

CITY OF BELLINGHAM CONTRACT#

Contract Authorization Routing

Number
(Assigned by FINANCE)

2008-0617

Alison M Henshaw submitted this request on 11/13/2008

Tracking Number AMHW-7LCTCA
Type Contract
Dept: EXECUTIVE

Contracting Party	Bellingham Public Development Authority	Original Cont #	
Name/Project #	First Operating Agreement between the City of Bellingham and the Bellingham Public Development Authority		
Termination Date	11/13/2038	If Contract is Extended, New Termination Date:	
City Project Mgr	Joan Hoisington		
Certificate of Insurance <input type="radio"/> Attached <input type="radio"/> Waived <input checked="" type="radio"/> N/A			
Is Notary required?	No		
P.O. Required?	No	Maximum Payable \$\$	<input type="checkbox"/> See Contract
Exhibits Attached:	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Special Instructions:	After signatures, please scan and e-mail to Alison Henshaw. Thank you.		

1/20

Distribution: Original - Attach to Contract, Copy: Return to Originating Dept.
Modification of Contract - Attach Copy of Original Contract to Physical document

Contract eRouter: In Process

Approvers	Title	Assigned	Notified	Received	Status Changed	Status
Kerry L Messer	Legal Administrative Assistant	11/13/2008	11/13/2008	-	-	-
Tracy L Lewis	Administrative Assistant	-	-	-	-	-
Linda D Anderson	City Clerk Representative	-	-	-	-	-

Approval Cycle Settings

- Approval conditions: 100 % approval
- Routing method: Serial (one at a time)
- Approvers
- Allow Approver comments: Grp_eRouter Yes
- Automatically Delegate to Assistant...: Yes
- Automatically Skip Approvers...: Yes
- Days until skipped/delegated: 60 Weekdays
- 60 Weekdays

Notification

Access

11/20/08 Rec'd Finance
✓ Scan

CITY OF BELLINGHAM
CONTRACT#

2008-0617

**FIRST OPERATING AGREEMENT
BETWEEN THE CITY OF BELLINGHAM AND
BELLINGHAM PUBLIC DEVELOPMENT AUTHORITY**

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**FIRST OPERATING AGREEMENT
BETWEEN THE CITY OF BELLINGHAM AND
BELLINGHAM PUBLIC DEVELOPMENT AUTHORITY**

THIS AGREEMENT is made and entered into as of the 20th day of November, 2008, by and between the CITY OF BELLINGHAM (the "City"), a municipal corporation and a first class charter city, and the BELLINGHAM PUBLIC DEVELOPMENT AUTHORITY ("BPDA"), a Washington public authority chartered by the City.

1. RECITALS

1.1 The Waterfront District is an important public resource to the City. Heavy industrial use of the City's waterfront over the years as well as use of the property as garbage landfills has resulted in significant environmental contamination to the City's waterfront areas. The City and the Port of Bellingham (the "Port") have joined together to embark upon a project to clean up and redevelop the City's waterfront areas. The redevelopment will clean up the contamination, provide public access to and enjoyment of the waterfront, facilitate private development projects and the development of cultural and educational institutions, provide for the development and operation of reasonable public amenities, parks, trails, open space, and recreational facilities, all of which will serve the public.

1.2 Both the City and the Port own substantial waterfront properties that are now or eventually will be available for redevelopment in a manner consistent with City plans, policies and regulations.

1.3 The City has worked with the Port to prepare for the redevelopment of their respective and other properties within and along the Bellingham waterfront for such mixed-use development with residence, retail, offices, marine and light industry, institutional uses, as well as parks, trails and shoreline amenities.

1.4 The City and the Port have jointly funded an environmental review of prospective redevelopment of the Bellingham waterfront and the Port has issued a draft environmental impact statement for public review and comment. Following consideration of public comments received, it is anticipated that a final environmental impact statement will be issued that will serve as the basis for decision-making on an eventual master plan for the area as well as associated implementing land use regulations.

