

SKAGIT COUNTY, WASHINGTON

18364

A RESOLUTION of the Board of County Commissioners of Skagit County, Washington, forming the Skagit Regional Public Facilities District pursuant to RCW 36.100.010.

Adopted on August 14, 2001

Prepared by:

PRESTON GATES & ELLIS LLP



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Skagit County Auditor

RESOLUTION NO. 18364

A RESOLUTION of the Board of County Commissioners of Skagit County, Washington, forming the Skagit Regional Public Facilities District pursuant to RCW 36.100.010.

WHEREAS, Skagit County (the "County") is in need of a centralized facility especially designed and constructed for the use of performing arts organizations and performances (a "Performing Arts and Conference Center" or "PAC"); and

WHEREAS, the County, in cooperation with the Skagit Performing Arts Council ("SPAC"), the Skagit Valley College (the "College") and the M.J. McIntyre and Shirley McIntyre Charitable Foundation (the "Donor"), have considered the options and available resources in order to implement the acquisition, construction and operation of a PAC; and

WHEREAS, Chap. 36.100 RCW (the "Act") authorizes the County to create a public facilities district (a "PFD") to acquire, remodel, finance and operate one or more "regional centers"; and

WHEREAS, "regional centers" are defined to include, among other things, performing arts centers; and

WHEREAS, PFDs have access to several new revenue sources, including a sales and use tax credit (the "Sales Tax"), which operates to shift 0.033% of the State's share of retail sales and use taxes generated within the PFD boundaries to the PFD instead; and

WHEREAS, in order to acquire, construct, equip and operate the PAC, and impose the Sales Tax and in consideration of the commitments of the Donor pursuant to the Donor Agreement Regarding the Skagit Regional Public Facilities District (the "Donor Agreement") between the County and the Donor and certain communities, each in Interlocal Agreements with the County (collectively, the "Interlocal Agreements"), the County wishes to create a PFD solely



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for the purpose of acquiring, improving and operating the PAC as a regional center, as defined in the Act; and

WHEREAS, the Donor Agreement contains a commitment by the Donor to make a contribution having a value of \$6,000,000 which is more than 33% of the net present value of projected Sales Taxes anticipated to be collected by the PFD;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SKAGIT COUNTY, Washington, as follows:

Section 1. Formation of the District. Pursuant to RCW 36.100.010, but subject to confirmation of the execution and delivery of the Donor Agreement, the County hereby creates a public facilities district (the "District"). The name of the District shall be the Skagit Regional Public Facilities District. The District shall be a municipal corporation, an independent taxing authority and a taxing district. The District shall be coextensive with the boundaries of the County. The District shall acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate a regional center, as defined in RCW 36.100.030, and as authorized in the Charter.

Except as limited by State law, the District shall have the powers, purposes and form set forth in its charter, attached as Appendix A hereto (the "Charter"). The formation of the District is further conditioned upon the execution and delivery of the Donor Agreement. At the time of formation of the District, the County anticipates that Interlocal Agreements will be executed with the Cities of Burlington, Mount Vernon and Sedro-Woolley and the Towns of La Conner and Concrete.

Section 2. Charter. The Charter is hereby approved in the form set forth as Appendix A. The Charter shall be issued in duplicate originals, each attested by the Clerk of the



Board of County Commissioners. One original shall be filed with County; a duplicate original shall be provided to the District. The District shall commence its existence effective upon issuance of the Charter.

Section 3. Board of Directors. A board consisting of five directors (the "Board"), as initially identified in the Charter, is hereby established to govern the affairs of the District. The directors are hereby appointed to serve their terms as provided in the Charter. All corporate powers of the District shall be exercised by or under the authority of the Board; and the business, property and affairs of the District shall be managed under the direction of the Board, except as may be otherwise provided for by law or in the Charter.

Section 4. Prior Acts. All acts taken pursuant to the authority of this resolution but prior to its effective date are hereby ratified and confirmed.

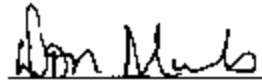
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ADOPTED by the Board of County Commissioners of Skagit County at a regular meeting thereof, held this 14th day of August, 2001.

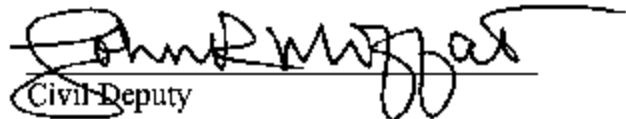
SKAGIT COUNTY BOARD OF
COMMISSIONERS
SKAGIT COUNTY, WASHINGTON


Ted W. Anderson, Chairman


Kenneth A. Dahlstedt, Commissioner

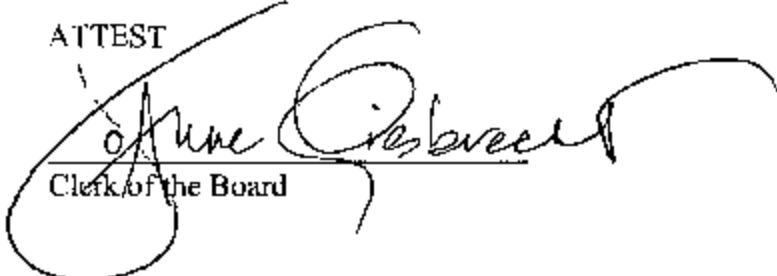

Don Munks, Commissioner

Approved as to form:


Civil Deputy



ATTEST


Clerk of the Board



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EXHIBIT A
CHARTER
OF THE
SKAGIT REGIONAL PUBLIC FACILITIES DISTRICT

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CHARTER
OF THE
SKAGIT REGIONAL PUBLIC FACILITIES DISTRICT

ARTICLE I

Name and Seal; Definitions

Section 1.1. Name. The name of this public facilities district shall be the SKAGIT REGIONAL PUBLIC FACILITIES DISTRICT (hereinafter referred to as the "District").

