

COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

K & S DEVELOPMENTS, LLC, a  
Washington limited liability company,

Plaintiff,

v.

CITY OF SEATAC, et al,

Defendants.

Consolidated Under  
Case No. 12-2-40564-6 KNT

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW IN  
SUPPORT OF PROMISSORY  
ESTOPPEL CLAIM**

CITY OF SEATAC,

Plaintiff,

v.

GERALD and KATHRYN KINGEN,

Defendants.

**I. COURT TRIAL**

1. Plaintiff K&S Developments, LLC sued Defendants City of SeaTac, Colliers International, and several individual City employees or officials. All Defendants, except for the City of SeaTac, were dismissed before trial.

2. K&S alleged several causes of action against the City, including inverse condemnation, interference with business expectancy, fraud, breach of contract, promissory estoppel, and various other constitutional violations. While the jury

PLAINTIFF'S FINDINGS OF FACTS AND CONCLUSIONS  
OF LAW IN SUPPORT OF PROMISSORY ESTOPPEL CLAIM - 1  
KSDE01-000001- 1653761



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1 adjudicated most of the parties' claims, counterclaims, and affirmative defenses, the  
2 parties agreed to have this Court, and not the jury, decide K&S's promissory estoppel  
3 claim and three of the state constitutional claims (privileges and immunities, substantive  
4 and procedural due process violation claims), together with the City's various defenses  
5 to those claims.

6 3. Trial began on November 2, 2015 and ended with the jury's verdict on  
7 January 25, 2016. The jury found the City liable for inverse condemnation, interference  
8 with business expectancy, and misrepresentation. As demonstrated by their answers to  
9 special interrogatories, the jury also rejected the City's various affirmative defenses and  
10 awarded K&S \$9,589,703.00 in damages.

11 4. On March 18, 2016, K&S voluntarily dismissed its privileges and  
12 immunities state constitutional claim.

13 5. On March 23, 2016, this Court, having considered the testimony,  
14 evidence, exhibits and arguments presented by the parties at trial, issued its written  
15 ruling on K&S's promissory estoppel claim and remaining state constitutional claims  
16 (substantive and procedural due process claims).

17 6. The Court dismissed K&S's state procedural and substantive due process  
18 claims because the jury's verdict rendered them moot. On the other hand, the Court  
19 found in favor of K&S's promissory estoppel claim and awarded K&S damages in the  
20 amount of \$9,589,703.00.

21 7. In addition to its written ruling, the Court makes the following Findings  
22 of Facts and Conclusions of Law regarding the Plaintiff's promissory estoppel claim,  
23 damages, and the Defendant's affirmative defenses.

## 24 II. FINDINGS OF FACT

25 1. K&S owned a large commercial property (the "SeaTac Center" or  
26 "Property") within the City of SeaTac. K&S wanted to develop a portion of the

1 Property into a multi-story 1,200-stall commercial park-and-fly garage ("park-and-fly  
2 garage", "garage", or "project") to provide parking services for patrons of the SeaTac  
3 International Airport. Park-and-fly operations are in high demand and highly profitable.  
4 Since March 2004, K&S had been working through the City's formal pre application  
5 process with the Planning Department to obtain approvals to build a 1,200-stall parking  
6 garage.

7 2. City officials voiced support and encouragement for K&S's proposal and  
8 communicated no concerns that the project may be incompatible with the City's short or  
9 long-term goals for what became known as the 154<sup>th</sup> Street Station Area. The Staff  
10 began in 2005 to refer to the area where the SeaTac Center was located as the "154<sup>th</sup>  
11 Street Station Area" because Sound Transit had announced its intent to have a light rail  
12 station across the street. There was never any public opposition to K&S's proposal and  
13 the Staff led K&S to believe the park-and-fly was compatible with its Station Area  
14 Planning. Because it was an allowed use, and because of the City's apparent support,  
15 and because there was no public opposition, K&S reasonably believed Staff was in  
16 support of the proposal and that its park-and-fly garage would be approved.

