

**INTERLOCAL  
OPERATING  
AGREEMENT #2  
CITY OF EDMONDS –  
EDMONDS PUBLIC  
FACILITIES DISTRICT**



Recording Requested By And  
When Recorded Return To:

  
200402020404 7 PGS  
02-02-2004 01:33pm \$25.00  
SNOHOMISH COUNTY, WASHINGTON

City of Edmonds City Clerk  
121 Fifth Avenue North  
Edmonds, WA 98020

**INTERLOCAL OPERATING AGREEMENT #2  
BETWEEN THE CITY OF EDMONDS  
AND THE EDMONDS PUBLIC FACILITIES DISTRICT**

THIS INTERLOCAL AGREEMENT ("the Agreement") is made and entered into this 17<sup>th</sup> day of DECEMBER, 2003, between THE CITY OF EDMONDS ("the City") and the EDMONDS PUBLIC FACILITIES DISTRICT ("the District") (collectively the "Parties") for the purpose of establishing a contractual relationship under which the City will avail the services of specified City personnel to the District in exchange for the District's reimbursement therefore.

**RECITALS**

WHEREAS, Chapter 39.34 RCW authorizes two or more political subdivisions or units of local government of the State of Washington to cooperate on a basis of mutual advantage to provide for services and facilities; and

WHEREAS, the City has, by passing Ordinance No. 3358 on April 24, 2001, created the District for the purpose of acquiring, constructing, owning, remodeling, maintaining, equipping, re-equipping, repairing, financing and operating a regional center to be located within the municipal boundaries of the City of Edmonds, and to develop, promote and advertise said regional center, and to exercise all powers reasonably necessary to fulfill its charge as defined by ordinance, charter and state statute; and

WHEREAS, Ordinance No. 3358 authorized limited use by the District of the City's Finance Director and City Attorney; and

*PFD 037*

WHEREAS, the existing Interlocal Operating Agreement between the City of Edmonds and Edmonds Public Facilities District required the District to reimburse the City of Edmonds for a portion of the City's Contribution towards preparation of the Market Demand and Feasibility Study; and

WHEREAS, the existing Interlocal Operating Agreement between the City of Edmonds and Edmonds Public Facilities District requires the District to reimburse the City of Edmonds for its reasonable costs of financial and legal services and that in-kind services shall be subject to reimbursement and/or credit against the City's contribution; and

WHEREAS, in December 2002, the District reimbursed the City of Edmonds \$120,000 for City services rendered in 2001 and 2002, and for repayment of a portion of the \$34,000 contributed to the District for start up costs; and

WHEREAS, the Parties mutually desire to establish a formal arrangement under which the District will utilize and reimburse the City for a broad range of administrative, legal and other services for years 2003 and 2004; and

WHEREAS, the Parties find that such an arrangement would serve the public interest by facilitating the District's development of a regional center; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of defining their respective rights, obligations, costs and liabilities regarding this undertaking;

NOW, THEREFORE, in consideration of the mutual understanding, undertaking, and promises contained herein inclusive of the recitals above and the benefits to be realized by each party and in consideration of the benefit to the general public by the District's development of the regional center, the Parties agree as follows:

## TERMS

Section 1. Purpose. The purpose of this Agreement is to set forth, in writing, the terms and conditions under which the District may utilize and reimburse the City for specified services provided by City personnel as deemed mutually acceptable by the Parties. This Agreement shall be construed in accordance with said purpose.

Section 2. Term. This Agreement shall become effective upon its execution by both Parties and shall remain effective until December 31, 2004 or until terminated by the Parties pursuant to Section 3.

Section 3. Termination. Either Party may terminate this Agreement without cause upon 30 days written notice to the other Party. Termination of this Agreement shall not affect or otherwise limit the Parties' respective obligations under Section 11, and shall not limit the District's obligation to reimburse the City for City services provided prior to the effective date of said termination.

Section 4. Integration/Amendments. The Agreement and any collateral instruments referenced herein constitute the entire agreement between the Parties and shall not be modified or amended in any manner except by a written instrument executed by both Parties.

Section 5. Administration. The Agreement does not establish or create a separate legal entity or a joint board. The President of the District shall be responsible for administering the Agreement.