Section 1.2. Seal. The District's seal, as set forth below, shall be a circle with the name "SKAGIT REGIONAL PUBLIC FACILITIES DISTRICT" inscribed therein.

[seal]

Section 1.3. Definitions. All capitalized terms used but not defined herein shall have the meanings set forth on Exhibit A attached hereto and incorporated herein by this reference:

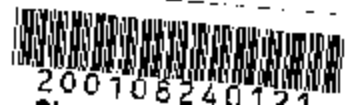
ARTICLE II

Authority and Limit on Liability

Section 2.1. Authority. The District is a public facilities district organized pursuant to RCW 36.100.010 and the County Resolution.

Section 2.2. Limit on Liability. 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.

Section 2.3. Mandatory Disclaimer. The following disclaimer shall be posted in a prominent place where the public may readily see it in the District's principal and other offices.


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It shall also be printed or stamped on all contracts, notes, bonds, and other documents that may entail any debt or liability by the District.

The SKAGIT REGIONAL PUBLIC FACILITIES DISTRICT is organized pursuant to RCW 36.100.010 and Resolution No. ___ of Skagit County. 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 Skagit County, its assets, credit, or services, on account of any debts, obligations, liabilities or acts or omissions of the District.

ARTICLE III

Duration

The duration of the District shall be perpetual.

ARTICLE IV

Purpose

The purpose of the District is to provide a legal entity under RCW 36.100.010 to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate (either directly or by contract) a Performing Arts and Conference Center ("PAC") consisting of the following components (all of which shall be included if and to the extent of available funds): a proscenium stage together with fly tower, and orchestra pit, with seating (estimated capacity of 700) in opera house configuration and one or two balconies and related lobby space and additional space for a conference facility on property to be leased from the College, including necessary parking. The Board of County Commissioners, may if then permitted by law, amend this Charter to authorize the undertaking of additional regional facilities by the District. If funding is not available to complete the entire PAC, the Board of the PAC shall undertake those components of the PAC deemed most feasible in the judgment of the Board.



To the extent appropriate and consistent with the needs and objectives of the County and the District's purpose, the District may acquire by purchase, lease or gift, and manage real property; secure financing; undertake or otherwise provide for the construction and development of the PAC; and otherwise undertake and accomplish all activities and projects necessary for the PAC and the operation of the PAC. Initially, the District shall have no purpose other than acquisition, construction, ownership, remodeling, maintenance, equipping, reequipping, repair, financing, and operation (either directly or by contract) of the PAC.

For the purpose only of securing the exemption from federal income taxation for interest on obligations of the District, the District constitutes an authority and instrumentality of Skagit County (within the meaning of those terms in federal regulations and rulings pursuant to Section 103 of the Code).

ARTICLE V

Powers

Section 5.1. Powers. The District shall have and may exercise all lawful powers conferred by State law, the County Resolution, this Charter and its Bylaws, including the usual powers of a corporation for public purposes and, without limitation, the power to:

A. Hire employees, staff, and services; prescribe their duties, qualifications, and compensation; and secure the services of consultants for professional services, technical assistance, or advice;

B. Contract for any corporate purpose with the United States, a state, and any political subdivision or agency of either, and with individuals, associations and corporations and other entities (including public or private entities) including the construction, equipping,



operation or management of the PAC, related parking or for any other facility owned or operated by the District;

C. Sue and be sued in its name;

D. Purchase, lease, exchange, mortgage, encumber, improve, use, or otherwise transfer or grant security interests in real or personal property or any interests therein; grant or acquire options on real and personal property; and contract regarding the income or receipts from real and personal property;

E. Accept and expend gifts, grants, and donations, including funds or property from the United States, a state, and any municipality or political subdivision or agency of either, property acquired by any such governmental unit through the exercise of its power of eminent domain, and funds or property from corporations, associations, individuals or any other source, and comply with the terms and conditions therefor;

F. Impose the following charges, fees, and taxes authorized in RCW §§ 36.100.040, 36.100.210, and 36.100.220: Rental Charges, Admission Charges, Parking Charges (if any) and any other fees or charges for services, goods or use of any of its facilities; Admission Taxes; Parking Taxes; Voted Sales Taxes; and Sales Taxes at a rate not to exceed the limit set forth in RCW 82.14.390;

G. Use Sales Tax Revenue, Additional Revenue and other receipts for its corporate purposes;

H. Use the supplemental alternative public works contracting procedures set forth in Chap. 39.10 RCW;

I. Borrow or lend its funds, property, credit or services for corporate purposes, or act as a surety or guarantor for corporate purposes; issue revenue bonds or general obligation bonds



in conformity with the debt limitations set forth in RCW 36.100.030 and other applicable provisions of State law in such principal amounts as in the discretion of the District shall be necessary or appropriate to provide sufficient funds for achieving any corporate purposes; provided, however, that all bonds and notes or liabilities occurring thereunder shall be satisfied exclusively from the assets, properties or credit of such District, and no creditor or other person shall have any recourse to the assets, credit or services of the County thereby, unless the County shall by resolution expressly guarantee such bonds or notes;

J. Manage, on behalf of the United States, a state, and any municipality or political subdivision or agency of either, any property acquired by such entity through gift, purchase, construction, lease, assignment, default, or exercise of the power of eminent domain;

K. Recommend to the United States, a state, and any municipality or political subdivision or agency of either, consistent with all applicable laws, such tax, financing, and security measures as the District may deem appropriate to maximize the public interest in activities in which the District by this Charter has a particular responsibility;

L. Control the use and disposition of corporate property, assets, and credit;

M. Invest and reinvest its funds;

N. Establish the consideration (if any) for property transferred, all in pursuit of corporate purposes;

O. Maintain books and records as appropriate for the conduct of its affairs;

P. Conduct corporate affairs, carry on its operations, and use its property as allowed by law and consistent with this Charter, and its Bylaws; name corporate officials;

Q. Identify and recommend to the United States, a state, and any municipality or political subdivision or agency of either, the acquisition by the appropriate governmental entity



for transfer to or use by the District of property and property rights, which, if so acquired, whether through purchase or the exercise of eminent domain, and so transferred or used, would materially advance the purpose for which the District is chartered; and

R. Exercise and enjoy such other powers as may be authorized by law.

Section 5.2. Limitation of Powers. The District organized under this Charter in all activities and transactions shall be limited in the following respects.