17 3. Beginning in the latter part of 2005, Planning Director Steve Butler, City  
18 Manager Craig Ward ("Manager" or "Ward"), and other staff members decided they did  
19 not want K&S to be permitted to build a park-and-fly garage at the SeaTac Center. This  
20 was, at least in part, because a park-and-fly would drive up the price of real estate, and  
21 hinder other, and more preferred, development in the area. The Staff was also exploring  
22 the idea of forming a public/private partnership with another park-and-fly developer  
23 ("MasterPark") to develop properties across from the SeaTac Airport (e.g., the "176<sup>th</sup>  
24 Street Station Area"). The Staff was concerned how K&S's project may affect the  
25 City's development plans. However, no one communicated these concerns, objectives,  
26 or the Staff's opposition to K&S, even though these officials were holding regular and



1 continuous meetings with K&S and enacted an emergency moratorium to bar park-and-  
2 flies within the 154<sup>th</sup> Street Station Area. Although they did not disclose their true  
3 intentions or its effect on K&S's proposal, Planning Director Steve Butler and City  
4 Manager Craig Ward wanted the City Council to pass the moratorium primarily to stop  
5 K&S's park-and-fly.

6 4. In late February, 2006, Ward, Butler and other members of the Staff,  
7 knowing K&S was close to applying for its building permits, devised a secret plan to  
8 have the City Council adopt a moratorium to stop K&S's proposed park-and-fly without  
9 giving K&S advance notice. Staff was concerned that if K&S got its application vested,  
10 the City could not legally stop the garage from proceeding. The moratorium targeted  
11 K&S.

12 5. When K&S's owner, Gerry Kingen, learned of the moratorium and the  
13 Staff's plans to permanently ban park-and-flies, he met with several of the Council  
14 Members, including Mayor Gene Fisher, to complain about the Staff's conduct and  
15 unfair treatment of K&S. Several of the Council Members, including Fisher, were  
16 surprised to learn of K&S or its project and said they did not know how the moratorium  
17 had affected those plans. Mayor Fisher promised to "make things right." When the  
18 Council Members learned of (1) K&S's proposed park-and-fly (and how far along K&S  
19 was in the pre-application process), (2) how the moratorium stopped K&S's two year  
20 effort, and (3) Staff mistreated K&S, directing City Manager Ward to work with K&S  
21 to allow the park-and-fly to proceed, despite the moratorium and the proposed change in  
22 land-use zoning.

23 6. In reliance upon the Council's directive, the City Attorney and other  
24 members of the Staff spent several weeks negotiating the essential terms of a written  
25 Development Agreement ("DA") with K&S. Staff (including the City Attorney) and  
26 K&S agreed upon the essential terms of a DA that would allow K&S to construct a

1 1,200-stall park-and-fly garage. And except for attaching specific building plans and  
2 drawings, and for reserving the right to make "minor modifications" necessary to  
3 address "processing" issues, the Staff and K&S had, by July, 2006, reached an  
4 agreement on the essential terms of the DA.

5 7. At its July 11, 2006 Retreat Meeting, and later that evening at its Regular  
6 City Council Meeting (the latter of which K&S attended), the Council reviewed the  
7 terms of the proposed DA and directed Ward and Staff to move forward with the  
8 process for having the Council formally approve the 1,200-stall park-and-fly DA. The  
9 Council also witnessed and supported the Manager signing a July 11, 2006 letter  
10 agreement (the "Letter Agreement") at the Council's July 11, 2006 Regular City  
11 Council Meeting. The Letter Agreement attached and incorporated the negotiated DA.  
12 A copy of this Letter Agreement, together with the DA, is attached as **Exhibit A**. In the  
13 Letter Agreement, Ward promised to (1) not significantly change the terms of the DA  
14 attached to the Letter, (2) expeditiously process the DA for final approval, and (3) "fully  
15 support" K&S's proposed 1,200-stall park-and-fly. Staff also agreed to meet and  
16 consult with K&S to get the Council to approve the DA. K&S reasonably believed both  
17 sides anticipated a quick process and final approval by the Council with no material  
18 changes to the substantive terms of the DA.

19 8. Prior to the July 11<sup>th</sup> Public Hearing, the City, including the Council  
20 Members and Staff, made clear their desire to have K&S publicly support the City's  
21 proposed zoning changes. K&S agreed to not object to the ban, and even lend its  
22 support, but only on the condition that the Staff would "fully support" its 1,200-stall  
23 park-and-fly proposal under the terms of the DA attached to City Manager Ward's  
24 Letter. In return for (and in reliance upon) City Manager Ward's Letter Agreement,  
25 K&S agreed to give-up its rights and not protest the City's adoption of the interim  
26



1 regulations. K&S further agreed, in return for having its proposal effectively treated as  
2 “vested,” to support the City’s ban on future park-and-fly garages.

