

GREG NICKELS

Introduced by: CHRISTOPHER VANCE

1 March 7, 1997
2 MW:clt
3 pfdam#4.mot
4

Proposed No: 97-172

MOTION NO. **10164**

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6
7 A MOTION related to a new major league baseball stadium,
8 authorizing execution of Amendment No. 4 to the March 18, 1996
9 Financing Agreement with the Washington State Baseball Stadium
10 Public Facilities District.
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12 WHEREAS, the King County Council and the Washington State Major League
13 Baseball Stadium Public Facilities District (the PFD) are committed to maintaining a
14 construction schedule to have a new major league baseball stadium ready for the 1999
15 baseball season, and

16 WHEREAS, there is a significant likelihood that the current owners of the Seattle
17 Mariners Baseball Club will sell the Mariners franchise if the current construction schedule is
18 not maintained, and

19 WHEREAS, RCW 82.14.360(6) requires King County to contribute to the PFD certain
20 county-owned real property as the PFD determines to be necessary as a site for the new major
21 league baseball stadium, and

22 WHEREAS, King County owns a 12.59 acre property south of the Kingdome on South
23 Royal Brougham Way, known as the Ackerley property, which was acquired by King County
24 in 1992 for stadium purposes, and

25 WHEREAS, the PFD has selected the Ackerley site for the new major league baseball
26 stadium, and
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1 WHEREAS, the King County Council has determined that the beneficial use and
2 occupancy of the Ackerley property by the PFD prior to the conveyance of property title to
3 the PFD as described and authorized herein, is necessary to maintain the current construction
4 schedule;

5 NOW THEREFORE, BE IT MOVED by the Council of King County:

6 The King County executive is authorized to execute Amendment No. 4 to the March 18,
7 1996 Financing Agreement with the Washington State Major League Baseball Stadium Public
8 Facilities District in substantially the form attached hereto.

9 PASSED by a vote of 8 to 5 this 2nd day of
10 April, 1997.

11 KING COUNTY, COUNCIL
12 KING COUNTY, WASHINGTON

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16 Jan Fazio
17 Chair

18 ATTEST:

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21 Just Masno
22 ACTING Clerk of the Council

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27 Attachments: Amendment No. 4 to the March 18, 1996 Financing Agreement

**FOURTH AMENDMENT TO AGREEMENT BETWEEN KING COUNTY AND THE
WASHINGTON STATE MAJOR LEAGUE BASEBALL STADIUM PUBLIC
FACILITIES DISTRICT**

This Fourth Amendment to the March 18, 1996 Financing Agreement ("Fourth Amendment") by and between King County (the "County") and the Washington State Major League Baseball Stadium Public Facilities District (the "PFD"), collectively referred to as the "Parties" shall be effective upon the authorized signatures of both Parties.

FINDINGS

The Washington State Major League Baseball Stadium Public Facilities District, established pursuant to RCW 36.100 and King County Ordinance 12000, has initiated efforts to develop a major league baseball ballpark in the City of Seattle (the "City"); and

The County entered into a Financing Agreement dated March 18, 1996 ("Financing Agreement") with the PFD for the development of a major league baseball stadium in the City of Seattle ("City"); and

RCW 82.14.360(6) requires the County to assemble such real property as the PFD determines to be necessary as a site for the baseball stadium and to contribute to the PFD certain property that is owned by the County which is necessary for that purpose; and

In accordance with Section 11 of the Financing Agreement, the County and the PFD wish to amend the Financing Agreement to transfer to the PFD certain County-owned real property described below ("Property"), pursuant to the terms and conditions of this Fourth Amendment and as required by law; and

The County is currently allowing the PFD beneficial use of the Property preliminary to construction of the stadium pursuant to a special use permit; and

The PFD and the County wish to execute such Fourth Amendment to transfer the Property as expeditiously as possible, consistent with the requirements of Ordinance 12000 and state law, to facilitate development of the ballpark.

NOW, THEREFORE, in consideration of the promises, covenants and considerations set forth herein, the County and the PFD hereby agree to amend the Financing Agreement to add the following new Section 22:

22. **PROPERTY TRANSFER**

Pursuant to Ordinance 12000 and Section 201(6) of Engrossed House Bill 2115 codified as RCW 82.14.360(6), the County hereby agrees to transfer to the PFD for the sole purpose of

constructing and operating a major league baseball stadium and parking facility ("Ballpark") fee title to the Property as described on Exhibit A attached hereto. Fee title shall be transferred by a statutory warranty deed within ten (10) days of the date of receipt by the PFD of no less than 100 million dollars in proceeds from bonds issued by the County for the Ballpark, unless the transfer of the Property is enjoined by a court of competent jurisdiction.