A. The District shall have no power of eminent domain.

B. The District may not incur or create any liability that permits recourse by any party or member of the public to any assets, services, resources, or credit of the County. All liabilities incurred by the District shall be satisfied exclusively from the assets and credit of the District; no creditor or other person shall have any recourse to the assets, credit, or services of the County on account of any debts, obligations, liabilities, acts, or omissions of the District.

C. No funds, assets, or property of the District shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or ballot proposition; nor shall any funds or a substantial part of the activities of the District be used for publicity or educational purposes designed to support or defeat legislation pending before the Congress of the United States, or the legislature of the State or the County, provided, however, that funds may be used for representatives of the District to communicate with members of Congress, State legislators concerning funding and other matters directly affecting the District, so long as such activities do not constitute a substantial part of the District's activities and so long as such activities are not specifically limited elsewhere in this Charter.

D. All Sales Tax Revenue, Additional Revenue, receipts, assets, or credit of the District shall be applied toward or expended for the payment of Debt Service and then for the



services, projects, and activities authorized by this Charter. No part of the net earnings of the District shall inure to the benefit of, or be distributable as such to, the Board members, officers of the District or other private persons, except that the District is authorized and empowered to:

- i. Compensate those persons or entities performing services for the District, including District employees and legal counsel, a reasonable amount for services rendered, and reimburse Board members and others for reasonable expenses actually incurred in performing their duties;
- ii. Assist District officials as members of a general class of persons to be assisted by a District-approved project or activity to the same extent as other members of the class so long as no special privileges or treatment accrues to such corporate official by reason of his or her status or position in the District;
- iii. Defend and indemnify any current or former Board member or employee and their successors, spouses and marital communities against all costs, expenses, judgments, and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with or resulting from any civil claim, action, or proceeding in which he or she is or may be made a party by reason of being or having been a corporate official, or by reason of any action alleged to have been taken or omitted by him or her as such official, provided that he or she was acting in good faith on behalf of the District and within the scope of duties imposed or authorized by law. This power of indemnification shall not be exclusive of other rights to which corporate officials may be entitled as a matter of law;



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iv. Purchase insurance to protect and hold personally harmless any of its officials, its employees, and its agents from any civil action, claim, or proceeding instituted against the foregoing individuals arising out of the performance, in good faith, of duties for, or employment with, the District and to hold these individuals harmless from any expenses connected with the defense, settlement, or monetary judgments from such actions, claims, or proceedings. The purchase of such insurance and its policy limits shall be discretionary with the Board, and such insurance shall not be considered to be compensation to the insured individuals. The powers conferred by this subsection shall not be exclusive of any other powers conferred by law to purchase liability insurance; and

v. Sell assets for a consideration greater than their reasonable market value or acquisition costs, charge more for services than the expense of providing them, or otherwise secure an increment in a transaction, or carry out any other transaction or activity, so long as such gain is not the principal object or purpose of the District's transactions or activities and is applied to or expended upon services, projects, and activities otherwise authorized as corporate purposes.

E. The District organized under this chapter shall not issue shares of stock, pay dividends, make private distribution of assets, make loans to its board members or employees or otherwise engage in business for private gain.

F. This further limitation is included in this Charter in recognition of the limited sources of funding available to the District to pay the Costs of the Project, i.e., the Sales Taxes (which are anticipated to be pledged to the payment of Debt Service on Bonds) and the Donation. No additional funds of the County are available to pay Costs of the Project.



Accordingly, the District shall not enter into any contract(s) for the design, architecture, engineering, construction and furnishing the PAC, the terms of which obligate the District (directly, contingently or otherwise) for the payment of any amount in the aggregate in excess of the Maximum Amount. The Maximum Amount is equal to the lesser of

- (i) \$13,085,000 (the current estimate of Net Proceeds plus the Donation on Deposit), and
- (ii) the Bond proceeds on deposit in the Project Fund available for Costs of the Project plus the Donation on Deposit plus Other Contributed Funds.

Contracts entered into by the District for the undertaking of the Project may include additive alternates as options, with costs in excess of the Maximum Amount, but such additive alternates may be authorized by the District to be undertaken only if cash is on deposit, e.g., from Other Contributed Funds (not previously included within the Maximum Amount) in the Project Fund. The MACC in any construction contract for the Project must include a reasonable contingency. Prior to entering into any construction contract, the District shall employ a construction manager, having experience in managing contracts of the type being administered by the District and having the authority to approve reasonable design changes during the course of construction, it being understood that all major design decisions are subject to the approval of the Board of Directors of the District. Each contract for the undertaking of the Project shall include the following statement in bold: **The contracting authority of the District is limited to the Maximum Amount, except as expressly provided in the Charter of the District. The total financial obligations of the District under this contract, together with any other contracts for the undertaking of the Project, may not exceed the Maximum Amount, and the contracting party under this contract by execution of this contract, acknowledges and agrees that all its claims under this contract may not exceed the Maximum Amount. [If the**



contract includes provisions for additive alternates costing more than the Maximum Amount, the following sentence shall be added: The additive alternates specified in paragraph ___ of this contract will not be undertaken until the contracting party has verified that Other Contributed Funds (not previously included in the Maximum Amount) are on deposit in the Project Fund and available to pay the costs of such additive alternates.] The contracting party to this contract understands and acknowledges that no County funds or funds of the College are available to satisfy the obligations of the District under this contract.