3 9. The Council, Manager, and Staff knew at the time that K&S was giving  
4 up its rights to oppose the interim regulations and that K&S was doing so in reliance  
5 upon the City officials’ promises, comments, and representations, including the  
6 Manager signing the July 11<sup>th</sup> Letter, in the presence of the Council, stating Staff would  
7 “fully support” the K&S park-and-fly project.

8 10. Unbeknownst to K&S (which will be detailed below), the Staff did not  
9 “fully support” the DA. Also unbeknownst to K&S, Staff worked behind the scenes to  
10 undermine K&S’s ability to get Council approval. While the Staff pretended to work  
11 and consult with K&S on getting its DA approved, it actually had no intentions of  
12 allowing a park-and-fly at the 154<sup>th</sup> Station Area and instead wanted to block K&S’s  
13 project. As detailed below, and unbeknownst to K&S, Staff concealed its true plans and  
14 intentions from K&S.

15 11. On October 9, 2007, after 15 months of re-negotiations, Staff presented  
16 the proposed DA to the Council at its regular Public Meeting for comments. The  
17 Council was comprised of the same council members that had voiced their support for  
18 the July 11, 2006 Letter Agreement. A majority of the Council stated they would no  
19 longer support a park-and-fly at the SeaTac Center. It was obvious from the October 9<sup>th</sup>  
20 meeting that the Council would not vote to approve the DA. Without revealing their  
21 true reasons for the apparent reversal in position, the Council Members instead  
22 encouraged K&S to work with Staff on a different proposal.

23 12. Due to the City’s delays, K&S fell victim to the unfolding recession and  
24 defaulted on its loans at the end of 2008, thus preventing K&S from being able to  
25 develop the Property or even secure conventional financing necessary to retain or  
26 develop the property. The substantial decline in the real estate market also made it



1 nearly impossible for K&S to be able to find a viable purchaser or developer for the  
2 Project. K&S therefore defaulted on its loans at the end of 2008.

3 13. When the City learned of K&S's default, it secretly retained a  
4 commercial real estate broker (Colliers) to exploit K&S's financial circumstances. In  
5 particular, the City directed its broker to force K&S to convey the SeaTac Center by  
6 way of a deed-in-lieu. Without disclosing the true identity of his client ("his guy"), the  
7 City's broker acquired the rights to the various Deeds of Trust encumbering the  
8 Property. Colliers then, with the City's full knowledge, consent, and support, used  
9 deception and financial duress to coerce K&S to convey the Property for millions of  
10 dollars less than its assessed or fair market value, or its potential value as a park-and-  
11 fly. For example, Colliers threatened K&S that "his guy" would go after the owners of  
12 K&S personally on their personal guarantees even though the City knew that this was  
13 not legally possible. The City, in hopes that it could also add pressure to K&S, also  
14 refused to meet with K&S's land-use attorney to discuss an extension of the DA, which  
15 K&S would need to move forward.

16 14. On December 24, 2009, under the threat of personal liability, the owners  
17 of K&S agreed to have K&S convey the property to "the guy." They did this without  
18 knowing they were actually conveying the Property to the City. By acting as a  
19 "phantom buyer," the City closed on the Deed-in-Lieu of Foreclosure transaction on  
20 December 29, 2009. This was the first time that K&S knew, or had reason to know, that  
21 the City was the "phantom buyer." As part of the deed-in-lieu transaction, K&S only  
22 agreed to release the City from claims derived from the underlying promissory notes or  
23 loans. K&S never agreed to waive or release the City from any other claims, including  
24 those related to the City's actions related to K&S's attempts to develop the Property.

25 15. After it learned the City was the "phantom buyer", K&S decided to  
26 investigate the circumstances surrounding the City's acquisition of the Property. The



1 revelation of the City's involvement is what prompted K&S to inquire into the City's  
2 conduct that led up to the acquisition. K&S therefore hired an attorney in February 2010  
3 to submit a public records request to the City. The City took over a year to fully produce  
4 all of the public records to K&S. As it turned out, the City also failed to produce many  
5 of the more important, relevant, and responsive public records required under the Public  
6 Records Act. K&S proved that many of the most incriminating public records that were  
7 not produced in response to K&S's public records request and ultimately obtained from  
8 other sources and not from the City. While there are others, one of the most striking  
9 examples of records the City should have produced was Trial Exhibit 107, which was a  
10 document that revealed as early as April, 2007, that the City had specific plans to  
11 acquire K&S's Property. Another example is the City's failure to produce two power  
12 point presentations (Exhibits 110 and 111) that reveal the disparate treatment between  
13 how the City treated K&S to a similarly situated property owner (Big Dollar  
14 Development).