Section 6. District Use of City Services Authorized. The City hereby authorizes the District to utilize the services of the following City employees pursuant to the terms and conditions of this Agreement, and amounts specified in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full:

- A. Finance Director
- B. Community Services Director
- C. Executive Assistant
- D. Administrative Assistant

Section 7. City Attorney — Conflict of Interest Waiver. The District may separately contract with the City Attorney's Office for the provision of legal services. The Parties recognize and acknowledge the City Attorney's dual representation in this regard, and specifically waive any and all conflicts of interest resulting therefrom. PROVIDED, that nothing herein shall be construed as preventing the District in its sole discretion from securing its own legal counsel at any time. PROVIDED further, that nothing herein shall be construed as requiring the City Attorney to represent the District in any matter, including but not limited to land uses issues, for which the City Attorney believes in its professional judgment dual representation would be inappropriate.

Section 8. Reimbursement. The District shall reimburse the City for the District's use of City personnel and services pursuant to this Agreement at a flat rate for years 2003 and 2004 as provided in Exhibit A. The City shall submit monthly invoices to the District for City services rendered during the previous month listing the total reimbursement amount due. The District shall provide payment to the City within 21 days of receiving each invoice in the form of a check or money order made payable to the City of Edmonds, or an approved electronic transfer of funds. Said payment shall constitute the full and exclusive compensation due under this Agreement.

Section 9. No Employment Relationship Created. City personnel utilized by the District pursuant to this Agreement shall retain the status of independent contractors to the District. The City shall be solely and exclusively responsible for providing all employment benefits to said personnel. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the City and any employee, agent, representative or contractor of the District, or between the District and any employee, agent, representative or contractor of the City.

Section 10. Notices. All notices which may be or are requested to be given pursuant to this Agreement shall be deemed given when hand delivered, or when deposited in the United States Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the Parties at the following addresses unless otherwise provided for herein:

To the City:           City Clerk  
                          City of Edmonds  
                          121 Fifth Avenue N.  
                          Edmonds, WA 98020

With a copy to:       Edmonds City Attorney  
                          Ogden Murphy Wallace P.L.L.C.  
                          1601 Fifth Avenue Suite 2100  
                          Seattle, WA 98101-1686

                          And/Or other Edmonds Public Facilities District Counsel

To the District:       President  
                          Edmonds Public Facilities District  
                          121 Fifth Avenue N.  
                          Edmonds, WA 98020

Section 11. Release, Indemnification and Hold Harmless Agreement.

- A.   The City agrees to protect, indemnify and save the District harmless from and against any and all injury or damage to the District or its property, and also from and against all claims, demands, and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with, or arising out of work performed under the terms hereof, caused by the fault of the City, its agents, employees, representatives or subcontractors. The City specifically promises to indemnify the District against claims or suits brought under Title 51 RCW by the City's employees or subcontractors and waives any immunity that the City may have under that title with respect to, but only to, the limited extent necessary to indemnify the District. The City shall also indemnify and hold the District harmless from any wage, overtime or benefit claim of any City employee, agent, representative or subcontractor performing services under this Agreement. The City further agrees to fully indemnify the District from and against any and all costs of defending any such claim or demand to the end that the District is held harmless therefrom. This paragraph shall not apply to damages or claims resulting from the negligence or wrongful tortious act of the District. In situations involving the sole negligence of the District or its employees, the Parties' respective liabilities shall be as defined by the law of the State of Washington.

- B. The District agrees to protect, indemnify and save the City harmless from and against any and all injury or damage to the City or its property, and also from and against all claims, demands, and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with, or arising out of work performed under the terms hereof, caused by the fault of the District, its agents, employees, representatives or subcontractors. The District specifically promises to indemnify the City against claims or suits brought under Title 51 RCW by the District's employees or subcontractors and waives any immunity that the District may have under that title with respect to, but only to, the limited extent necessary to indemnify the City. The District shall also indemnify and hold the City harmless from any wage, overtime or benefit claim of any District employee, agent, representative or subcontractor performing services under this Agreement. The District further agrees to fully indemnify the City from and against any and all costs of defending any such claim or demand to the end that the City is held harmless therefrom. This paragraph shall not apply to damages or claims resulting from the negligence or wrongful tortious act of the City. In situations involving the sole negligence of the City or its employees, the Parties' respective liabilities shall be as defined by the law of the State of Washington.