G. The District's power to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate (either directly or by contract) any Regional Center other than the PAC and related parking facilities is subject to the approval of the County;

H. The following District powers shall be subject to the approval of the Board of County Commissioners:

i. The plan of finance and the issuance of the Bonds any and Additional Bonds shall be subject to the prior approval of the Board of County Commissioners;

ii. The District shall not impose Admission Taxes, Sales Taxes or Parking Taxes without the prior approval of the Board of County Commissioners;

iii. The District's power to impose Voted Sales Taxes authorized under RCW 82.14.048 is subject to the approval by the Board of County Commissioners prior to placement on the ballot..

I. A copy of the District's annual budget, including Administrative Costs, shall be delivered to the County.



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J. Any public display of non-performance artwork under the authority of the District at the PAC shall be subject to approval by the College's Board of Trustees.

ARTICLE VI

Board of Directors And Corporate Officers

Section 6.1. Powers. The Board shall govern the affairs of the District. All corporate powers of the District shall be exercised by or under the authority of, and the business, property and affairs of the District shall be managed under the direction of, the Board except as may be otherwise provided in this Charter or State law.

Section 6.2. Board Composition. The Board shall include representation from each of the Commissioner districts of the County and representing broad community and performing arts interests. Pursuant to RCW 36.100.010, the Board shall be composed of five or seven members, at the discretion of the Board of County Commissioners. The initial members of the Board shall be as follows:

Bud Moore	Group I - District #1
John Janicki	Group II – District #3
Rick Epting	Group II – District #2
Mike Crawford	Group III – District #3
Cheryl R. Bishop	Group III – District #1

Subsequent to the initial Board, future members of the Board shall be nominated by a Nominating Committee in the following manner. The Nominating Committee shall consist of: (i) the College Representative, (ii) the County Representative; (iii) the Donor Representative;



and (iv) the SPAC Representative. The Nominating Committee shall review and consider potential Board members and shall, by unanimous consent, select a candidate for referral to the Board of County Commissioners. The nominee shall be submitted to the Board of County Commissioners for final approval.

Section 6.3. Terms of Office.

A. The terms of office of the initially appointed members of the Board shall commence on the effective date of this Charter and shall be staggered as follows:

1. Group I. One member for a two-year term;
2. Group II. Two members for three-year terms; and
3. Group III. Two members for four-year terms.

B. The expired term of any member shall be filled by appointment of the Nominating Committee.

C. Except for the initial members of the board, each member shall be appointed to serve for a four-year term. Each member shall continue to serve until his or her successor has been appointed and qualified as provided in the bylaws. Members may be reappointed to serve not more than two consecutive full terms.

D. Terms shall expire on the day prior to the anniversary date of the Charter of the year in which the respective group is scheduled to terminate. Nominations for new appointees or for reappointment of existing members shall be processed by the Nominating Committee.

E. Vacancies occurring during the course of a term shall be filled by nomination by the Nominating Committee, in the manner and to the effect provided in the Bylaws to complete the unexpired term to which appointed.

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Section 6.4. Quorum and Manner of Action. At all meetings of the Board a majority of directors then in office shall constitute a quorum. The Board may adopt resolutions of the Board only by an affirmative vote of a majority of the Board members then in office.

Section 6.5. Officers and Division of Duties.

A. The initial officers of the District shall be the President, Vice President, Secretary and Treasurer of the Board. In no event shall there be less than two officers designated, nor shall the same person occupy the office of president and that of treasurer, or any office responsible for custody of funds and maintenance of accounts and finances. Additional officers may be provided for in the Bylaws.

B. The President shall be the agent of the District for service of process; the Bylaws may designate additional corporate officials as agents to receive or initiate process. The corporate officers, who shall be selected from among the membership of the Board as provided in the Bylaws, shall manage the daily affairs and operations of the District.

C. The Board shall oversee the activities of the corporate officers, establish and/or implement policy, participate in corporate activity, and shall have stewardship for management and determination of all corporate affairs.

Section 6.6. Bonding of Corporate Officers. Each corporate official responsible for handling accounts and finances shall file as soon as practicable with the District a fidelity bond in an amount determined by the District to be adequate and appropriate, and may hold the corporate office only as long as such a bond continues in effect.

Section 6.7. Executive Committee. The Bylaws may provide for an Executive Committee, which shall be appointed and/or removed by the Board, and shall have and exercise



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such authority of the Board in the management between meetings of the Board, as may be specified in the Bylaws.

Section 6.8. Removal of Board Members. The County Commissioners may by resolution remove from the Board with or without cause any member of the Board at or after a public meeting, with prior notice to the District. In the event of removal, members shall be replaced in the same manner as provided for in filling vacancies on the Board.

ARTICLE VII

Meetings

Section 7.1. Board Meetings.

A. The Board shall meet at least quarterly each year; special meetings of the Board may be called as provided by the Charter, the Bylaws or RCW 42.30.010 et seq.

B. The Board shall be the governing body of a public agency as defined in RCW 42.30.020, and all meetings of the board shall be held and conducted in accordance with RCW 42.30.010 et seq. Notice of meetings shall be given in a manner consistent with RCW 42.30.010 et seq. In addition, the District shall routinely provide reasonable notice of meetings to any individual specifically requesting it in writing.

C. All Board meetings, including executive and all other permanent and ad hoc committee meetings, shall be open to the public to the extent required by RCW 42.30.010 et seq. The Board and committees may hold executive sessions to consider matters enumerated in RCW 42.30.010 et seq., or privileged matters recognized by law, and shall enter the cause therefor upon its official journal. At all public meetings, any citizen shall have a reasonable opportunity to address the Board either orally or by written petition.



Section 7.2. Parliamentary Authority. The rules in Robert's Rules of Order (revised) shall govern the District in all cases to which they are applicable, where they are not inconsistent with the Charter or with the special rules of order of the District set forth in the Bylaws.

Section 7.3. Minutes. Copies of the minutes of all regular or special meetings of the Board shall be available to any person or organization that requests them. The minutes of all Board meetings shall include a record of individual votes on all matters requiring Board concurrence or approval.