15 16. It was not until January 2012, when the City finished responding to the  
16 public records requests, that K&S had sufficient information to know of its potential  
17 claims against the City for actions related to K&S's proposed development. Until it  
18 received the "behind the scenes" documents, K&S did not know of the City's actions or  
19 ulterior motives.

20 17. For example, K&S only learned from the public records<sup>1</sup> of the Staff's  
21 true feelings about K&S or the proposed park-and-fly. For example, the City's  
22 consultant (Heartland) interviewed Planning Director Butler and other Staff on  
23 September 4, 2007 – one month before the Council first began to voice any objection to  
24

25 <sup>1</sup> "City records" included such things as e-mails, studies, and meeting notes. Some of the more pertinent  
26 records came from Assistant City Manager Todd Cutts' Notes, which the City initially failed to supply in  
response to K&S's public records request.



1 K&S's proposed park-and-fly. These interviews (described below) reveal the Staff's  
2 true feelings.

3 18. Another example was, in summarizing their 2007 interview of Staff  
4 (Trial Exhibit 61), Heartland wrote that Staff believes K&S is "not [a] capable or  
5 reliable developer." Heartland also noted that "we should learn more about those  
6 negotiations [of the DA with K&S] before they get so far down the track that they  
7 create a **fundamental dysfunction** right in the middle of any potential trying to be  
8 achieved at this station area." Heartland also quoted Mr. Butler as concerned with how  
9 the DA could constitute spot zoning and allowing the park-and-fly could "inadvertently  
10 drive up land values thereby dampening redevelopment interest." These statements  
11 reveal that, despite their July 11<sup>th</sup> promises, the Staff did not support K&S or its  
12 proposal, and that Staff worked to conceal its true feelings about K&S and its project. It  
13 also revealed that Staff preferred to have someone other than K&S develop the  
14 Property.

15 19. It was also not until K&S received the public records that it had reason to  
16 know that it was actually the Staff that led the behind the scene charge to kill the park-  
17 and-fly project. These records revealed the Staff wanted the City to (1) acquire K&S's  
18 property for a price that was less than what the Property would be worth as a park-and-  
19 fly, (2) limit competition from the City's (or its public/private partner, MasterPark) own  
20 proposed park-and-fly proposal at the 176<sup>th</sup> Street Station Area, and (3) support Mayor  
21 Fisher's agenda to increase housing prices to force out the refugees in his neighborhood  
22 and to enhance the value of his nearby property. K&S could not have known this until it  
23 received the public records. It was also not until K&S obtained public records that it  
24 could have learned that, despite the Staff's promise to "fully support" K&S's  
25 development, the Staff really wanted the City to acquire K&S's property or that the  
26 Staff did not intend to "fully support" the Project.



1           20.     K&S also first learned from the public records that the Staff believed  
2     granting K&S permission to build a park-and-fly would substantially increase the value  
3     of the property, and therefore require the City to pay more to acquire K&S's property.  
4     While the Staff never shared its desire or intent to acquire K&S's property with K&S,  
5     the Staff was determined to depress or control the fair market value of the Property by  
6     not allowing K&S to obtain approval for its park-and-fly, which even the City  
7     concealed was the Property's highest and best use.

8           21.     The public records also revealed, for the first time to K&S, that, as early  
9     as 2005, the City was exploring a public/private partnership with MasterPark to develop  
10    an entertainment center across from the SeaTac Airport (176<sup>th</sup> Street Station Area). This  
11    included plans for MasterPark, or the City, to construct a public garage to attract other  
12    development to the 176<sup>th</sup> Street Station Area. Part of this plan was for the City to use  
13    the garage, at least on an interim basis, as a park-and-fly to generate revenue to repay  
14    the cost of the construction or other development. However, the Staff and its  
15    public/private partner (MasterPark) was concerned with how other park-and-fly  
16    garages, including K&S's proposal, would compete against its own commercial parking  
17    garage. In fact, a representative from MasterPark testified at trial that K&S's Property  
18    was an ideal location for a park-and-fly because of its close proximity to Highway 518  
19    and the Airport. This representative also testified how he had used his relationship with  
20    the City to limit competition. The Staff was therefore, unbeknownst to K&S, against the  
21    proposed park-and-fly because of its potential impact on the City's own competing  
22    development plans.

