INTERLOCAL AGREEMENT TO FUND MULTIJURISDICTIONAL CONVENTION CENTER FACILITY

This Interlocal Agreement ("Agreement") is entered into this 26th day of March, 2003, between **Snohomish County**, a political subdivision of and duly organized and existing under the laws of the state of Washington and the charter of Snohomish County (the "County"); and the **City of Lynnwood**, a code city duly organized and existing under and by virtue of the laws of the state of Washington (the "City").

RECITALS

WHEREAS, the City and the County each have the authority pursuant to chapter 67.28 RCW to impose special excise taxes on the furnishing of lodging and to use the tax proceeds collected to acquire tourism-related facilities, which includes siting, design, construction, refurbishing, expansion, repair, and improvement of such facilities and paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under chapter 67.28 RCW; and

WHEREAS, the County and the City have the authority to enter into interlocal agreements under chapter 39.34 RCW and RCW 67.28.1815 to fund multi-jurisdictional tourism-related facilities and to provide for services from one government to another; and

WHEREAS, the City and the County each have determined that the acquisition of a Convention Center located within the City will support and accommodate tourist activity and benefit each respective jurisdiction as a multijurisdictional tourism-related facility; and

WHEREAS, the City has determined that the acquisition and operation of such a Convention Center is in the interest of the City, and by Ordinance No. 2266 in 1999 established the South Snohomish County Public Facilities District (the "City PFD") pursuant to Chapter 35.57 RCW, to acquire, design, construct, own, finance, operate and maintain a regional center defined under RCW 35.57.020 as a convention, conference, or special convention center, or any combination of such facilities, and related parking facilities serving a regional population (the "Convention Center"); and

WHEREAS, the City, the City PFD, the Snohomish County Public Facilities District (the "County PFD") and the County have entered into a "First Amended and Restated Interlocal Agreement for Development of the Lynnwood Convention Center" ("Four Party Agreement") that provides for joint acquisition and development of the Convention Center by the City, the City PFD and the County PFD and in which the City commits hotel-motel taxes imposed and collected by the City under Chapter 67.28 RCW and the County is a non-contributing party; and

WHEREAS, the City is willing to undertake certain additional responsibilities under this Agreement to induce the County to provide funding assistance toward acquisition of such a Convention Center; and

WHEREAS, the County is willing to commit to the City up to one-third of the hotel-motel taxes imposed and collected by the County over a period of years to fund the acquisition of a Convention Center in consideration for the City operating the Convention Center, or causing it to be operated, as a tourism-related facility for the benefit of the City and the County;

NOW, THEREFORE, the City and the County enter into this Agreement to outline the responsibilities and commitments of each Party in the acquisition and operation of a Convention Center located within the City:

A. DEFINITIONS

For the purposes of this Agreement, the terms defined in this Section shall have the following meanings:

Acquire or Acquisition includes siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement.

Agreement is this Interlocal Agreement entered into between the City and the County under the authority of chapters 39.34 RCW and 67.28 RCW for County funding assistance in the acquisition of a Convention Center acquired and operated as a multijurisdictional tourism-related facility.

City is the city of Lynnwood, a municipal corporation of the state of Washington.

City PFD is the South Snohomish County Public Facilities District.

County is Snohomish County, a political subdivision of the state of Washington.

County PFD is the Snohomish County Public Facilities District.

Convention Center is a convention center located in Lynnwood, Washington acquired and operated as a multijurisdictional Tourism-Related facility to serve the City and the County in a manner consistent with chapter 67.28 RCW and as provided for in the Four Party Agreement, and that is a convention and conference facility of at least 50,000 square feet that, together with an adjoining parking facility, satisfies the minimum requirements set forth in Exhibit A, attached hereto and incorporated by this reference.

Hotel-Motel Taxes means regional tourism taxes imposed and received by the County under RCW 67.28.181 and Snohomish County Code (SCC) 4.41.010.

Municipality means any county, city or town of the state of Washington.

Parties means the City and the County.

Person means the federal government or any agency thereof; the state or any agency, subdivision, taxing district or municipal corporation thereof other than a county, city or town; or any private corporation, partnership, association, or individual.

Tourism-Related Facility means a tourism-related facility as that term is defined in RCW 67.28.080, as it may be amended from time to time.