1.5 The City also owns other properties located near the waterfront, in the Old Town Overlay District, that are suitable for redevelopment in a manner consistent with City plans, policies and regulations. Further, the City has an interest in the redevelopment of other than City-owned properties that are located in Old Town such that the redevelopment of those properties complements both the Waterfront District and Old Town redevelopment projects.

1.6 The City also owns properties in downtown Bellingham that are suitable for redevelopment in a manner consistent with City plans, policies and regulations. Redevelopment of these properties also would complement redevelopment efforts in the Waterfront District and Old Town.

1.7 The City, in conjunction with its Parking Commission, has a desire to plan for and develop parking for the downtown, Old Town and waterfront areas that will complement and serve the redevelopment in those areas.

1.8 The City is interested in optimizing the use of its properties located in the Waterfront and Old Town districts and in downtown through both more focused management and possibly, if appropriate, redevelopment in a manner that realizes important City policies and other public purposes.

1.9 The City has an interest in coordinating the management and redevelopment of appropriately identified properties that are currently being managed under the auspices of different City departments; including but not limited to property managed by the Public Works Department, Planning and Community Development Department, and the Parks Department.

1.10 The City has determined that the creation of an independent legal entity to undertake specific redevelopment projects is the best means to accomplish the City's property management and redevelopment goals. Accordingly, the City Council has authorized the issuance of a charter to the Bellingham Public Development Authority pursuant to Ordinance No. 2008-05-047, and RCW 35.21.750-RCW 35.21.755 with the specific purpose of accomplishing redevelopment by: acquiring, managing, and disposing of real property, securing financing; undertaking or otherwise providing for the development, construction, operation, and maintenance of structures and facilities.

1.11 The purpose of this First Operating Agreement is to allocate duties and responsibilities between the City and the Bellingham Public Development Authority for management and pre-development activities.

2. DEFINITIONS

As used herein, the following capitalized terms shall have the following meanings:

“Authority” means the Bellingham Public Development Authority.

“BPDA” means the Bellingham Public Development Authority.

“Board” means the Board of Directors of the Bellingham Public Development Authority.

“City” means the City of Bellingham.

“Downtown” or “Downtown Neighborhood” means the area of the Central Business District and some of the abutting neighborhoods outlined in the City Center Master Plan Boundary.

“Old Town” means the Old Town Overlay District.

Operating Agreement” means one or more agreements entered into between the City and the BPDA, each of which shall identify the City’s and the BPDA’s respective duties and responsibilities, including providing for management of City-owned properties by or the transfer of such properties to the BPDA in a manner consistent with City policies, goals and priorities.

“Port” means the Port of Bellingham.

“University” means Western Washington University.

“Waterfront District” means the site that lies within the City of Bellingham’s Central Business District Neighborhood Planning area. The site is generally bounded by Bellingham Bay to the west, Roeder Avenue and State Street to the north and east, and the BNSF railroad corridor and bluff to the south. The Central Business District Neighborhood is generally bounded by the Columbia and Lettered Streets neighborhoods to the north; the Sunnyland and York neighborhoods to the east, and Cornwall Avenue and the Sehome and South Hill neighborhoods to the south. The Waterfront District includes approximately 216.3 acres of contiguous waterfront property and adjacent aquatic area in central Bellingham. Currently, the Port owns and/or manages approximately 148.9 acres of the site; the City owns approximately 21.2 acres and another approximately 46.2 acres of the site are held in State of Washington or private ownership.

3. PUBLIC DEVELOPMENT AUTHORITY ROLE

3.1 Designation of BPDA. The City designates the BPDA to manage and, as appropriate, secure redevelopment of certain City-owned properties not currently committed to use for municipal purposes. In managing any such properties, the BPDA shall seek to improve the performance of such properties both with respect to revenue generation as well as use in a manner consistent with and which reinforces City plans, policies and regulations. As provided herein, the BPDA may request management responsibility for or conveyance for redevelopment purposes of City-owned properties. The BPDA also may be called upon by the City to support, undertake or otherwise participate in other projects identified by the City that may not involve use of City-owned property.