23          22.     It was also not until the public records disclosures that K&S learned of  
24    Mayor Gene Fisher's motives and his behind the scenes effort to thwart K&S's project.  
25    Mayor Fisher, who lived within three blocks of the SeaTac Center, was personally  
26    against K&S's park-and-fly because he wanted high-rise condominiums instead. Mayor

1 Fisher believed condominiums would drive out the Somali refugees that had migrated  
2 into "his neighborhood." In addition to his prejudice against refugees, Mayor Fisher  
3 also had a financial motive against K&S's park-and-fly. He believed condominiums  
4 would increase the value of his own property, while a park-and-fly would undermine his  
5 ability to sell. Mayor Fisher sold his property to a townhouse developer shortly before  
6 trial and then refused, despite having been properly subpoenaed, to testify at trial. Mr.  
7 Fisher communicated his objections and desires to the Staff, but not to K&S. The Staff  
8 acted to protect Mayor Fisher's interest, even though his interests were contrary to the  
9 Staff's obligations to "fully support" K&S's Project.

10 23. K&S also learned from its public records request that, beginning in 2007,  
11 the Staff began to implement a plan to acquire properties ("assemblage properties")  
12 adjacent to and around K&S's Property for the purpose of acquiring, controlling, and  
13 developing the 154<sup>th</sup> Street Station Area Action Plan. The City wanted someone other  
14 than K&S to own or develop the SeaTac Center because K&S was not the Staff's  
15 "preferred" developer.

16 24. So, despite the July 11<sup>th</sup> Letter Agreement's promise by Staff to "fully  
17 support" K&S's park-and-fly, it turned out the Staff was actually motivated to prevent,  
18 or at least delay, the project and was working behind the scenes to undermine K&S's  
19 efforts to get the DA approved.

20 25. As a result of the City and Staff's conduct, K&S lost the Property, the  
21 ability to develop the Property, the use of the Property, and the ability to market or sell  
22 the Property as a park-and-fly. K&S also expended millions of dollars in fees, costs,  
23 holding costs, and other expenses in reliance upon the Staff's promise it would support  
24 the project.

25 26. The only evidence offered at trial of the economic damages that K&S  
26 suffered from the City's actions was provided by K&S's damages expert, George



1 Johnson, who relied in part upon the expert opinions of land-use planning expert  
2 William Geyer. The Court finds these experts, their analysis, and the facts they relied  
3 upon to form their opinions credible and unrebutted. Mr. Geyer provided expert  
4 testimony on how long it should have taken for K&S to obtain approval for the park-  
5 and-fly, including how long it should have taken for the City to approve the DA  
6 attached to the City's July 11, 2006 Letter Agreement.

7 27. Mr. Johnson relied upon Mr. Geyer's opinions, his own analysis of  
8 similar businesses, and the facts presented at trial to conclude that K&S suffered at least  
9 \$12,682,500.00 in damages because of the City not approving the DA. His Damages  
10 Scenario, including scenario #3, is attached as **Exhibit B**. In forming his opinion, Mr.  
11 Johnson compared and contrasted the economics of K&S's proposed park-and-fly  
12 operation to substantially similar operations near the SeaTac Center. Mr. Johnson's  
13 opinion was based on credible and tangible evidence, which have not all been listed  
14 here, and was not based on speculation or unsupported hypotheticals. The City did not  
15 offer any experts to rebut Mr. Johnson's expert opinions.

16 28. The court also takes into consideration that the Jury determined that  
17 K&S suffered damages in the amount of \$9,589,703.00, which the Court adopts and  
18 finds to be based upon substantial evidence.

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1           **From the foregoing FINDINGS OF FACT the Court makes the following**  
2 **CONCLUSIONS OF LAW:**

3                           **I.       CONCLUSIONS OF LAW**

4           1.       The Court has jurisdiction over the parties and the subject matter of this  
5 action.