B. ACQUISITION AND OPERATION OF THE CONVENTION CENTER

B.1. Acquisition

The City shall participate and use all funds received from the County under this Agreement in the acquisition of the Convention Center as a Tourism-Related Facility in compliance with all applicable provisions of Title 67.28 RCW.

B.2. Operation

a. The City shall operate and maintain the Convention Center, or cause it to be operated and maintained, as a Tourism-Related Facility beginning no later than on or about March 1, 2005 and for the duration of this Agreement. Convention Center facilities shall remain open to residents of the City and the County on equal terms and conditions, and on terms and conditions no less favorable than available to other members of the public.

b. The City shall maintain records sufficient to establish how funds received by the City under this Agreement are spent and that establish compliance with the terms of this Agreement and all applicable provisions of Chapter 67.28 RCW. The City shall provide access to such records to the County and its authorized representatives throughout the term of this Agreement, and for six years following its completion or termination, for the purpose of audit examinations and the making of excerpts or transcripts. Based upon the information maintained by the City to which the County is provided access, the County may withhold or reclaim project payments from the City for any funds that were spent in violation of this Agreement and for any year or portion thereof in which the Convention Center is not operated as a Tourism-Related Facility.

C. COUNTY ASSISTANCE IN FUNDING THE CONVENTION CENTER

C.1. The County has imposed Hotel-Motel Taxes to fund, among other things, the acquisition costs of tourism-related facilities such as the Convention Center. In order to assist in the acquisition of the Convention Center, the County shall make payments to the City under the terms of this Agreement in amounts as stated in Exhibit B, which is attached hereto and incorporated by this reference. The Parties recognize and agree, however, that the amounts set forth on Exhibit B represent maximum allocations and disbursements (not including interest due under Section. G.2.c) based upon projected County Hotel-Motel Tax revenue receipts. The obligations of the County under this Agreement shall be payable solely from Hotel-Motel Taxes imposed and received by the County, and in no event will an annual allocation and disbursement to the City (including all interest due under Section G.2.c) exceed one-third of County Hotel-Motel Tax revenue receipts (including any interest earned on County Hotel-Motel Tax funds held by the County but less administrative expenses) from the year prior to the one in which the allocation is due.

C.2. The County will remit payments due under this Agreement by wire transfer on or before December 1 of each year as directed in writing by the City.

C.3. The City estimates the total acquisition cost of the Convention Center, including acquisition costs of the underlying land, to be approximately Thirty-one Million Three Hundred Thousand Dollars ($31,300,000). The City shall apply funds received from the County under this Agreement towards the costs of construction of the Convention Center as described in Exhibit A. Except as provided in Section E.2 to this Agreement, the City shall not use funds received from the County under this Agreement for any other purpose, including but not limited to (i) acquisition or debt service costs of the underlying real property other than portions on which the Convention Center and related parking facilities are constructed, (ii) costs associated with any subsequent phase or development of the Convention Center project such as improvement or expansion of the facility on the same or adjoining property, (iii) acquisition costs incurred before the effective date of this Agreement; and (iv) operation costs for the Convention Center or other facilities.

C.4. The County recognizes that the City and/or other persons may issue obligation bonds as a means to finance acquisition of the Convention Center, the underlying real property, and/or future improvement or expansion of the Convention Center on the same or another site. The City shall ensure that any such obligations, and any disclosure documents accompanying the sale of such obligations to the public contain a statement to the effect that they are obligations of the issuer, payable solely from the specified tax sources and other money of the issuer legally available therefore, and that they are not obligations of the County or payable from County funds.

C.5. It is the intent of the City and the County, and each party agrees, that the County is committing Hotel-Motel taxes under this Agreement for the purpose of funding acquisition of a Convention Center as a multijurisdictional tourism-related facility under RCW 67.28.1815 and Chapter 39.34 RCW. Nothing in this Agreement shall be construed to create or transfer any ownership interest in the Convention Center facility or premises to the County.