22.1 The PFD acknowledges that the State of Washington is contemplating making road improvements along the South Atlantic Street boundary of the Property. The Parties agree that should any part of the Property be acquired by the State for this purpose the County, at its election, shall either be entitled to payment of an amount developed by ratio of the amount of land acquired by the State over total square footage of the Property times \$9,102,705 plus an annual escalation as defined below or be entitled to credit such amount as local share for matching purposes for state or federal grants related to such road improvements.

The annual escalation shall be calculated using the Consumer Price Index for All Urban Consumers (CPI-U), Seattle-Tacoma, All Items (1982-1984) = 100) issued by the Bureau of Labor Statistics of the United States Department of Labor. If the CPI-U ceases to use the 1982-1984 average equaling 100 as the basis of calculation, or if a change is made in the term or number of items contained in the CPI-U, or if the CPI-U is altered, modified, converted or revised in any other way, then the determination of the CPI change shall be made with the use of such conversion factor, formula or table for converting such index as may be published by the Bureau of Labor Statistics. If the CPI-U is no longer published by the Bureau of Labor Statistics, then any substitute or successor index published by said Bureau or other governmental agency of the United States will be used, as shall be agreed upon by the PFD and the County. For the purposes of this subsection, the Parties agree that the date that the annual escalation, as defined above shall be applied commencing for calendar year 1993 through the calendar year in which the payment required under these subsections is made to the County.

22.2 Notwithstanding the date when title to the Property transfers, the PFD shall have the right to make beneficial use of the Property on execution of this Fourth Amendment.

22.3 Until the date of "Substantial Completion" of the Ballpark, as defined at page 10 of the Ballpark Operations and Lease Agreement between the PFD and the Baseball Club of Seattle ("Mariners"), is achieved, if the PFD Board takes formal action to abandon a Ballpark project at a site including the Property, the PFD shall either return the Property to the County with the County's prior concurrence or shall pay the County \$9,102,705 plus an annual escalation as set forth in subsection 22.1.

22.4 Additionally, if following Substantial Completion of the Ballpark, and during the period of time the bonds referenced in this section are outstanding, title to the Property is voluntarily or involuntarily transferred to a private party, then the PFD shall pay the County \$9,102,705 plus an annual escalation as set forth in subsection 22.1.

22.5 The financial obligations set forth above in subsections 22.1, 22.3, and 22.4 are intended to survive any transfer of title from the County to the PFD and shall be recorded along with the deed.

22.6 The PFD has inspected the Property and has been provided a copy of a soils report prepared by RZA AGRA, Inc., commissioned by the County in 1992, as well as an August 1995 report compiled by the County as part of the Kingdome Renovation Project regarding the storage of excavated soils from the Kingdome Pavilion as well as the stockpiling of K-13 acoustical debris and sandblasting waste from the Reroofing Project at the Kingdome. The PFD is aware of potential environmental concerns raised in these reports. Based on these reports, the PFD understands and agrees that the Property is taken for use by the PFD on an "as is" basis and that the County has no obligation to the PFD to make any changes, improvements, or to incur any expenses whatsoever for maintenance, repair or clean-up, including removal of any Hazardous Substances or contaminated soils.

22.7 With respect to the use of the Property by the PFD before and after transfer of title pursuant to this Fourth Amendment, the following indemnification and hold harmless provisions shall apply.

A. Except to the extent of the County's negligence, and to the maximum extent permitted by law, the PFD agrees, for itself, its successors, and assigns, to defend, indemnify and hold harmless the County, its officials, employees and agents, from and against liability for all claims, demands, suits, and judgment, including costs of defense thereof, for injury to persons, death or property damage which is caused by or results from the PFD's exercise of its rights and privileges granted by this Agreement. The PFD's obligations under this section shall also include, but not be limited to:

- (1) The duty to promptly accept tender of defense under this subsection and to provide defense to the County at the PFD's own expense;
- (2) Indemnification of the County for claims made by PFD's own employees, agents, contractors or consultants unless injuries or death or property damage results from the negligence of the County. For this purpose, by mutual negotiation the PFD hereby waives as to the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW as adopted or hereinafter revised;
- (3) To reimburse the County for any necessary and additional out-of-pocket expenses, including reasonable fees for retained attorneys or costs incurred in the enforcement of any part of this Fourth Amendment within thirty (30) days upon receiving written notice and a detailed accounting of the expenses incurred, provided the County previously advised the PFD in writing that such expenses were going to be incurred;

- (4) Indemnification of the County for any response or remedial action costs, and/or natural resource damages recoverable pursuant to 42 U.S.C. Sec. 9607 and/or RCW Ch. 70.105D.040, as now existing or hereafter amended, arising out of the release or threat of release of a Hazardous Substances (as defined below) existing on or emanating from the Property as of the date of title transfer and including the previously referenced Kingdome Pavilion site soils, K-13 debris and sandblasting residue but excluding any Hazardous Substance previously deposited on the Property by the County and not identified by the County to the PFD prior to execution of this Fourth Amendment;
- (5) Indemnification of the County against any and all claims, liabilities, damages, and expenses asserted against the County by a third party including without limitation any agency or instrumentality of the federal, state or local government, for contribution pursuant to 42 U.S.C. Sec. 9613 and RCW Ch. 70.105D (if a right of contribution is provided for thereunder), as now existing or hereafter amended, arising out of or relating to the release, or threatened release, of a Hazardous Substance (as defined below) existing on or emanating from the Property as of the date of transfer of title, except for Hazardous Substance previously deposited thereon by the County.