6           2.       Promissory estoppel requires satisfaction of five elements:

7                       (1) [a] promise which (2) the promisor should reasonably expect to  
8 cause the promisee to change his position and (3) which does cause  
9 the promisee to change his position (4) justifiably relying upon the  
10 promise, in such a manner that (5) injustice can be avoided only by  
11 enforcement of the promise. *Havens v. C&D Plastics, Inc.*, 124  
12 Wn.2d 158, 171-72, 876 P.2d 435 (1994) (alteration in original)  
(internal quotation marks omitted) (quoting *Klinke v. Famous*  
*Recipe Fried Chicken, Inc.*, 94 Wn.2d 255, 259 n.2, 616 P.2d 644  
(1980)).<sup>2</sup>

13           3.       In 2006, the Staff promised it would expedite the review and formal  
14 acceptance of the DA attached to City Manager Ward's July 11, 2006 Letter. This DA  
15 specifically allowed for a 1,200-stall park-and-fly. The Staff also promised to "fully  
16 support" the DA before the Council. The Staff also promised to only request  
17 "modifications" to the DA necessary for the "processing" of the DA. They also  
18 promised to confer and work with K&S to expedite the Council's final approval.

19           4.       While it took no formal action, the Council Members encouraged City  
20 Manager Ward to sign the Letter Agreement. This support was communicated in public  
21 meetings (as well as privately) and relied upon by K&S. The Council was certainly  
22 aware, in July 2006, of City Manager Ward's promises and representation, the Letter  
23 Agreement, the terms of the Letter Agreement, the terms of the DA and K&S's reliance  
24 upon those promises.

25  
26 <sup>2</sup> *Wash. Educ. Ass'n v. Dep't of Ret. Sys.*, 181 Wn.2d 212, 224-25, 332 P.3d 428, 435 (2014); *see also*  
*Elliott Bay Seafoods, Inc. v. Port of Seattle*, 124 Wn. App. 5, 13, 98 P.3d 491 (2004).

1           5.       K&S had a right to challenge the City's adoption of the moratorium.  
2       K&S also had a right to oppose the City's adoption of the interim regulations that would  
3       have barred park-and-flies. The City knew of K&S's rights and communicated its desire  
4       that K&S support the City's efforts to pass new land-use regulations to bar future park-  
5       and-flies at the 154<sup>th</sup> Street Station Area.

6           6.       In return for the City's promises and representations, including the terms  
7       of the Letter Agreement and DA, K&S agreed to not challenge the moratorium or the  
8       City's proposed interim regulations and to lend its support to the City's actions. K&S  
9       reasonably relied upon the City's promises and Letter Agreement when it agreed to  
10      forgo its rights and to support the City's efforts. K&S therefore, in reasonable reliance  
11      upon the City's promises, changed its position and gave up important rights.

12          7.       The City knew of K&S's reliance and what K&S was willing to forego  
13      in reliance upon the City's promises and representations. The City should have also  
14      reasonably expected K&S to rely upon those promises.

15          8.       The Staff failed to fulfill its promises. It did not promptly process the  
16      DA. It failed to fully support the DA before the Council. It also insisted upon  
17      substantial changes to the DA and purposely delayed and frustrated the processing and  
18      approval of the DA. The Staff acted in bad faith.

19          9.       The Staff not only broke its promises to K&S, it actually undermined  
20      and circumvented K&S's attempts to get its park-and-fly approved by the Staff also  
21      failed to disclose its true intentions. Staff's broken promises, bad faith, and ulterior  
22      motives resulted in the Council not approving the proposed park-and-fly DA and  
23      insisting upon a different use. The Staff's delays also caused K&S to suffer economic  
24      damages, including the eventual loss of its Property.



1           10.     Because it seeks to enforce a promise that arises out of the July 11, 2006  
2 written Letter Agreement, K&S's Promissory Estoppel claim is governed by  
3 Washington's six-year statute of limitations (RCW 4.16.040(1) and RCW 4.16.080(3).

4           11.     But even if the claim was governed by a shorter statute of limitations,  
5 K&S did not know, or have reasons to know, of the basis for its claims until it received  
6 records from the City in response to its 2010 Public Records Act request. And, K&S did  
7 not have reason to suspect that the City had acted inappropriately until it was revealed,  
8 on December 29, 2009, that the City was the "phantom buyer." Upon learning of the  
9 City's role in the loss of its Property, K&S immediately took reasonable steps to launch  
10 an investigation into the City's misconduct, including a February 2010 public records  
11 request. It was not until the City provided some of the records in 2010 that K&S had  
12 sufficient information to know of the elements or factual basis for its claims. Moreover,  
13 as was proven at trial, the City intentionally withheld from K&S several key or  
14 damaging documents from its public records response, which K&S was only able to  
15 discover through third-party sources.

