

August 15, 1997

GREG NICKELS

Introduced By:

CHRISTOPHER VANCE

Proposed No.:

97-502

**10274**

MOTION NO. 10274

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A MOTION related to a new, open air stadium suitable for National League Football and for Olympic and world cup soccer and exhibition center , authorizing the execution of an agreement with the Washington State Public Stadium Authority (PSA) to provide services and interim financing.

WHEREAS, pursuant to provisions of state law, King County and the PSA shall enter into agreements regarding the construction of the an open air stadium suitable for National League Football and for Olympic and world cup soccer and exhibition center, and

WHEREAS, the proposed agreement provides for necessary services and interim financing to the PSA and makes adequate provisions to safeguard the interests of King County by requiring repayment of funds and reimbursement for any services rendered.

NOW, THEREFORE, BE IT MOVED by the Council of King County: the executive is hereby authorized to execute the agreement between King County and the

1 PSA in substantially the form attached hereto.

2 PASSED by a vote of 12 to 0 this 25<sup>th</sup> day of August, 1997.

3 KING COUNTY COUNCIL  
4 KING COUNTY, WASHINGTON

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6 \_\_\_\_\_  
Chair

7 ATTEST:

8   
9 \_\_\_\_\_  
Clerk of the Council

10 Attachments:

11 Services and Interim Financing Agreement between King County and the  
12 Washington State Public Stadium Authority

**SUPPORT SERVICES AND INTERIM FINANCING AGREEMENT  
BETWEEN KING COUNTY AND THE  
WASHINGTON STATE PUBLIC STADIUM AUTHORITY**

This Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of August, 1997, by and between King County (the "County") and the Washington State Public Stadium Authority (the "Authority"), collectively referred to as the "Parties."

**RECITALS**

At a special election held on June 17, 1997, the voters of the State of Washington approved Referendum 48 [1997 Laws of Washington, Chapter 220] to provide for the financing, construction, ownership and operation of a new, open air stadium, suitable for National League Football and for Olympic and World Cup Soccer, and exhibition center through a public stadium authority; and

Pursuant to said laws and by Ordinance No. 12807 adopted July 17, 1997, King County created the Washington State Public Stadium Authority and a Board of Directors has been appointed by the Governor of the State of Washington; and

The Authority began official operations on July 31, 1997 and by motion authorized the Chair of the Authority's Board of Directors to contact appropriate agencies and offices of the State of Washington, King County and the Washington State Major League Baseball Stadium Public Facilities District to investigate the availability and potential commitment of staff and other services to assist the Authority during the first ninety (90) days of its operations; and

King County is willing to provide certain support and procurement services to the Authority on an interim basis to assist its startup operations with the Authority's commitment to reimburse King County for its costs; and

Pursuant to Referendum 48 and King County Ordinance No. 12807, King County on July 22, 1997, imposed a special stadium and exhibition center sales and use tax, all revenues from which are to be transferred to the Authority in accordance with applicable provisions in Referendum 48; and

Sales and use tax revenue accrued from August 1, 1997 cannot be transferred to the Authority until October, 1997 due to the amount of time necessary to collect and account for such tax, but is willing to provide an advance on such tax revenues, which are accruing for the benefit of the Authority, to be credited against the amount later to be transferred to the Authority; and

The Authority is in need of an interim treasurer until such time as the Authority is able to negotiate and execute a long-term contract for banking services and the King County Department

of Finance is willing to act as such interim treasurer until the Authority develops more permanent financial arrangements; and

By Resolution No. 97-007 adopted August 14, 1997, the Board of the Authority authorized its Chair to request the King County Department of Finance to serve as the Authority's interim treasurer and to request interim financing by advances from King County against future tax revenues and by Resolution No. 97-009 adopted the same date the Board authorized agreements with local governments for interim staff, procurement and other services.

**AGREEMENT**

**1. PURPOSE**

This Agreement is intended to (1) assist the Authority in the expeditious development of a new stadium and exhibition center project by providing interim staff support from King County during the initial operations of the Authority; (2) provide for an advance on tax revenues currently accruing for the benefit of the Authority to be credited against the amounts later transferred by the County to the Authority pursuant to Referendum 48 and King County Ordinance No. 12807; (3) provide for cooperative purchasing and other services; and (4) confirm the King County Treasurer as the interim treasurer for the Authority.

