMENT AND OPERATION OF A
PUBLIC FACILITY OR PROJECT**

BY AND BETWEEN

LEWIS COUNTY PUBLIC FACILITIES DISTRICT

AND

LEWIS COUNTY, WASHINGTON

THIS INTERLOCAL AGREEMENT REGARDING the financing, development and operation of an initial public facility or project (this "Agreement") is dated as of the 8 day of 2007, 2007, and is made by and between the LEWIS COUNTY PUBLIC FACILITIES DISTRICT (the "District") and LEWIS COUNTY, WASHINGTON. ("the County"). .

RECITALS

WHEREAS, Chapter 36.100 RCW (the "County PFD Act") authorizes the County to create a public facilities district coextensive with the boundaries of the County for the purposes, among others, of constructing, owning, operating, and/or financing a public facility or project;

WHEREAS, by Resolution No. 07-247, adopted August 13, 2007, (the "Formation Resolution"), the County created the District for the purposes set forth in Chapter 36.100 RCW, specifically, for the purpose of acquiring, constructing, owning, operating, maintaining, remodeling, repairing, equipping, reequipping, and/or financing a public facility(ies) or projects, with contiguous parking facilities, which may include a regional center located within the County providing for business, recreational, equestrian, rodeo, musical, and cultural exhibitions and presentations;

WHEREAS, the District intends to carry out the initial project for public purposes including stimulating economic development by creating jobs, realizing additional sales tax and lodging tax revenues and attracting more commercial business and tourism, and providing facilities for community events, including business, recreational, equestrian, rodeo, musical, and cultural exhibitions and presentations, all as authorized by Chapter 36.100 RCW.

The District shall not carry out the design, construction, ownership, operation and/or financing of any public facility(ies) or projects except the initial project. Any subsequent public facility or project must be approved in writing by the Board of County Commissioners. The initial project is undefined but must be consistent with RCW 36.100 and Resolution No. 07-247;

WHEREAS, the Washington Interlocal Cooperation Act (Chapter 39.34 RCW) authorizes a PFD to contract with any other public agency of this state or of any other state to perform any governmental service, activity, or undertaking which each entity is authorized to perform, and the District has concluded that the Project should be carried out;

WHEREAS, as authorized by the County PFD Act and RCW 82.14.390, and subject to certain restrictions, a public facilities district created by a County before September 1, 2007, in which there are no other public facilities districts and in which the total population in the public facilities district is greater than seventy thousand, that commences construction of a new regional center before January 1, 2009, may impose solely for regional center purposes, a 0.033 percent (0.033 percent) sales and use tax

that is deducted from the amount of the sales and use tax otherwise required to be collected and paid over to the Washington State Department of Revenue under Chapter 82.08 and 82.12 RCW and that does not increase the amount of tax paid by the public;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto covenant and agree as follows.

ARTICLE 1.

1.1 Responsibilities of the District.

(a) In cooperation with one or more private sector entities identified by the District, the District shall identify, acquire, develop, own, construct, operate, and finance the initial project, serving a regional population.

(b) The District's shall not acquire, construct, own, remodel, maintain, equip, reequip, repair, operate, or finance any other regional center other than the Project, without prior written approval of the County.

(c) The District shall prepare, maintain, and provide to the Board of County Commissioners, a financial and activities report quarterly, and otherwise as directed by the Board of County Commissioners.

(d) The District accepts the conditions and restrictions imposed on it under County Resolution No. 07-247 and 07-248.

1.2 Project Financing

Except as otherwise approved by the Board of County Commissioners the District shall not impose any taxes under RCW 36.100.040 (lodging tax), RCW 36.100.050 (property tax) nor any other tax, except as authorized under RCW 82.14.390 and Engrossed House Bill 2388. The District may receive or collect and expend gifts, grants, and donations consistent with RCW 36.100.

ARTICLE 2. MISCELLANEOUS

2.1 Termination.

In addition to the term and renewal obligations under section 2.13, below, either party may terminate this Agreement without cause if construction of a regional center is not commenced before January 2009. If either party desires to so terminate this Agreement, that party shall provide the other party with three (3) months' prior written

notice. However, no termination shall be effective if it would result in the impairment of contracts entered into by either the County or the District.