ARTICLE VIII

Procedural Requirements

Section 8.1. Board Review and Concurrence.

A. At least quarterly, the Board shall review monthly statements of income and expenses, which compare budgeted expenditures to actual expenditures. The Board shall review all such information at regular meetings, the minutes of which shall specifically note such reviews and include such information.

B. General or particular authorization or review and concurrence of the Board by resolution shall be necessary for any of the following transactions:

1. Transfer or conveyance of an interest in real estate other than release of a lien or satisfaction of a mortgage after payment has been received and the execution of a lease for a current term less than one year;

2. The contracting of debts, issuances of notes, debentures, or bonds, and the mortgaging or pledging of authority assets or credit to secure the same;

3. The donation of money, property or other assets belonging to the District;

4. An action by the District as a surety or guarantor;



5. All capital expenditures in excess of twenty-five thousand dollars (\$25,000), and all other transactions in which: (i) the consideration exchanged or received by the District exceeds the greater of one percent of the previous year's operating budget or twenty-five thousand dollars (\$25,000) or (ii) the performance by the District shall extend over a period exceeding one year from the date of execution of an agreement therefor;

6. Any substantial project or major activity outside the boundaries of the District;

7. Adoption of an annual budget, which such adoption shall occur and be presented to the Board of County Commissioners no later than September 1 of the year prior to the budget year;

8. Certification of annual reports and statements to be filed with the County as true and correct in the opinion of the Board and of its members except as noted;

9. Proposed amendments to the Charter and Bylaws; and

10. Such other transactions, duties, and responsibilities as the Charter shall repose in the Board or the Board may reserve.

Section 8.2. Establishment and Maintenance of Office and Records. The District shall:

A. Maintain a principal office at a location within the boundaries of the County;

B. File and maintain with the County a current listing of all Board officials, their positions and their home addresses, their business and home phone numbers, the address of the District's principal office and of all other offices used by it, and a current set of its Bylaws; and

C. Maintain all of its records in a manner consistent with the Preservation and Destruction of Public Records Act, RCW Chapter 40.14.

Section 8.3. Access to Records.

A. The District shall keep an official journal containing the minutes of proceedings at all meetings of the Board and the resolutions of the Board.

B. Any person shall have access to records and information of the District to the extent required by State law.

Section 8.4. Deposit of Public Funds. The County Treasurer shall serve as ex-officio treasurer of the District. All money belonging to or collected for the use of the District, coming into the hands of any corporate official or officer thereof, shall be deposited in a qualified public depository as determined by the Washington Public Deposit Protection Commission. Such monies may be invested at the direction of the Board, by resolution, in investments that would be lawful for the investments of County funds.

Section 8.5. Reports and Information. The District shall, within three months after the end of its fiscal year, file an annual report with the Board of County Commissioners containing audited financial statements of assets and liabilities, revenue and expenditures and changes in its financial position during the previous year; a summary of significant accomplishments; a list of depositories used; a projected operating budget for the current fiscal year; a summary of projects and activities to be undertaken during the current year; a list of authority officials and a list of officials bonded pursuant to Section 6.6 of this Charter. The District shall review with the Board of County Commissioners within 45 days of receipt and take immediate corrective action to address any audit findings or qualifications in its audit reports.

Section 8.6. Audits and Inspections. The District shall, at any time during normal business hours and as often as the Board of County Commissioners or the State Auditor deem necessary, make available to the Board of County Commissioners, the State Auditor or, at the _____




request of the County, an independent auditor for examination all of its financial records, and shall permit the County Treasurer or her designee, the Board of County Commissioners, State Auditor or, at the request of the County, an independent auditor to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all the aforesaid matters. The County shall control and oversee the District as required by State law. In exercising such control, the Board of County Commissioners, and State Auditor shall have no right, power or duty to supervise the daily operations of the District, but shall oversee such operations through their powers to audit, modify the District Charter and Bylaws and to remove Board members all as set forth in this Charter, all for the purpose of correcting any deficiency and assuring that the purposes of the District are reasonably accomplished.

Section 8.7. Insurance. The District shall maintain in full force and effect public liability insurance in an amount sufficient to cover potential claims for bodily injury, death or disability and for property damage, which may arise from or be related to projects and activities of the District, naming the County, the College and the Donor, and their respective agents and employees, as additional insureds, if such insurance shall be available at a reasonable price as determined by the Board. If insurance is not maintained the District shall maintain adequate reserves to cover potential claims and losses.

Section 8.8. Bylaws.

A. The properly adopted Bylaws of the District shall be the official rules for the governing of meetings and the affairs of the District.


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B. The Bylaws may be amended as provided in Article IX of this Charter in order to provide additional or different rules for governing the District and its activities as are not inconsistent with this Charter.

C. Amendments to the Bylaws shall be effective ten days after filing of same with the Clerk of the County, unless such amendment(s) shall have been passed by unanimous vote of the Board and an earlier effective date shall have been set.

Section 8.9. Conflict of Interest.

A. Except as provided in this section, a Board member or employee of the District may not participate in Board decisions if that person or a member of that person's immediate family has a financial interest in the issue being decided unless the financial interest is a remote financial interest and participation is approved under subsection B of this section.

B. A Board member or employee may participate in a decision if that person or a member of that person's immediate family has only a remote financial interest, the fact and extent of the interest is disclosed to the Board in a public meeting and is noted in the minutes of the Board before any participation by the member in the decision, and thereafter in a public meeting the Board by vote authorizes or approves the participation. If the person whose participation is under consideration is a Board member, that person may not vote under this subsection. For purposes of this subsection, "remote financial interest" means:

- (i) that of a nonsalaried officer or director of a nonprofit corporation;
- (ii) that of an employee or agent of a contracting party where the compensation of the employee or agent consists entirely of fixed wages or salary and the contract is awarded by bid or by other competitive process;
- (iii) that of a landlord or tenant of a contracting party, except in cases where the property subject to the lease or sublease is owned or managed by the public corporation;



(iv) that of a holder of less than one percent of the shares of the corporation or cooperative that is the contracting party; or

(v) that of an owner of a savings and loan or bank savings or share account or credit union deposit account if the interest represented by the account is less than two percent of the total deposits held by the institution.