**2. ADMINISTRATION**

All tasks and services undertaken pursuant to this Agreement shall be administered on behalf of the County by Mike Wilkins, Assistant Deputy for the County Executive, or designees who may be selected by the County Executive, who will represent the County in administering tasks covered by this Agreement, and on behalf of the Authority by the Authority's interim or permanent Executive Director, who will represent the Authority in administering tasks covered by this Agreement and shall serve as the "Administrator" as provided below.

**3. INTERIM FINANCING ASSISTANCE**

3.1 Contingent upon appropriation, King County agrees to transfer to the Authority by loan the sum of Three Hundred Ninety Thousand Dollars (\$390,000) as an advance against tax revenues currently accruing for the benefit of the Authority, which shall be credited against the amount later to be transferred by King County to the Authority beginning in October of 1997, pursuant to the provisions of Referendum 48 and King County Ordinance No. 12807. The amount advanced by loan shall be credited against the tax revenues scheduled to be transferred to the Authority in three installments of: \$75,000 in October, 1997; \$100,000 in November, 1997; and \$215,000 in December, 1997, plus accrued interest on all funds previously advanced so that the entire advance is repaid, with interest, on or before December 31, 1997.

The transfer shall constitute the only obligation of King County to provide interim financial support to the Authority.

3.2 King County shall be entitled to interest on the funds so advanced until repaid at its standard interfund borrowing rate for any interfund transfer which is currently \_\_\_ (%) percent per annum. Funds shall be considered advanced when King County issues a warrant for payment of an Authority obligation.

#### 4. INTERIM TREASURER SERVICES

4.1 The King County Department of Finance shall serve as the interim treasurer for the Authority until such time as the Authority is able to negotiate and execute a long-term banking services contract which would include such services. The Department of Finance shall cooperate in good faith with requests from the Authority to establish particular funds and accounts and to issue warrants for payments as deemed necessary by the Authority to properly serve the business and functions of the Authority and shall invest Authority funds pursuant to investment policies approved by the Authority.

4.2 The Authority shall give the Department of Finance reasonable advance written notice of the requested termination dates for any treasurer services no longer required by the Authority.

#### 5. PROCUREMENT OF GOODS AND SERVICES

5.1 The County agrees, on behalf of and as requested by and under the direction of the Authority, and subject to the availability of County resources to administer procurements for selection of consultants, contractors, and other service providers needed for the development of the said stadium and exhibition center project for so long as the Authority requires such procurement services. The County's procedures relating to advertisement and selection of providers, proposals, consultants and vendors or contractors may be used to the extent they are consistent with laws applicable to the Authority and further that any procedures not otherwise available to the County but authorized for use by the Authority pursuant to Referendum 48 [1997 Laws of Washington, Chapter 220] or otherwise available at law to the Authority may also be used. The County reserves the right to refuse to assist the Authority in the procurement of goods and services when it is in the County's interest.

5.2 The County authorizes the Authority to engage in cooperative procurements with the County and to secure goods and services under current County contracts where feasible.

5.3 The Authority shall reimburse the County for all costs reasonably related to the County's administration of procurement processes in accordance with the reimbursement provisions set forth in this Agreement.

5.4 The Authority reserves the right to contract independently for the purchase of any particular class of goods or services, with or without notice to the County.

5.5 Subject to the availability of County resources, the County authorizes the use by the Authority of County information services, including telecommunications and computer systems connected to or installed in business office space used by the Authority.