16           12.     The Court further concludes that the City is estopped from asserting the  
17 statute of limitations defense. From at least 2006 – when the City passed the  
18 moratorium without proper notice, through at least the 2010 public records process, the  
19 City engaged in a pattern of deliberately withholding information from K&S. The City  
20 cannot benefit from its wrongful and deceptive conduct by asserting a statute of  
21 limitations defense.

22           13.     City Manager Ward had the authority to bind him and Staff to the  
23 promises made in the Letter Agreement. And while the Letter Agreement could not  
24 officially bind the Council, it bound City Manager Ward and his Staff to (1) not  
25 negotiate substantial changes to the draft Development Agreement, (2) quickly process  
26 and submit the DA to the Council, (3) "fully support" the DA to the Council (4) consult

1 and cooperate with K&S to get the DA approved and, (5) be forthright and honest in its  
2 dealings with K&S related to the Property and the proposed DA.

3 14. Had the Staff fulfilled its promises and fully supported the DA, the  
4 Council would have most likely adopted the DA and K&S could have proceeded with  
5 its park-and-fly garage. But instead, the Council only approved a DA that allowed for a  
6 less economically desirable use for K&S.

7 15. Allowing the City to break its promises would be unjust. Requiring the  
8 promises to be enforced would avoid an injustice.

9 16. K&S has therefore proved the elements for promissory estoppel and  
10 enforcement of those promises would be just.

11 17. K&S never agreed to waive or release the City from liability related to  
12 the City's processing of K&S's proposed development, the DA, the moratorium or the  
13 land-use regulations. There was also no accord and satisfaction. K&S also never  
14 "abandoned" its claims against the City.

15 18. When it conveyed the SeaTac Center to the City by way of the Deed-in-  
16 Lieu, K&S did not assign its rights to sue the City with the conveyance. K&S's right to  
17 sue for the City's conduct was not a right that ran with the Property. The City never  
18 acquired the rights to sue itself with the conveyance of the Property.

19 19. The Court also rejects the Defendant's other affirmative defenses, either  
20 because the City failed to provide sufficient facts or the law did not support such  
21 defenses.

22 20. K&S also presented significant and reliable evidence, including the  
23 testimony of a damages expert, to prove that it suffered significant money damages  
24 because of the City's broken promises. This included expectation and reliance damages.

25 21. Although K&S was seeking damages for a business that it was unable  
26 (due to the City's misconduct) to develop or operate, the evidence of lost profits and



1 lost business opportunities was based on clear and reasonable estimations of damages.  
2 These estimates were based on an expert's analysis of the relevant market conditions  
3 and the revenue, expense and profits of substantially similar businesses that operated  
4 under what would be considered the same market conditions, and within the same  
5 vicinity. The expert's opinion was based on real, tangible, and credible evidence  
6 presented at trial, and was not based on speculation or an unproven hypothetical. The  
7 Court therefore finds that the testimony satisfied the requirements of the "new business  
8 rule." Also key is that K&S is the only party that presented any expert testimony on lost  
9 profits – no rebuttal evidence was offered.


10 22. The jury's verdict was reasonably based on substantial evidence. The  
11 Court therefore finds that K&S suffered economic damages as a result of the City's  
12 broken promises in at least the amount of \$9,589,703.00.

### 13 CONCLUSION

14 K&S proved each of the elements of its promissory estoppel claim and that it  
15 suffered economic damages in at least the amount of \$9,589,703.00. The Court also  
16 finds against the City on its affirmative defenses. K&S is therefore entitled to a  
17 judgment on its Promissory Estoppel claim against the City of SeaTac for  
18 \$9,589,703.00.

19 To the extent there is any ambiguity, overlap or mixed question of law and fact,  
20 the Court intends for any Findings of Fact described as a Conclusion of Law to be a  
21 Finding of Fact and that any Conclusion of Law described as a Finding of Fact to be a  
22 Conclusion of Law.

23 ENTERED this 8th day of July, 2016.

24  
25  
26   
JUDGE RICHARD F. MCDERMOTT

1 Prepared and Submitted by:

2 LANDERHOLM, P.S.

3  
4 /s/ Bradley W. Andersen

5 BRADLEY W. ANDERSEN, WSBA #20640

6 PHILLIP J. HABERTHUR, WSBA #38038

Of Attorneys for Plaintiff K&S Developments, LL

and Defendants Gerald and Kathryn Kingen