Section 12. Filing. The District shall, within 10 days of the execution of this Agreement by both Parties, file a copy of this Agreement with the City Clerk of the City of Edmonds and with the Snohomish County Auditor; PROVIDED, however, that failure to file shall not affect the validity of this Agreement.

Section 13. Waiver. The waiver by one Party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition, or promise hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies unless they are expressly excluded.

Section 14. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. The venue for any dispute related to or arising out of this Agreement shall be Snohomish County, Washington.

Section 15. Exculpation. Notwithstanding anything contained to the contrary in any provision of this Agreement, it is specifically agreed and understood that there shall be absolutely no personal liability on the part of any individual officers of the City or any officers or directors of the District with respect to any of the obligations, terms, covenants, and conditions of this Agreement.

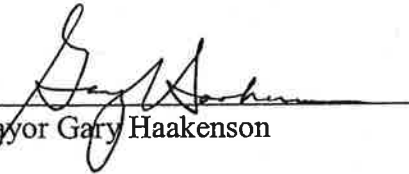
Section 16. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the

remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.


Section 17. Superiority. This Agreement expressly supercedes any provision of the June 2001 Interlocal Operating Agreement between the Parties regarding repayment or reimbursement for the District's use of City personnel, including but not limited to Section 5.1(1) thereof, but only to the extent that such provision is inconsistent with this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

CITY OF EDMONDS

  
\_\_\_\_\_  
Mayor Gary Haakenson

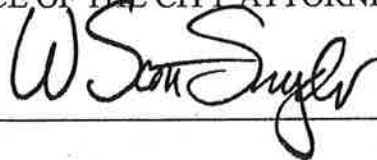
PUBLIC FACILITIES DISTRICT

By:   
\_\_\_\_\_  
Its: President

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Sandra S. Chase, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

  
\_\_\_\_\_



**Exhibit  
A**

**Interlocal Operating Agreement #2  
Between City of Edmonds and Edmonds Public Facilities District**

1. Amend the prior interlocal agreement between the City and the PFD by now establishing a clear and concise payment schedule for utilizing city staff from January 2003-December 2004.
2. The PFD will pay the City a sum of \$98,000 total for City Service rendered in years 2003 and 2004, to be paid in monthly payments as outlined in Interlocal Agreement #2, to purchase the services of the following City staff:

Community Services Director  
Community Services Director Executive Assistant  
Finance Department  
Administrative Assistant



**Recording Requested By And  
When Recorded Return To:**  
City of Edmonds, City Clerk  
121 – 5<sup>th</sup> Ave. North  
Edmonds, WA 98020

**FIRST ADDENDUM TO  
INTERLOCAL OPERATING AGREEMENT #2  
BETWEEN THE CITY OF EDMONDS  
AND THE EDMONDS PUBLIC FACILITIES DISTRICT**

WHEREAS, the Edmonds Public Facilities District (hereinafter “the District”) and the City of Edmonds, Washington (hereinafter “the City”) (collectively “the Parties”) entered into an Interlocal Operating Agreement #2 on December 17, 2003; and

WHEREAS, pursuant to that agreement, the District contracted with the City for the services of certain employees designated in the agreement and agreed to pay the sum of Ninety-Eight Thousand Dollars (\$98,000.00) for such services; and

WHEREAS the Parties wish to amend the agreement to clarify the services for which the District has contracted to include the costs of necessary overhead such as utilization of necessary equipment, offices, and other infrastructure including, but not limited to, utilization of the City’s computer systems for the use of District software, such as the installation of fundraising software on the City’s main server to use by service providers, NOW, THEREFORE,

The Parties have entered into this Addendum to the Interlocal Operating Agreement #2, amending said agreement in, but only in, the following ways:

1. Services Clarified; Agency Confirmed. The services of the individuals specified in Section 6 of the Agreement, specifically the Community Services Director and Executive Assistant are hereby clarified to include work done by such individuals in the furtherance of the fundraising activities of the District. This clarification is not intended to expand the total work to be performed by such individuals under the Interlocal Operating Agreement, but rather to clarify that their duties include their participation in and furtherance of lawful fundraising activities of the District. To that end, the District specifically designates the Community Services Director, Stephen Clifton, and his Executive Assistant, Cindi Cruz, as agents of the District, authorized to assist it and represent it in the District’s fundraising activities. In the event that either named

individual ceases to be an employee of the City of Edmonds, the agency designation shall automatically terminate and the District reserves the right to specifically authorize and designate any future individuals appointed to such positions as its agent, at its sole discretion and with the concurrence of the City. By the signatures below, the City expressly consents to the designation of the herein named individuals as agents of the District for fundraising purposes.