D. NATURE OF OBLIGATIONS

It is understood and agreed by all Parties that the County's obligation to make the intergovernmental project payments to the City as provided in this Agreement and set forth in Exhibit B is solely an obligation limited to payment from Hotel-Motel Taxes and is contingent upon City's performance of obligations as set forth in this Agreement. The County shall not have any liability to fund revenue shortfalls or have any other financial commitments other than making the respective payments to the City in the amounts and to the extent such funds are available from Hotel-Motel Taxes at the times the funds are due under the terms of this Agreement. The obligations of the County to the City are not and shall not be deemed a general obligation or debt of the County. The County shall not have any obligation for, nor shall it be liable for, the payment of amounts due to any other person by reason of any other contract, agreement, or liability, however incurred. It is the intent of the Parties, and the Parties specifically agree, that this Agreement is for the benefit of the Parties only and shall not confer third-party beneficiary status upon any person not a Party to this Agreement.

E. INDEMNIFICATION AND INSURANCE

E.1. City Indemnification of County.

To the extent permitted by law, the City shall indemnify, defend and hold harmless the County and its officials, officers, employees, and agents when acting within such designated capacity (collectively, the "Section E.1 Indemnified Parties"), from all claims, losses, suits, actions, legal or administrative proceedings, costs, attorneys' fees, litigation costs, expenses, damages, penalties, fines, judgments or decrees of any nature whatsoever (collectively "damages") caused by any negligent act, error or omission and/or willful misconduct of the City or its officials, officers, employees, agents, contractors or subcontractors (collectively, the "City Functionaries") arising out of the performance or breach of any obligation under this Agreement.

The City's obligation shall include, but not be limited to, defending all claims alleging damages from any negligent action, error or omission or breach of any common law, statutory or other delegated duty by the City or City Functionaries, and defending and indemnifying against claims to which it would otherwise be immune from suit under Title 51 RCW or other applicable law. The County has a direct interest in any settlement agreement that the City may obtain while defending under this hold harmless and indemnity. The City grants to the County veto authority regarding any settlement proposal. However, if the City agrees to a settlement proposal and the County vetoes the proposal, then the County shall, immediately after vetoing the settlement proposal, assume the defense including the cost of the City's personnel time at then current billing rates in support of the defense and any cost of judgment or settlement in excess of payments and terms provided in the settlement proposal. The City will provide information to the County regarding all claims.

The City's obligation to indemnify and hold harmless shall apply except and to the extent where caused by the sole or concurrent negligence and/or willful misconduct of any of the Section E.1 Indemnified Parties. If the claim, suit, or action for injuries, death, or damages as provided for in this Section E.1 is caused by or results from the concurrent negligence of (i) any of the Section E.1 Indemnified Parties; and (ii) and the City or City Functionaries, the indemnity provisions provided for in this paragraph of this Section E shall be valid and enforceable only to the extent of the negligence or willful misconduct attributable to the City or City Functionaries.

E.2. Insurance.

The City shall obtain and maintain, or cause to obtained and maintained, insurance in amounts sufficient to protect the County and give full effect to the indemnification required under Section E.1. The County acknowledges and agrees that the City may use funds provided by the County under this Agreement to procure insurance for this purpose. The City recognizes and acknowledges that any liability incurred by the County that arises out of the acquisition or operation of the Convention Center and any other matter within the scope of this Agreement will be paid out of and debited against funds that would otherwise be available to the City under this Agreement.

Insurance forms and insurance levels will be as determined by the Joint Board under the Four-Party Agreement, provided that the following minimum coverage shall be obtained and

maintained: (a) a comprehensive general liability policy with limits of at least $10 million, naming, among others, the County and the Snohomish County Public Facilities District as insureds; (b) a blanket employee fidelity bond of at least $500,000; (c) property insurance equal to the replacement value of the Convention Center and its contents; and (d) a directors & officers liability insurance policy of at least $1,000,000. In addition, the general contractor constructing the Convention Center shall be required to obtain builders' risk insurance, also naming, among others, the County and the County Public Facilities District as insureds; that builders' risk insurance shall be in an amount equal at least to the replacement cost of the Convention Center.

F. SUBCONTRACTING

The Parties anticipate that the City will perform its obligations to the County under this Agreement by executing and enforcing agreements with other persons, including but not limited to the City PFD and/or the County PFD. The Parties understand and agree, however, that no such agreement will relieve the City of any obligation to the County under this Agreement, except to the extent of actual and timely performance. The obligations of the City are to that extent non-delegable, and may be enforced by the County without reference to any other agreement.