3.2 Start-up Activities. Under this First Operating Agreement, as more specifically provided herein, the BPDA will focus on the preparation and initial implementation of a comprehensive multi-year strategic plan for the management and redevelopment of City-owned properties located in the Waterfront, Old Town and Downtown Districts. The strategic plan shall, among other matters: (i) identify, evaluate and rank specific BPDA management and development priorities utilizing consistently applied BPDA-adopted evaluation criteria; (ii) discuss public and private investment needs, including public infrastructure and other capital improvements supportive of identified management or redevelopment opportunities; and (iii) describe marketing strategies and delineate procedures for soliciting and evaluating development proposals.

In developing and updating its strategic plan, the BPDA will coordinate with the Bellingham Parking Commission on parking issues related to proposed development and with

the Port of Bellingham, Western Washington University, the Viking Development Authority, private property owners, appropriate City staff and other entities and public property owners as necessary consistent with the nature of and location of the proposed project. The BPDA shall update its strategic plan on an annual basis.

4. PDA STAFFING AND ADMINISTRATION

4.1 Executive Director. The BPDA Board shall determine the scale and nature of the staffing needed for it to accomplish the purposes for which it was chartered and to meet its responsibilities under this Agreement. The Board shall retain an Executive Director to function as the BPDA's chief executive officer to whom all other staff and consultants will report. The Executive Director shall be responsible for retaining and managing such additional staff and consultants. Unless determined otherwise by the Board, the Executive Director shall serve as the principal spokesperson for the BPDA.

4.2 Initial Staffing, Support Services and Funding. The City will identify and provide City staff to function as initial BPDA staff, specifically including a senior, qualified City employee and a qualified administrative support person, who will support the PDA until the PDA hires its own Executive Director and other staff. The City also may provide support services such as finance, accounting services, and real estate transactional support in a manner and under terms agreeable to the BPDA. As provided herein, the City also shall provide funds for initial operating expenses, taking into account the possible provision by the City of initial staffing or support services.

4.3 BPDA Budget. Consistent with the City's budgeting schedule and procedures, the BPDA will timely prepare and submit to the Mayor, or his or her designee, a proposed annual budget. The proposed budget will describe the BPDA's planned work for the year, consistent with its current strategic plan. In reviewing the BPDA's proposed budget in the context of the City's own annual budget process, the City will assess resources available to the BPDA, including but not limited to revenues generated by properties it manages and revenues derived from its redevelopment efforts, as well as the availability of City resources to support the work of the BPDA. Upon approval of the BPDA's proposed annual budget, the City will appropriate funding necessary to ensure the functionality of the BPDA during the City's annual budget process. The City recognizes that, for the balance of 2008 and for 2009, the City will very likely be substantially supporting the BPDA as it begins operations and positions itself to begin to generate revenues to support its activities.

4.4 Self-Sustainability. The BPDA and the City share the goal that the BPDA will become self-sustaining, generating sufficient revenue to support its own operations, eventually without direct City financial assistance. The primary source of funding to support BPDA operations will be revenues generated by the BPDA from properties it manages on behalf of the City, on terms to be determined as properties are assigned to the BPDA for management. The priority use for funds generated by the sale or long-term lease of City-owned properties for redevelopment through the efforts of the BPDA shall be investment in City-sponsored capital improvements specifically associated with such redevelopment projects or which the BPDA and the City have identified as important to improving opportunities to secure redevelopment of

City-owned properties in the future. Funding generated by the sale or long-term lease of City-owned properties for redevelopment through the efforts of the BPDA may also be: (i) applied to BPDA operating expenses; (ii) if possible without compromising the viability of the BPDA or its ongoing efforts to secure redevelopment of BPDA prioritized properties to reimburse the City for funding previously dedicated to BPDA operating support; or (iii) be shared with the City pursuant to a revenue sharing agreement as determined on a transaction by transaction basis.