2. Infrastructure. In further clarification of the original Interlocal Operating Agreement, the sum paid for the services of the Community Services Director and his Executive Assistant, and the other individuals named, include payment for the infrastructure necessary for those individuals to perform services for the Public Facilities District, including but not limited to, office space, telephone and computer support, and all of the other infrastructure normally associated with the performance of both those individuals' normal duties and the duties authorized by Interlocal Operating Agreement #2. By way of illustration and not limitation, the Interlocal Operation Agreement between the Parties shall expressly authorize the District to load fundraising software on the main server of the City to support the services of the Community Services Director and Executive Assistant, PROVIDED, HOWEVER, that such authorization to load software requires the express written consent of the City's Administrative Services Director following consultation with the City's information technology advisors.

2.1 The District agrees to obtain all necessary authorizations and licenses necessary to fully authorize the City to install such software on its system and to authorize the use of such software by the individuals designated in this Agreement.

2.2 The District further agrees to hold harmless and indemnify the City with respect to any claims for the misuse of such software or the violation of any licensing or similar agreement regarding the use of such software.

2.3 The installation of the software and its use is stipulated by the Parties not to impose any additional financial obligation on the City of Edmonds beyond that contracted for in the underlying Interlocal Agreement. As previously noted, the designated service providers are not expanding the hours of work which they will provide under the underlying Interlocal Agreement. Rather, the installation of the software and the clarification that the individuals are authorized to use the infrastructure of the City in the provision of services, is intended to increase the efficiency of the individuals in the performance of the previously contracted for services and to ensure that the services rendered may reasonably be performed within the limits of the compensation paid under Interlocal Operating Agreement #2.


3. Underlying Agreement Confirmed. In all other respects, the provisions of Interlocal Operating Agreement #2 are confirmed. In the event of conflict between any provision of the underlying Interlocal Operating Agreement #2 and this Addendum, the provisions of this Addendum shall control.

4. Recordation. This Agreement shall be in full force and effect following its execution by the Parties and its recording with the Snohomish County Auditor. The cost of recording shall be shared equally by the Parties.

DATED this 21<sup>st</sup> day of July, 2004.


CITY OF EDMONDS

By:

  
\_\_\_\_\_  
Mayor Gary Haakenson


PUBLIC FACILITIES DISTRICT

By:

  
\_\_\_\_\_  
Its: President

ATTEST/AUTHENTICATED:

By:

  
\_\_\_\_\_  
Sandra S. Chase, City Clerk

APPROVED AS TO FORM:

By:

  
\_\_\_\_\_  
W. Scott Snyder, City Attorney



When Recorded Return To:  
City of Edmonds, City Clerk  
121 – 5<sup>th</sup> Ave. North  
Edmonds, WA 98020

**SECOND ADDENDUM TO  
INTERLOCAL OPERATING AGREEMENT #2  
BETWEEN THE CITY OF EDMONDS  
AND THE EDMONDS PUBLIC FACILITIES DISTRICT**

WHEREAS, the Edmonds Public Facilities District (hereinafter “the District”) and the City of Edmonds, Washington (hereinafter “the City”) (collectively “the Parties”) entered into an Interlocal Operating Agreement #2 on December 17, 2003; and

WHEREAS, pursuant to that agreement, the District contracted with the City for the services of certain employees designated in the agreement and agreed to pay the sum of Ninety-Eight Thousand Dollars (\$98,000.00) for such services rendered in years 2003 and 2004; and

WHEREAS, the District and the City entered into a First Addendum To Interlocal Operating Agreement #2 on July 21, 2004; and

WHEREAS, pursuant to that agreement, the Parties agreed to amend the agreement to clarify the services for which the District has contracted to include the costs of necessary overhead such as utilization of necessary equipment, offices, and other infrastructure including, but not limited to, utilization of the City’s computer systems for the use of District software, such as the installation of fundraising software on the City’s main server to use by service providers; and ,

WHEREAS the Parties wish to amend the First Addendum to Interlocal Operating Agreement #2 by further clarifying the underlying agreement by establishing a payment schedule for years 2005 and 2006, NOW, THEREFORE,

The Parties have entered into this Second Addendum to the Interlocal Operating Agreement #2, amending said agreement in, but only in, the following ways:

1. Reimbursement. The District shall reimbursement the City for the District’s use of City personnel and services pursuant to this Agreement for years 2005 and 2006 for

those positions provided in Exhibit A of the Interlocal Operating Agreement #2. The PFD will pay the City a total of \$40,000 or \$20,000 per year for City services rendered in years 2005 and 2006.