Notwithstanding the above termination clauses, Lewis County may terminate this Interlocal Agreement for public convenience and or public necessity.

2.2 Governing Law; Venue.

This Agreement is governed by, and shall be construed in accordance with, the laws of the State of Washington. Except as otherwise required by applicable law, any legal action under this Agreement shall be brought in the Superior Court of the State of Washington in and for Lewis County.

2.3 Notices.

Except as otherwise provided herein, all notices, consents or other communications required hereunder shall be in writing, delivered as follows:

To Lewis County:

[Ron Averill or his successor] Commissioner District 1

[Richard Graham or his successor] Commissioner District 2

[F. Lee Grose or his successor] Commissioner District 3

To the District:

Board of District Directors

[Peter Corwin or his successor]

[P. Bill Schulte or his successor]

[Thomas Lerchen or his successor]

[David Kuper or his successor]

[Rodney Murschel or his successor]

2.4 Binding Effect.

This Agreement shall inure to the benefit of, and shall be binding upon, Lewis County and the District.

2.5 Severability.

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

2.6 Amendments.

This Agreement may not be effectively amended, changed, modified, altered, or terminated except by an instrument in writing duly executed by Lewis County and the District.

2.7 Waiver of Breach

No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it.

2.8 No Rights Created in Third Parties.

The terms of this Agreement are not intended to establish nor to create any rights in any persons or entities other than the County and the District and the respective successors and assigns of each.

2.9 Indemnification

Each party shall protect, defend, indemnify and hold harmless the other party, the Board of County Commissioners, its officers, agents, and employees, or any of them from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, which are caused by or result from the performance of this agreement by either party. This indemnity and hold harmless agreement shall not apply to acts or omissions of the District's or the County's officers, agents, and employees that are not in good faith and are outside the scope of their official duties.

2.10 Limit on Liability

The District shall not take action that might impose liability upon the County or the Board of County Commissioners. All liabilities incurred by the District shall be satisfied exclusively from the assets, credit, and properties of the District, and no

creditor or other person shall have any right of action against or recourse to the County, its assets, credit, or services, on account of any debts, obligations, liabilities or acts or omissions of the District.

2.11 Dispute Resolution

(a) If a dispute arises between the parties with regards to the performance of any provision of this agreement or the interpretation thereof, the parties agree to follow the procedure set forth below. It is the goal of the parties to resolve their differences as early and amicably as possible.

(b) The parties shall first meet to attempt to see if the matter can be informally resolved. This informal resolution attempt may involve more than one meeting but is not required to involve more than one meeting.

(c) If the parties are unable to resolve their differences, the parties will endeavor to settle the dispute by mediation under such mediation rules as shall be mutually agreeable to the parties. Such mediation shall be non-binding but shall be a condition precedent to having said dispute decided in court by a judge or jury. Mediation shall commence, unless otherwise agreed, within thirty (30) days of a party's written request for mediation of a dispute. Any resolution at this stage shall be reduced to writing and, if it involves an interpretation of the agreement, it shall be considered an addendum to this agreement without the need for formal adoption by the governing bodies of the jurisdictions that are parties to this agreement.

2.12 Insurance

The Board of Directors of the District shall provide for directors and officers liability insurance or errors and/or omissions insurance in such amounts and with such coverages as shall be determined by resolution or motion of the District's Board.

2.13 Term of Agreement

This Agreement shall terminate on the later of (a) the date of expiration of the District's sales and use tax imposed under Chapter 82.14 RCW that serves as a credit against a portion of the State's sales and use tax; and (b) the date all District bonds secured by that sales and use tax are retired.

2.14 Complete Agreement

This agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded,

2.15 Effective Date/Filing.

This Agreement shall be come effective upon its full execution and its filing with the Lewis County Auditor. All actions previously taken by the County and the District, and their respective officers and employees, consistent with this Agreement, are ratified and confirmed.

IN WITNESS WHEREOF, the County and the District have caused this Agreement to be executed by their duly authorized officers.

DATED this 8th day of October, 2007.

LEWIS COUNTY BOARD OF
COUNTY COMMISSIONERS

By

By

By

LEWIS PUBLIC FACILITIES
DISTRICT

By

By

By

By

By

Approved as to Form:

Counsel

Approved as to Form:

K. D. Fitzer
Counsel