C. A Board member or employee is not considered to be financially interested in a decision when the decision could not affect that person in a manner different from its effect on the public.

D. No Board member or employee of the District shall accept, directly or indirectly, any gift, favor, loan, retainer, entertainment or other thing of monetary value from any person, firm or corporation having dealings with the District when such acceptance would conflict with the performance of a Board member or employee's official duties. A conflict, or possibility of conflict, shall be deemed to exist where a reasonable and prudent person would believe that it was given for the purpose of obtaining special considerations or influence; provided that application of this provision shall take into consideration the established customs and practices of the District.

E. The Board may adopt additional conflict of interest and ethical rules it considers appropriate.

F. For purposes of this section, "participate in a decision" includes all discussions, deliberations, preliminary negotiations, and votes.

G. For purposes of this section, "immediate family" means:

1. A spouse;
2. Any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; and



3. Any parent, parent-in-law, child, son-in-law, daughter-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of the corporate official or employee.

Section 8.10. Discrimination.

A. Board membership may not directly or indirectly be based upon or limited by creed, age, race, color, religion, sex, national origin, marital status or the presence of any sensory, mental or physical disability, unless such limitations are necessary for the performance of the role and no less discriminatory alternatives are available.

B. To ensure equality of employment opportunity, the District shall not discriminate in any matter related to employment because of creed, age, race, color, religion, sex, national origin, marital status or the presence of any sensory, mental or physical disability, unless such limitations are necessary for the performance of the role and no less discriminatory alternatives are available. The District shall, in all solicitations or advertisements for employees placed by or on behalf of the District, state that all qualified applicants will receive consideration for employment without regard to creed, age, race, color, religion, sex, national origin, marital status or the presence of any sensory, mental or physical disability, unless such limitations are necessary for the performance of the role and no less discriminatory alternatives are available.

ARTICLE IX

Amendments to Charter and Bylaws

Section 9.1. Proposals to Amend Charter.

A. The District may propose to the Board of County Commissioners that its Charter be amended by resolution passed by a procedure outlined in its Bylaws at a regular or special meeting of the Board for which 30 days' advance written notice was given.



B. When required by law, the District shall propose to the Board of County Commissioners an amendment to this Charter that will conform to and be consistent with said law.

C. As necessary and appropriate in the discretion of the Board of County Commissioners, the Board of County Commissioners may propose to amend this Charter on its own initiative.

Section 9.2. Charter Amendments. The Charter may be amended only with the approval of the Board of County Commissioners, whether in response to a resolution passed by the District's Board of Directors, or on the initiative of the County. After adoption of a Charter amendment, the revised Charter shall be issued and filed in the same manner as the original Charter.

Section 9.3. Amendments to Bylaws. The Bylaws of the District may be amended by a resolution passed by a majority of the Board members in office at the time. Bylaws shall be reviewed annually after the election of officers with recommendations, if any, for amending the bylaws proposed by the Executive Committee, if such committee is established, otherwise by an ad hoc Bylaws Committee appointed by the Board President. At any other time, any Board member may introduce necessary amendments to the Bylaws to the Board for consideration. The Board of County Commissioners may amend the Bylaws by resolution adopted at or after a public meeting held, with notice to the College.

ARTICLE X

Commencement

The District shall commence its existence effective upon filing its Charter as issued and attested with the Clerk and Auditor of the County.



ARTICLE XI

Dissolution

Section 11.1. Dissolution Process.

A. If the Board makes an affirmative finding that dissolution is necessary or appropriate because the purposes of District may not be fulfilled for any reason, the Board may adopt a resolution requesting the County to dissolve the District.

B. Upon adoption of a motion by the Board of County Commissioners requesting the following information, or upon adoption by the District board of a resolution requesting its own dissolution, the District shall file a dissolution statement with the Clerk and the Auditor of the County setting forth:

1. The name and principal office of the District;
2. The debts, obligations and liabilities of the District, including conditions of grants and donations, and the property and assets available to satisfy the same; the provisions to be made for satisfaction of outstanding liabilities and performance of executory contracts; and the estimated time for completion of its dissolution;
3. Any pending litigation or contingent liabilities;
4. The Board resolution requesting such dissolution and the date(s) and proceedings leading toward its adoption, whenever the dissolution be voluntary; and
5. A list of persons to be notified upon completion of dissolution.

Section 11.2. Trusteeship.

A. In the event of the insolvency or pending dissolution of the District, the Superior Court of Skagit County shall have jurisdiction and authority to appoint trustees or receivers of corporate property and assets and supervise such trusteeship or receivership. Jurisdiction over



dissolution arises in the event the dissolution ordinance enacted by the Board of County Commissioners requests Superior Court trusteeship.

B. The trustees appointed by the Superior Court shall take such actions as necessary during the trusteeship to achieve the object thereof as reasonable. The trustees shall have the power and authority to reorganize the District and recommend amendment of its Charter and/or its Bylaws; suspend and/or remove District officials, and manage the assets and affairs of the District; and exercise any and all District powers as necessary or appropriate to fulfill outstanding agreements, to restore the capability of the District, to perform the functions and activities for which it is chartered, to reinstate its credit or credibility with its creditors or obligees, and, if so authorized by the Superior Court, to oversee its dissolution and appropriate subsequent transactions.

ARTICLE XII

Approval of Charter

APPROVED by the Board of County Commissioners of Skagit County.



DEFINED TERMS

Additional Bonds means Completion Bonds or Refunding Bonds issued by the District.