4.5 Use of Funds. All City funds disbursed hereunder to the BPDA shall be used by it only and solely for the purposes of performing services and activities required herein. Such funds shall not be used to advance funds to any individuals or organizations, nor shall such funds be diverted by the BPDA for any other activity, program or service, other than as required herein. Such funds also shall be applied in a manner consistent with accounting rules generally applicable to comparable organizations.

5. STRATEGIC PLAN DEVELOPMENT AND IMPLEMENTATION

5.1 Property Identification. In developing and updating its strategic plan, the BPDA shall undertake the following:

5.1.1 Review of City Plans and Policies. The BPDA shall review existing and evolving City land use and development-related plans and policies

governing or directly affecting the Waterfront, Old Town and Downtown Districts.

5.1.2 Identification of Available City Properties. In consultation with the City, the BPDA shall review the status of and management or redevelopment prospects for City-owned properties located in its priority areas that are either not currently dedicated for municipal use or, if so used, are underutilized. As a result of such review, the BPDA shall identify and prioritize properties that, in its judgment, would be suitable for its management or for conveyance for eventual redevelopment through its efforts.

5.2 City-owned Properties. The BPDA may request and the City may approve granting BPDA management responsibility for certain City properties or approve conveyance of certain City-owned properties for eventual redevelopment if the City reasonably determines that:

5.2.1 BPDA management would yield improved financial return from the property, either for the BPDA or for the City, or BPDA management would serve other public purposes including achieving objectives articulated in City plans, policies or regulations; or

5.2.2 The BPDA would be able to improve the prospects for redevelopment in a manner consistent with City plans, policies and regulations or which would accomplish other important public purposes.

5.3 Properties of Initial Interest. As the BPDA develops its strategic plan as provided herein, including its review of City-owned properties, the following potential properties and associated projects should receive specific consideration:

5.3.1 Old Town. The 600 West Holly Street property was purchased for mixed-use redevelopment potentially in conjunction with redevelopment of adjacent privately-owned properties, but remains underutilized. The City-owned property on Holly Street adjacent to the Army Street right-of-way also may present an opportunity for mixed-use redevelopment.

5.3.2 Waterfront. Collaborative and supportive participation in projects to be undertaken by the Viking Development Authority, recently formed by the University and the Port, should receive specific consideration. The City-owned Colony Wharf property may represent an early opportunity for mixed use redevelopment in Area One of the Waterfront District and the City's holdings in Area Ten may be suitable for mixed use development in conjunction with the Port. The BPDA may also become involved in other joint-use projects involving the City and other partners

such as WWU at different sites on the waterfront, such as the waterfront foot of Bay Street.

5.3.3 Downtown. The BPDA should undertake a comprehensive evaluation of City-owned land and structured parking in the downtown area (located in the Central Business district), to determine how best to utilize such resources and maximize their potential to leverage additional development.

5.4 Financing Strategy. In collaboration with City staff and with the support of professional consultants and other experts as required, the BPDA will develop a comprehensive survey of public and private capital and development financing tools and incentives that may be available to support its efforts. In addition to mechanisms that may be of direct or indirect assistance in private redevelopment projects such as tax credits or other incentives, the BPDA shall give particular attention to identification of infrastructure and other public capital investments that may be necessary for or supportive of the private redevelopment projects that it has prioritized. The BPDA will coordinate with the City in establishing realistic costs for such projects and understanding how such projects may align with existing City infrastructure and capital improvement plans and priorities.

5.5 Marketing Strategy. The BPDA will develop a marketing strategy to identify and promote its priority development and management opportunities. The marketing strategy will describe how the BPDA will market development opportunities including the preparation of

marketing materials, which may include but are not limited to web-based strategies, informational and promotional brochures, videos, conceptual drawings or scale models of possible projects or leasing opportunities. Such marketing is to be focused on promoting development to identified potential partners or other direct participants in the development process.