6. **SERVICES PROVIDED BY COUNTY STAFF**

6.1 The County does hereby agree, within the terms of this Agreement and applicable laws and subject to the availability of County resources, to provide the following services to assist the development of the stadium and exhibition center project as requested by the Authority:

- A. Assist the Authority in the preparation of and then advertise and issue Requests For Qualifications (RFQ), Requests For Proposals (RFP) and Invitations For Bids (IFB).
- B. Conduct limited ministerial or administrative contract-related tasks as specifically authorized by the Authority.
- C. Assist the Authority in conducting technical reviews of RFQ's, RFP's and IFB's.
- D. Serve as administrative support staff to Consultant Selection Boards appointed by the Authority.
- E. Assist the Authority Board in negotiating consultant agreements and other contracts.
- F. Assist the Authority in the preparation of scopes of work for RFQ's, RFP's and IFB's.
- G. Assist with the development of administrative systems, including accounting, finance, personnel, and purchasing for review and approval by the Authority's Board.
- H. Draft documents related to the services set out above.
- I. Such other services as the Parties may agree to, provided they are authorized by and consistent with applicable laws and County ordinances.
- J. Assist the authority in evaluating risk management and insurance issues.

6.2 In providing all of the referenced services, the County shall furnish any materials and equipment necessary for full performance subject to reimbursement as specified herein.

6.3 All services provided by County staff under this Agreement shall be governed by County personnel standards of performance, discipline, and other applicable County policies and procedures. Whenever County staff provide services to the Authority under this Agreement, they shall provide such services as the agent of the Authority.

6.4 All County staff providing services to the Authority pursuant to this Agreement shall continue as employees of the County and retain all employee rights and benefits made generally available to County employees while performing work for the Authority.

6.5 Nothing in this Agreement shall prevent the Authority from obtaining similar or other services from a service provider other than the County.

## **7. COMPENSATION AND METHOD OF PAYMENT**

7.1 The Authority shall reimburse the County for all reasonable, documented costs incurred in providing the services set forth herein. Such reimbursement shall include:

7.1.1 Payment of all direct labor costs.

7.1.2 Payment of a reasonable overhead rate, established and approved by both Parties using generally accepted accounting principles, multiplied by the direct labor cost to cover the cost to the County of documented employee benefits and administrative overhead.

7.1.3 Payment of other direct costs incurred by the County for services to the Authority including, but not limited to, materials, equipment, and reasonable travel expenses allowable and justified under County policies applicable to its employees, when such costs are incurred at the request of the Authority.

7.2 Beginning in the first month after this Agreement is signed and on the 10th day of each month thereafter, the County shall submit to the Authority an invoice in a form and level of detail approved by the County and acceptable to the Authority. The Authority shall reimburse the County within thirty (30) days of receipt of a properly documented invoice.

7.3 The Authority shall reimburse the County for other costs incurred after the performance of this Agreement which are not otherwise set forth above, but authorized by the Authority and properly invoiced as provided herein.

## **8. INSURANCE**

The Authority agrees to secure and maintain for the duration of this Agreement commercial general liability insurance at least as broad as Insurance Services Organization form number CG0001 ed 11-88, with limits not less than \$1,000,000 combined single limit per occurrence and for those policies with an aggregate limit, a \$2,000,000 aggregate. Such insurance shall include coverage for Public Officials Errors and Omissions and shall include King County as an

additional insured. The Authority shall furnish the County with certificates of insurance and endorsements required by this Agreement. The County reserves the right to require complete, certified copies of all required insurance policies at any time. Any deductibles or self-insured retentions applicable to any insurance policy required in this Agreement shall not limit or apply to the Authority's liability to the County and shall be the sole responsibility of the Authority.

By requiring such insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Authority under this Agreement. The Authority shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

#### **9. PARTICIPATION IN INSURED BENEFITS**

Consistent with applicable laws, and provided that the plan holders/providers/insurance carriers agree and there is no financial impact on the County, the County agrees that the Authority may contract with the County for participation by Authority employees in certain County employee benefit plans. These plans shall be limited to medical, vision, dental, life insurance and disability insurance. Any Authority employees wishing to participate in any such plan shall be subject to the same eligibility requirements applicable to County employees. The Parties agree that the Authority may, subject to plan requirements and with reasonable notice, withdraw from the such plans if and when the Authority decides to obtain employee benefits through another source.

#### **10. FORCE MAJEURE**

Each Party shall not be responsible for its failure to comply with the terms and obligations of the Agreement as described herein where such performance is rendered impossible or impracticable due to strikes, walk-outs, acts of God, inability to obtain labor, materials, or services, government restrictions, enemy action, civil commotion, fire, unavoidable casualty, or similar causes beyond the control of the Parties.