Additional Revenue means all revenue received by the District (or by the County on behalf of the District), including gifts, grants, donations, Admission Charges, Admission Taxes, Parking Charges, Parking Taxes, Rental Revenue Voted Sales Tax, and any other revenue derived from the ownership or operation of the facilities of the District, including investment income.

Administrative Costs means the costs of the College incurred in administering the District and the Management Agreement.

Act means chapter 36.100 RCW, as the same may be amended from time to time.

Admission Charge means any charge imposed by the District (or by the College on behalf of the District) for admission to its facilities, including charges for season tickets or subscriptions; cover charges, or charges for use of seats and tables, and other similar accommodations; charges for food and refreshment if free entertainment, recreation, or amusement is provided; charges for rental or use of equipment or facilities for purposes of recreation or amusement.

Admission Tax means any tax imposed by the District pursuant to RCW 36.100.210 to be paid by any person who pays an Admission Charge.

Board means the governing body vested with the management of the affairs of the Skagit Regional Public Facilities District.

Bond Budgeted Amount means, currently, the dollar amount of Bonds to be sold in order to generate proceeds available for construction of \$8,000,000, as such amount may be adjusted, based upon the approval of the County's financial advisor.



Bond Counsel means a firm of lawyers nationally recognized and accepted as bond counsel and so employed by the District.

Bond Resolution means the resolution of the District Board authorizing the issuance of the Bonds and any amendments.

Bonds means the bonds, notes or other evidences of indebtedness issued by the District pursuant to and under authority of the Bond Resolution to finance the Project.

Charter means the Charter of the District, issued pursuant to the County Resolution, as amended from time to time.

Code means the Internal Revenue Code of 1986, as amended, together with all applicable regulations thereunder.

College means the Skagit Valley College, a community college of the State of Washington.

County/College Interlocal Agreement means the County/College Interlocal Agreement Regarding Skagit Regional Public Facilities District between the College and the County with respect to the formation of the District, and the management of the PAC.

College Representative means the President of the College or any other person designated in writing to act as the "College Representative" by the President of the College.

Completion Bonds means additional bonds of the District issued to pay Costs of the Project.

Costs of the Project means all capital costs that are paid or incurred by the District in connection with the design, development and construction of the Project, including, but not limited to all or a portion of the interest on Bonds during the period of construction of such improvements, and for a period of time thereafter; amounts required to meet any reserve



requirement for the Bonds; the cost of paying or reimbursing the District or any fund thereof for expenses, including planning, permitting and design expenses, incident and properly allocable to the Project; and all other items of expense incident and properly allocable to designing, developing and constructing the Project, financing the Project and placing the Project in operation.

County Representative means the County Administrator of the County and shall include any other person appointed in writing to act as the County Representative by the Board of Commissioners of the County.

County Resolution means Resolution No. ___ of the Board of County Commissioners, adopted on August 14, 2001, as the same may be amended from time to time.

Date of Issuance means the date on which the Bonds are issued and sold to the Underwriter in exchange for the purchase price therefore.

Debt Service means the amount, taking into account amounts then on deposit in the Debt Service Fund(s), to be paid on the next succeeding Payment Date to pay the principal of, premium, if any, and interest on Bonds and any Additional Bonds coming due on such Payment Date.

Debt Service Fund means the special fund(s) established by the District under the Bond Resolution or a Supplemental Bond Resolution for the purpose of paying the principal of, interest on and redemption price, if any, of Bonds and/or any Additional Bonds.

Debt Service Reserve Fund means the Debt Service Reserve Fund, if any, established by the District under the Bond Resolution or Supplemental Bond Resolution, which secures the Bonds and/or any Additional Bonds.

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Debt Service Reserve Fund Requirement means the least of: (a) 10% of the principal amount of the Bonds; (b) 125% of the average annual debt service on the Bonds; or (c) 100% of the maximum annual debt service on the Bonds.

District means the Skagit Regional Public Facilities District created pursuant to the County Resolution.

Donation means the sum of \$6,000,000, committed to be contributed by the Donor in accordance with the terms of the Donor Agreement.

Donation on Deposit means that portion of the Donation represented by (i) undisbursed cash on deposit with the Treasurer in the Project Fund and (ii) the undrawn balance of any irrevocable, unconditional letter of credit provided by the Donor to the Treasurer for deposit in the Project Fund and issued by a banking institution having a rating of "A" or higher. The initial aggregate Donation on Deposit is expected to be \$5,085,000 (the Donation minus in-kind contributions).

Donor means the M.J. McIntyre and Shirley McIntyre Charitable Foundation, a Washington nonprofit corporation.

Donor Agreement means the Donor Agreement Regarding the Skagit Regional Public Facilities District, between the Donor and the County.

Donor Representative means the individual or legal entity identified in writing signed by the President of the Donor and delivered to the County, SPAC, the College and the District.

Facilities Maintenance means the costs of maintaining the Land and PAC, including security, utilities, grounds maintenance and all janitorial service.



Favorable Opinion of Bond Counsel means, with respect to any action, a written legal opinion of Bond Counsel addressed to the District, to the effect that such action is permitted under the laws of the State and under applicable ordinances of the District Council, including the Bond Resolution and any Supplemental Bond Resolution, and will not impair the exclusion of interest on a Bond or any other bonds of the District from gross income for federal income tax purposes under the Code (subject to the inclusion of any exceptions contained in the opinion delivered upon original issuance of such bond).

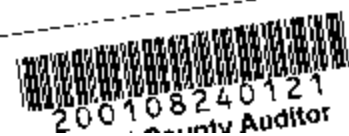
Final Terms and Specifications means the final plans and construction designs for the Project to be prepared by the Project architect, subject to the approval of the College and the Board of Directors of the District.

Fiscal Year means the fiscal year for the District, currently ending December 31.

Fitch means Fitch IBCA, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, or, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch IBCA" shall be deemed to refer to any other nationally recognized securities rating agency other than S&P or Moody's, designated by the County.