5.6 Forms of Agreements. With advice of counsel, BPDA will develop forms of the agreements it may use in management or securing development of City-owned properties. Such agreements shall be subject to review and approval as to form by the City Attorney. Such agreements include short and long leases for management by the BPDA of City-owned properties and agreements necessary for the redevelopment of City-identified properties. The parties envision that, generally, redevelopment will occur under two, sequential agreements: (i) a development agreement under which a developer identified through the BPDA's competitive process as provided herein meets certain milestones within a defined timeframe in order to qualify for acquisition of the property; and (ii) a purchase and sale or long-term lease agreement prescribing the terms and conditions of the conveyance or lease of the property.

6. PROPERTY MANAGEMENT

6.1 Relationship with the City. The BPDA shall develop for City review and approval basic terms and conditions for management of City-owned properties by the BPDA. In general, the BPDA shall retain rents realized from its management of such properties and apply toward its own operating expenses any net proceeds, after meeting its obligations under the

City-approved basic terms and conditions, which may include revenue sharing. The BPDA may lease such properties to tenants for as long as five years, including tenant options for renewals, without further City approval.

6.2 Tenancing. In managing City-owned properties, the BPDA shall seek to optimize the use and occupancy of City-owned properties for which it has management responsibility. The BPDA shall seek uses that advance public purposes and City plans, policies and regulations for the area in which a property is located. The BPDA shall develop, adopt and utilize local industry standard best practices in marketing properties that are consistent with any applicable requirements of law for renting public property and that promote competition to the maximum extent possible.

7. **DEVELOPMENT PROCESS**

7.1 Competitive Solicitation Process, Including Development Proposal Evaluation and Selection.

7.1.1 Criteria for Evaluating Redevelopment Proposals for Each Site. The Board shall establish criteria for evaluating the potential development alternatives for each property for which it has responsibility. At a minimum, the evaluation criteria shall include the following: (i) whether the proposed redevelopment is consistent with applicable City plans, policies and regulations; (ii) whether the proposed redevelopment meets

minimum development thresholds established by the BPDA; (iii) the public benefit associated with the proposed redevelopment; (iv) the economic viability of the proposal; the experience of the development team, specifically including comparable projects in reasonably similar communities; (v) the financial return that the proposed redevelopment will provide to the BPDA and/or the City; (vi) the long-term economic impacts (in addition to (v) above) of the proposed project; and (vii) the effects of the proposed redevelopment on adjacent or nearby developments or proposed developments. In evaluating competing redevelopment plans, the Board should consider the projected timeline for commencement and completion of the proposed project. The Board may expand the evaluation criteria to include additional, more specific criteria for each project.

7.1.2 Competitive Development Proposal Solicitation. The following two-stage competitive solicitation process shall be utilized by the BPDA to identify developers of specific projects determined to be the highest and best use of the property consistent with applicable City plans, policies and regulations.

7.1.2.1 In consultation with the City, the BPDA will issue Requests for Qualifications (“RFQs”) to determine the credentials of potential developers and elicit overall development concepts. The specific

terms and conditions of any RFQs must be reviewed and approved by the Bellingham City Attorney prior to issuance.

7.1.2.2 Based on the results of the RFQs, one or more firms will be requested to submit more detailed project proposal(s) in response to Requests for Proposals (“RFPs”).

7.1.3 Competitive Development Proposal Review and Selection. The BPDA may establish an expert review committee to evaluate draft RFQs, draft RFPs and the responses to RFQs and to present recommendations to the Board for Board approval, modification or rejection. Such a review committee may include BPDA Board members as well as qualified citizens and City staff, as determined by the Board. The BPDA Board will act as the selection committee in evaluating the responses to the RFPs according to the criteria established pursuant to this Agreement, taking into account the recommendations of the review committee, if one is used. In its capacity as selection committee, the Board will review RFP responses and select the developer(s) to proceed with the specific projects in the RFP. The Board will also identify the next highest ranked developer. The BPDA will reserve the option to negotiate a Development Agreement, Purchase/Sale Agreement, or Development and Lease Agreement with such next highest ranked developer if it is unable to achieve an acceptable agreement with the top ranked respondent.