#### **11. SURPLUS PERSONAL PROPERTY**

Subject to the availability of County resources and in accordance with the provisions of KCC 4.56.040 to determine depreciated value, County agencies and departments are authorized to sell used and surplus County furniture, equipment, supplies, materials and personal property to the Authority.

#### **12. INDEMNIFICATION**

12.1 In executing this Agreement, the County does not assume liability or responsibility for, or in any way release the Authority from, any liability or responsibility which arises in whole or in part from the existence, validity or effect of Authority resolutions, rules or regulations, irrespective of the County's involvement in assisting with the drafting of such document. If any cause, claim, suit, action or administrative proceeding is commenced related to the validity, effect or application of such resolutions, rules or regulations, the Authority shall



defend the same at its sole expense and if judgment is entered or damages are awarded against the Authority, the County, or both, the Authority shall satisfy the same, including all chargeable costs and attorney's fees.

12.2 The Authority shall protect, defend, indemnify and hold harmless the County and its officers, agents, and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, which are caused by or result from the performance of this Agreement by either party or any act or omission of the Authority, its officers, agents, and employees. In the event that any suit based upon such a claim, action, loss or damage is brought against the County or the Authority and the County, the Authority shall defend the same at its sole cost and expense; and if final judgment be rendered against the County, and its officers, agents, and employees or jointly against the County and the Authority and their respective officers, agents, and employees, the Authority shall satisfy the same. Provided, that this indemnity and hold harmless agreement shall not apply to acts or omissions of County officers, agents and employees that are not in good faith and are outside the scope of their official duties.

### **13. ENTIRE AGREEMENT**

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

### **14. ADMINISTRATOR**

14.1 The Parties may each appoint additional representatives to review contract performance and resolve any problems which cannot be dealt with by the Assistant Deputy for the County Executive or designees who may be selected by the County Executive and the Authority's Executive Director. Each Party shall notify the other in writing of its designated representatives. The Chief of Staff for the County Executive and Authority Executive Director will meet as needed, with two (2) days' written notice to the other.

14.2 Any problem which cannot be resolved by the Parties' designated representatives shall be referred to the Chair of the Authority Board and the County Executive, who may resolve the issue with or without using the dispute provisions of Section 19 of this Agreement.

### **15. ESTABLISHMENT AND MAINTENANCE OF RECORDS**

Each party shall maintain records which accurately reflect all actions taken and services provided pursuant to this Agreement and all direct and indirect costs incurred in the performance of this Agreement.

### **16. EXECUTION OF DOCUMENTS AND AGREEMENTS**

The Authority hereby authorizes the County to execute necessary documents and agreements required for the accomplishment of the services and tasks set forth herein, provided such services

and tasks are requested by the Authority and such documents and agreements are first approved by the Authority.

17. **TERMINATION**

This Agreement may be terminated by either party without cause upon thirty (30) days written notice.

18. **DISPUTE RESOLUTION**

The Parties shall use good faith efforts to resolve all claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement, through nonbinding arbitration or mediation. If the Parties cannot resolve their dispute pursuant to nonbinding arbitration or mediation as aforementioned, jurisdiction and venue for resolving any dispute arising out of or in connection with this Agreement shall be in the Superior Court of the State of Washington in King County.

19. **ASSIGNMENT**

Neither Party shall assign this Agreement without the written consent of the other. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their successors and permitted assigns.

20. **GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Washington. Venue for any suit between the Parties related to the performance of this Agreement shall be in King County Superior Court.

21. **SEVERABILITY**

If any provision in this Agreement is held by any court of competent jurisdiction to be unenforceable, the remaining terms and provision unaffected thereby shall remain in full force and effect.

22. NO THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the Authority and the County, and no other person may acquire or have any right hereunder by virtue hereof.

KING COUNTY

WASHINGTON STATE PUBLIC STADIUM AUTHORITY

By: \_\_\_\_\_  
Ron Sims, County Executive

By: \_\_\_\_\_  
Lorraine Hine, Board Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to form:

Approved as to form:

\_\_\_\_\_  
King County Prosecuting Attorney

\_\_\_\_\_  
Authority Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date