Governmental Authority shall mean any board, bureau, commission, department, or body of any municipal, county, state, or federal governmental or quasi-governmental unit, or any subdivision thereof, having, asserting, or acquiring jurisdiction over the Property or the management, operation, use, or improvement thereof.

Ground Lease means the ground lease of the Land, to be entered into between the College and the District.



Improvements shall mean all buildings, structures, fixtures, improvements and equipment constructed or located on the Property, including, but not limited to, the structure of the PAC and the [parking facilities], elevator(s), lighting, seating, carpeting, HVAC, plumbing, electrical and mechanical systems; *provided*, that in no event shall the term "Improvements" be deemed to include any portion of the District's public or movable personal property, including furniture, computers and office equipment.

Insurance Proceeds mean the greater of (i) the proceeds from the insurance policies actually maintained by the District with respect to the PAC; or (ii) the proceeds that would have been available had the District maintained the insurance policies required to be maintained by the District under the Ground Lease.

Insurer means the municipal bond insurance company, if any, that issues a policy of municipal bond insurance with respect to the Bonds.

Interlocal Agreement means any or all of the Interlocal Agreements expected to be entered into between the County and each of the cities of Anacortes, Burlington, Mount Vernon and Sedro-Woolley and the towns of La Conner and Concrete.

Land means the parcel of real property, owned by the College and consisting of approximately ___ acres.

Law(s) and Resolution(s) shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, permits, authorizations, orders and requirements of all federal, state, county and municipal governments, the departments, bureaus or commissions thereof, authorities, boards or officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Property, including the District acting in its governmental capacity.



Lodging Taxes means lodging taxes, if any, received by the District pursuant to Chap. 67.28 RCW.

MACC means the maximum allowable construction cost and shall include hard and soft costs and the costs of all change orders.

Major Maintenance means those expenditures deemed necessary to maintain and extend the life of the Project, including, but not limited to costs of roofing, replacement of carpeting and other flooring, HVAC replacement and paving.

Management Agreement means the Management Agreement, between the District and the College, having a term equal to the term of the Bonds, pursuant to which the College agrees to operate the PAC and to cause to be remitted to the Treasurer all revenues thereof, including but not limited to Rental Revenues.

Maximum Amount means the lesser of (i) \$13,085,000; the current estimate of Net Proceeds plus the Donation on Deposit) and (ii) the undisbursed Bond proceeds on deposit in the Project Fund remaining available to pay Costs of the Project plus the Donation on Deposit plus Other Contributed Funds.

Moody's means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency (other than Fitch or S&P) designated by the County.

Net Proceeds, when used with reference to the Bonds, means the principal amount of such Bonds, plus original issue premium, if any, and less original issue discount, if any, and less



the proceeds of the Bonds used to pay costs of issuance or deposited in the Debt Service Reserve Fund.

Nominating Committee means the standing committee of the District, consisting of the Donor Representative, the County Representative, the SPAC Representative and the College Representative.

Other Contributed Funds means money, including grants from the state or any other local or federal agency, received from sources other than the County, the College or Bond proceeds and may include cash contributions from donors solicited by SPAC or the Skagit Valley College Foundation or by the District. Other Contributed Funds may also include sums contributed by the Donor in addition to the Donation. Funds shall not be considered to be *Other Contributed Funds* until such time as the cash (and/or an irrevocable, unconditional letter of credit issued by a banking institution rated "A" or better representing such funds) is on deposit in the Project Fund

PAC means the Skagit County Performing Arts and Conference Center, to be situated on property owned by the College and leased to the District.

Parking Charge means "vehicle parking charges" as defined in RCW 36.100.210.

Parking Tax means a tax on any Parking Charge imposed at any parking facility that is owned or leased by the District pursuant to RCW 36.100.220.

Payment Date means the dates specified in the Bond Resolution, or any Supplemental Bond Resolution, as dates for the payment of interest on, principal of or premium, if any, with respect to the Bonds or any Additional Bonds.

Project means the undertaking of the construction and equipping of the PAC.

Project Fund means the special fund to be established and held by the Treasurer into which the Donor Deposit, the Bond Proceeds Deposit and Other Contributions On Deposit shall be held, together with interest earnings thereon, for the purpose of paying the costs of the Project.

Property shall mean the real property described in Exhibit A to the Ground Lease.

Rating Agency means S&P if S&P then maintains a rating on the Bonds or Moody's or Fitch if Moody's or Fitch then maintains a rating on the Bonds.

Refunding Bonds means bonds, notes or other evidence of indebtedness the proceeds of which will be used to refund Bonds.

Rental Revenue means all income derived from the ownership and operation of the PAC, including daily, weekly or other lease or use agreements.

S&P means Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc., a corporation organized and existing under the laws of the State of New York, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency (other than Fitch or Moody's) designated by the County.

Sales Tax means the sales and use tax to be imposed by the District in accordance with RCW 82.14.390 at a rate not to exceed 0.033% of the selling price in the case of a sales tax or value of the article used in the case of a use tax, which tax shall be deducted from the amount of tax otherwise required to be collected or paid over to the State's Department of Revenue and shall expire when the Bonds and any Additional Bonds are retired, or, in any event, not more than 25 years after the Sales Tax is first collected.



Sales Tax Revenue means all Sales Taxes received by the District.

SPAC means the Skagit Performing Arts Council, a Washington nonprofit organization.

SPAC Representative means the _____ of SPAC and shall include any other person designated in writing by the _____ of SPAC.

State means the State of Washington.

Substantial Completion shall mean when the Beneficial Occupancy of the PAC as expanded by the Project is achieved.

Supplemental Bond Resolution means any resolution adopted by the Board amending or supplementing the Bond Resolution, including any resolution adopted by the Board in connection with the issuance of Additional Bonds.

Underwriter means the underwriting firm or firms selected by the County to underwrite the Bonds.

Voted Sales Tax means any sales and use tax imposed by the District pursuant to RCW 82.14.048 and approved by the voters.