For year 2005, both parties acknowledge that the Edmonds PFD paid \$20,000 to the City for services rendered on behalf of the PFD. For year 2006, the City shall submit an invoice to the District on a quarterly basis for City services rendered during the previous three months listing the total reimbursement amount due.

The District shall provide payment to the City within 21 days of receiving each invoice in the form of a check or money order made payable to the City of Edmonds, or an approved electronic transfer of funds. Said payment shall constitute the full and exclusive compensation due under this Agreement.

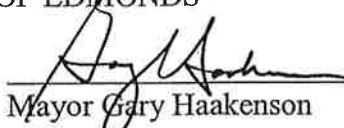
2. Underlying Agreement Confirmed. In all other respects, the provisions of Interlocal Operating Agreement #2 are confirmed. In the event of conflict between any provision of the underlying Interlocal Operating Agreement #2 and this Addendum, the provisions of this Addendum shall control.

3. Recordation. This Agreement shall be in full force and effect following its execution by the Parties and its recording with the Snohomish County Auditor. The cost of recording shall be shared equally by the Parties.

DATED this 10<sup>th</sup> day of JANUARY, 2006.

CITY OF EDMONDS

By:

  
Mayor Gary Haakenson

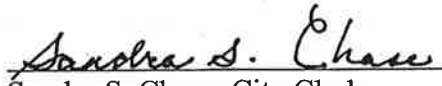
PUBLIC FACILITIES DISTRICT

By:

  
Its: President

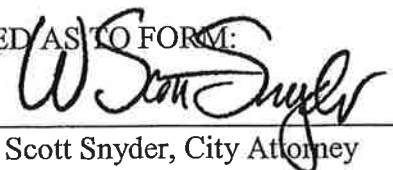
ATTEST/AUTHENTICATED:

By:

  
Sandra S. Chase, City Clerk

APPROVED AS TO FORM:

By:

  
W. Scott Snyder, City Attorney



**INTERLOCAL AGREEMENT BETWEEN  
EDMONDS PUBLIC FACILITIES DISTRICT  
AND  
EDMONDS CENTER FOR THE ARTS**

Whereas, the Edmonds Public Facilities District owns a facility for the performing arts known as the Edmonds Center for the Arts, and

Whereas, a 501(C)(3) not-for-profit corporation has been created which is also known as the “Edmonds Center for the Arts”; and

Whereas, these entities share a mutual purpose and a commitment to fostering and promoting the performing arts in Edmonds and throughout the Puget Sound region; and

Whereas, these entities seek to achieve their mutual goals by establishing a relationship which authorizes Edmonds Center for the Arts to conduct the day to day scheduling, operation and promotion of the center and its programs; now, therefore,

The Edmonds Public Facilities District, a municipal corporation, organized pursuant to Chapter 165, laws of 1999, (hereinafter EPFD) and the Edmonds Center for the Arts, a not-for-profit 501(C)(3) corporation of the state of Washington (hereinafter (ECA) have entered into this Agreement under the terms and conditions set forth herein and in consideration of the mutual benefits to be derived.

1. Purposes.

1.1 Primary Purpose. The primary purpose of this Agreement is to delegate the day-to-day operational management of the Edmonds Center for the Arts for purposes consistent with the underlying interlocal agreement between the EPFD, Snohomish County, the Snohomish County Public Facilities District and the City of Edmonds, as well as an interlocal agreement between the City of Edmonds and the EPFD and an easement between the EPFD and Edmonds Community College. These two agreements and the easement are incorporated by this reference as fully as if herein set forth and are collectively referred to in this Joint Operating Agreement as the “Underlying Interlocals.” No right or power shall be exercised by the ECA under this Agreement which is inconsistent with or in violation of the underlying interlocals.