For the purposes of this Agreement the definition of Hazardous Substance includes:

- B. (1) Any toxic substances or waste, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances.
- (2) Any dangerous waste, hazardous waste, or hazardous substance as define in:
- (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereinafter amended (42 U.S.C. § 9610 et seq.);
- (b) Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. § 6910 et seq.);
- (c) Washington Model Toxics Control Act, as now or hereinafter amended (RCW Chs. 70.105, 70.105A and 70.105D); and

- (d) Regulations, administrative rulings or direction which implement these statutes; or
- (3) Any pollutants, contaminants, substances, as defined above, posing a danger or threat to public health or welfare, or to the environment, which are regulated or controlled by any federal, state and local laws and regulation, as now or hereafter amended.

C. To the maximum extent permitted by law, King County agrees, for itself, its successors, and assigns, to defend, indemnify and hold harmless the PFD, its officials, employees and agents, from and against liability for all claims, demands, suits, and judgment, including costs of defense thereof, for injury to persons, death or property damage which is caused by, or results from King County's exercise of its rights and privileges granted by, or its obligations pursuant to, this Fourth Amendment.

D. The indemnification, hold harmless obligations contained herein shall survive the expiration or termination of this Fourth Amendment.

22.8 The County agrees to immediately notify the PFD of any claim made against the County regarding the Property if it relates to the PFD's use of the Property pursuant to this Fourth Amendment. Such notice shall be in writing sent by registered mail at PFD's address as stated in the Financing Agreement no later than ten (10) days of receipt of the claim by King County. The County shall not be required to pay rent on, demolish, remove, or pay the costs of demolition or removal of any structures or other improvements, fixtures or equipment remaining on the Property, except that the County shall be responsible for relocating the fixtures and equipment related to operation of the Kingdome.

22.9 As of the date of beneficial use, the PFD shall be responsible to pay all taxes and assessments levied against the Property and all costs, expenses, fees, services, and charges of all kinds for heat, light, water, gas, and telephone, and for all other public utilities used on said Property so that the same shall not become a lien against the Property. The County agrees to notify the PFD of any claim for payment of such taxes, assessments or for such charges by utilities made against the County after the transfer of beneficial use to the PFD.

If the PFD fails to pay any obligations, fees, taxes or assessments, the County will mail notice to the PFD of its failure to pay. Twenty (20) days after mailing notice, if the PFD's obligation remains unpaid, the County may pay these obligations at the PFD's expense. Upon written notification to the PFD of any costs incurred by the County under this section, the PFD will reimburse the County within twenty (20) days. Nothing herein shall be deemed to prohibit the PFD from having the right, at its own expense, in its own name and/or in the name of the County, to object to the legality or validity of any tax or assessments on the Property or improvements thereon.

22.10 The Parties agree that this Fourth Amendment represents the complete expression of the terms hereto and any oral or written representations or understandings not incorporated

herein are excluded. Both Parties recognize that time is of the essence in the performance of the provisions of this Fourth Amendment. Waiver of any default shall not be deemed to be waiver of any subsequent default. Waiver of a breach of any provision of this Fourth Amendment shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Fourth Amendment or the Financing Agreement, unless stated to be such through written approval by the County.

22.11 No provision of this Fourth Amendment precludes a Party from pursuing any other remedies for the other Party's failure to perform its obligations.

22.12 If any term or provision of this Fourth Amendment or the application of any of its term or provision to any person or circumstance is invalid or unenforceable, the remainder of this Fourth Amendment, or the application of the terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.

EXCEPT AS SET FORTH HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE FINANCING AGREEMENT ARE TO REMAIN IN FULL FORCE AND EFFECT.

In witness whereof, the Parties hereto have accepted this Fourth Amendment .

KING COUNTY

WASHINGTON STATE MAJOR LEAGUE
BASEBALL STADIUM PUBLIC
FACILITIES DISTRICT

By _____
Ron Sims, County Executive

By _____
Joan Enticknap, Board Chair

Date

Date

Approved as to form:

Approved as to form:

King County Prosecuting Attorney

PFD Attorney

Date

Date