G. TERM AND TERMINATION

G.1 Term.

This Agreement shall continue in full force and effect through December 31, 2027 unless terminated earlier by the County under Section G.2 to this Agreement.

G.2. Termination.

a. If the County reasonably determines that the Convention Center has not been operated as a Tourism-Related Facility under the Section B.2 to this Agreement for a period totaling at least one-year in any three-year period, the County may provide notice to the City of its intent to terminate this Agreement no earlier than 180 days after the date the notice is provided. If, at the end of the notice period, the County reasonably determines that the Convention Center has not been operated as a Tourism-Related Facility for at least the last 90 days of the notice period, the County may terminate this Agreement by providing written notice to the City.

b. If at any time the insurance requirements under Section E.2 to this Agreement are not satisfied in full, the County may terminate this Agreement by providing written notice to the City no earlier than ninety (90) days after providing written notice of the deficiency if the deficiency has not been cured within that ninety (90) day period.

c. If the County terminates or withholds funds due the City under this Agreement in violation of the terms of this Agreement, the sole remedy available to the City shall be reinstatement of the Agreement and payment of past due installments without interest or any other charges or fees unless a court of competent jurisdiction finds

that the County acted unreasonably in withholding funds, in which case the City also shall be entitled to the interest earned by the County on withheld funds in the intervening period to the extent that payment of such interest is consistent with the funding limitations in Sections C and D to this Agreement.

H. GOVERNING LAW AND VENUE

The laws of the State of Washington shall govern this Agreement, and any lawsuit regarding this Agreement must be brought in the Superior Court of Snohomish County, Washington.

I. EFFECTIVE DATE; FILING WITH COUNTY AUDITOR

This Agreement shall be effective immediately upon execution and filing with the Snohomish County Auditor within five (5) days from the date of execution, as required by the provisions of RCW 39.34.040.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers and representatives as of the day indicated below.

CITY OF LYNNWOOD

Mayor

Date: 4-8-3

SNOHOMISH COUNTY

GARY WEIKEL
Deputy Executive

County Executive

Date: 3/26/03

Approval Recommended by:

_____

Date: _____

Approved as to form:

Deputy Prosecuting Attorney

Steven J. Bladek

Reviewed by Risk Management:

FOR Leah Vergosen, Risk Analyst

D-10

EXHIBIT A
CONVENTION CENTER DESCRIPTION

The Convention Center facility shall be at least 50,000 square feet, with full kitchen facilities, two pre-function concourses, a 13,500 square foot exhibit hall/ballroom that can be configured into three smaller sizes, and a 5,600 square foot meeting room configurable into four smaller sizes and eight break-out meeting rooms of 600 square feet each, which can also be configured into 1,200 square foot rooms.

The Convention Center facility and its adjoining parking facility shall be able to accommodate the following events:

Multiple day events for up to 400 attendees with exhibits, 500 without exhibits.
Single event banquets for up to 900
Auditorium seating for 1125

EXHIBIT B

SNOHOMISH COUNTY PROJECTED ALLOCATION OF HOTEL-MOTEL TAX: $800,000 in 2002 and $400,000 PER YEAR, INCREASED AT 4% PER YEAR

Date	One-Time	Projected Annual Allocation	Projected Monthly Disbursement
12/01/2002	800,000	400,000	33,333
12/01/2003		416,000	34,667
12/01/2004		432,640	36,053
12/01/2005		449,946	37,495
12/01/2006		467,943	38,995
12/01/2007		486,661	40,555
12/01/2008		506,128	42,177
12/01/2009		526,373	43,864
12/01/2010		547,428	45,619
12/01/2011		569,325	47,444
12/01/2012		592,098	49,341
12/01/2013		615,782	51,315
12/01/2014		640,413	53,368
12/01/2015		666,029	55,502
12/01/2016		692,671	57,723
12/01/2017		720,377	60,031
12/01/2018		749,192	62,433
12/01/2019		779,160	64,930
12/01/2020		810,327	67,527
12/01/2021		842,740	70,228
12/01/2022		876,449	73,037
12/01/2023		911,507	75,959
12/01/2024		947,968	78,997
12/01/2025		985,886	82,157
12/01/2026		1,025,322	85,443