1.2 Secondary Purposes. In addition, the ECA is authorized both under its charter and under the terms of this Agreement to exercise rights and powers within the Premises necessary and reasonably appurtenant to accomplishing the primary purpose, including but not limited to:

1.2.1 Promotion of the facilities and its programs to the community;

1.2.2 Develop, hold and administer grant funding and other contributed revenue consistent with the purposes of this Agreement and the Underlying Interlocals;

1.2.3 Develop and maintain a volunteer force to support the operations and fundraising efforts of the ECA; and

1.2.4 Other rights and powers consistent with the accomplishment of the primary and secondary purposes of this Agreement.

2. Subject Premises. The Premises subject to this Joint Operating Agreement are described on the attached Exhibit A. Exhibit B designates use agreements within the facility in aid of the interpretation of this agreement.

3. Management Terms.

3.1 Underlying Interlocals. All rights, powers and exercises of authority by the ECA shall comply with the terms of the Underling Interlocals. ECA through its Board of Directors and the Executive Director warrant that they have read the interlocal agreements and understand their obligations. The ECA may exercise only those powers available to the EPFD under the Underlying Interlocals and the statutes which create the EPFD, and are by necessary implication delegated to ECA through this Joint Operating Agreement. It is expressly understood and agreed by the parties that private fund donations raised by the ECA may be utilized for any purpose consistent with its charter.

3.2 Operational Management.

3.2.1 The term "operational management" shall refer to all acts necessary to manage and operate the facility known as the Edmonds Center for the Arts, and includes but is not limited to programming, marketing, administration, maintenance and fund raising for both capital and operational requirements. Provided, however, that no physical change or alternation of any kind shall be made to the exterior of the structure, the lobby spaces or performance spaces, without the express consideration, vote and written authorization of the EPFD.

3.2.2 Nothing herein shall be interpreted to prohibit the ECA from taking emergency measures to protect or preserve the facility, nor from performing normal maintenance. The ECA is specifically authorized to make minor repairs and to paint, repaint, or otherwise decorate the office spaces shown on the attached Exhibit B. For the purpose of interpretation of this Agreement, no action may be taken which requires the issuance of a building permit under the State Building Code or the approval of the Edmond Architectural Design Board without the express notification, consideration, vote and approval of the EPFD.

3.2.3 No lease contract or use agreement shall be entered into by the ECA with any entity which is in excess of 30 days per calendar year without the express approval of the EPFD and, as applicable, the Program Advisory Committee. No lease, contract or use agreement of any kind may be entered into by the ECA which extends beyond the upcoming season unless expressly approved and executed by the EPFD with the concurrence of the Program Advisory Committee.

3.4 Board Membership. During the term of this Agreement, ECA board members shall be appointed and may be dismissed by the EPFD board. So long as this Agreement remains in force and effect, at least one and not more than two Board Members from the EPFD Board shall serve on the ECA Board. ECA Board Members shall serve staggered terms of not more than three (3) years. However, initial members may be appointed for terms of less than three (3) years in order to achieve full membership and staggered terms. Each ECA Board Member may be appointed to a second consecutive term, subject to approval by the EPFD Board.

3.5 Financial Planning and Reporting. Revenues derived from the use of the facility shall be kept in an account separate from the fundraising revenues of the ECA. Reports outlining revenues and expenses of Edmonds Center for the Arts shall be provided to the EPFD at least quarterly, or on a more frequent basis as may be required by the EPFD. In addition, Annual Financial Performance Estimates (Budgets) and all revisions including projected revenues and expenses, both capital and operating, must be approved by the EPFD Board. At the discretion of the EPFD Board, ECA funds may be directed to be transferred to the EPFD for the purposes permitted by statute and the Underlying Interlocals or to meet bond obligations.

3.6 Financial Records. Financial records and other accountings shall be kept by the ECA in accordance with generally accepted accounting practice. These records shall be open to inspection at any reasonable time by the EPFD, any party to any of the underlying interlocals, any grant agency and/or the agents, officers or employees of such entities.

3.7 Grants and Revenues. All funds received by the ECA from the lease or use of the Premises, or generated through fundraising activities, shall be used solely for the purposes for which the EPFD and ECA were created in accordance with all underlying interlocals. No grant obligation shall be entered into by the ECA which is inconsistent with the underlying interlocals or the statutes under which the Premises have been constructed and renovated.

### 3.8 Insurance and Indemnity.

3.9.1 So long as this Joint Operating Agreement is in effect, the ECA shall obtain and keep in force general commercial liability insurance, on an occurrence basis, insuring the EPFD, or ECA, as applicable, against claims for personal injury (including, without limitation, bodily injury or death), property damage, and such other loss or damage from such causes that are embraced by insurance policies of the type now known as "General Commercial Liability Insurance" with a combined single limit of not less than One Million Dollars per occurrence and Two Million Dollars in the aggregate (per policy year).

3.8.2 The EPFD shall maintain property insurance coverage for Premises and the Edmonds Center for the Arts (see Underlying Interlocals).

3.8.3 The parties agree that they shall each mutually indemnify and hold the other harmless from any loss, claim or liability of any kind or nature arising from a party's

negligent act or omission, tortious conduct or illegal act. In the event of concurrent negligence, respective liability of the parties shall be determined in accordance with the laws of the State of Washington.

3.8.4 No third party right shall be deemed to be created by any provision of this Agreement.

3.9 Termination. This Agreement may be terminated without cause by either party by the provision of written notice to the other party, by U.S. Mail, postage prepaid. Notice shall be deemed effective 48 hours from the date of posting.

4. Term. The initial term of this Agreement shall be five (5) years. It may be extended for up to three (3) additional terms with the express written consent of the parties hereto.

5. Notices.

Edmonds Public Facilities District (EPFD)  
Terry Vehrs, President  
121 – 5<sup>th</sup> Ave. North  
Edmonds WA 98020

Edmonds Center for the Arts (ECA)  
Joseph McIalwain, Executive Director  
121 - 5th Avenue North  
Edmonds WA 98020

6. Miscellaneous.

6.1 Captions. The captions and paragraph headings contained in this Joint Operating Agreement are for convenience of reference only and in no way limit, describe, extend or define the scope or intent of this Joint Operating Agreement, nor the intent of any of the provisions hereof.

6.2 Amendments; Waivers. No modification or amendment of this Joint Operating Agreement may be made except by written agreement or as otherwise may be provided in this Joint Operating Agreement. No failure by EPFD or the ECA to insist upon the strict performance of any covenant, duty, agreement or condition of this Joint Operating Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Joint Operating Agreement and each and every covenant, agreement, term and condition of this Joint Operating Agreement shall continue in full force and effect with respect to any other than existing or subsequent breach thereof.

6.3 Neutral Authorship Each of the provisions of this Joint Operating Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. The language in all parts of this Joint Operating Agreement shall be construed as a whole according to its fair meaning. No presumption or other rules of construction which


would interpret the provisions of this Joint Operating Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Joint Operating Agreement.

6.4 Attorneys' Fees. Each party shall be responsible for payment of the legal fees of its counsel in the event of any litigation, mediation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Joint Operating Agreement.

6.5 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington. In the event of any litigation to enforce or interpret the rights, duties and obligations of the parties set forth in this Agreement, venue of any such legal action shall lie exclusively in Snohomish County Superior Court and the parties waive the right to file suit elsewhere.

DONE this 22nd day of AUGUST, 2006.

Edmonds Public Facilities District

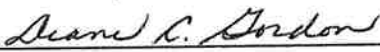
By:   
Terry Vehrs, President

STATE OF WASHINGTON  
COUNTY OF SNOHOMISH

I certify that I know or have satisfactory evidence that **Terry Vehrs** is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the **President of the Edmonds Public Facilities District** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 8/22/06



  
NOTARY PUBLIC  
Printed Name: DIANE C. GORDON  
My appointment expires: 06/27/07

Edmonds Center for the Arts,  
a not-for-profit 501(C)(3) Corporation

By: *Joseph McIalwain*  
Joseph McIalwain, Executive Director

STATE OF WASHINGTON  
COUNTY OF SNOHOMISH

I certify that I know or have satisfactory evidence that **Joseph McIalwain** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Executive Director of Edmonds Center for the Arts**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 8/22/06



*Diane C. Gordon*  
NOTARY PUBLIC  
Printed Name: DIANE C. GORDON  
My appointment expires: 06/27/07

**NOTE: EXECUTIVE DIRECTOR WILL DESIGN AND INCLUDE ATTACHMENTS "A" AND "B" AS REFERRED TO IN SECTION 2 AND IN SECTION 3.2.2 OF THIS AGREEMENT, PENDING APPROVAL BY THE EPFD AND ECA BOARDS.**