7.1.4 Consultation with City. Prior to initiating negotiation of Development Agreements, Purchase/Sale Agreements, or Development and Lease Agreements with the selected developer, the BPDA shall consult with the Mayor, or his or her designee, regarding objectives for such negotiation and the need for and relative priority of public capital improvements necessary for or reasonably supportive of the contemplated development.

7.1.5 Proposed Development Agreements, Purchase/Sale Agreements, or Development and Lease Agreements. Upon selecting the developer(s), the BPDA will negotiate a Development and Purchase/Sale or Development and Lease Agreements that are consistent with applicable City plans, policies and regulations, to provide for conveyance of a fee simple or leasehold interest to a developer. The specific terms and conditions of any Development Agreements, Purchase/Sale Agreements, or Development and Lease Agreements must be reviewed and approved as to form by the Bellingham City Attorney. Any sale of property to a developer shall be at a price that may include cash or other tangible and intangible forms of consideration as determined by the BPDA Board to be consistent with its fair market value, taking into account that the consideration to be received would make the project economically viable and induce capital investment in the community; the overall value of the proposed redevelopment to the area, and the long-term community benefit that can be realized through the

sale or lease of the property, among other relevant factors, as determined by the Board. Any transfer of property by sale or lease pursuant to a Development and Purchase/Sale or Development and Lease Agreements is contingent upon the developer initiating full or partial redevelopment within a specified time frame as provided in such Agreements. The BPDA will identify any matters involving obligations or commitments on the part of the City that are proposed to be incorporated into the Agreements.

7.1.6 Compliance with Applicable Law. Notwithstanding any other provisions herein, BPDA property disposition procedures shall comply with applicable State law and City ordinances.

8. TRANSFER OF PROPERTY FOR LEASE OR SALE TO SELECTED DEVELOPERS

8.1 Bellingham City Council Review of Proposed Development. The sale or long-term lease of City-owned property or BPDA property formerly owned by the City to a developer selected by the BPDA as provided herein shall be subject to review and approval by the City. In submitting a recommended development on such property, the BPDA shall confirm to the Council that it believes such proposal is consistent with the applicable City plans, policies and regulations. The Council shall accept or reject the BPDA's recommended proposed

Development and Purchase/Sale or Development and Lease Agreements by an affirmative vote of a majority of the Council.

8.1.1 If the Council accepts the BPDA's recommendation, it shall:

8.1.1.1 with respect to City-owned property, authorize a transfer of the subject property to the BPDA at no cost for reconveyance by the BPDA as provided herein; or

8.1.1.2 with respect to BPDA property formerly owned by the City, the City will negotiate and execute documents necessary to effectuate sale or lease of such property as recommended by the BPDA as provided herein.

8.1.2 If the Council rejects the BPDA's recommendation, the BPDA will: (i) initiate a new RFQ/RFP process; (ii) provide additional information in support of its proposed Development and Purchase/Sale or Development and Lease Agreements that responds to concerns expressed by the Council; (iii) submit revised Development and Purchase/Sale or Development and Lease Agreements that address the Council's concerns; or (iv) submit Development and Purchase/Sale or Development and Lease Agreements negotiated with the next highest ranked developer. If presented with additional information, revised Agreements, or Agreements

negotiated with the next highest ranked developer, the Council shall then accept or reject the BPDA's recommendations as provided herein.

8.1.3 This provision shall survive expiration or termination of this Agreement.

9. BPDA REPORTING REQUIREMENTS; CITY AUDITS

9.1 BPDA Annual Reports. As a feature of the annual report the BPDA is required to prepare under its charter, the BPDA shall describe its activities for the prior year and its plans for the current year, with particular emphasis on the status of its responsibilities under this Agreement.

9.2 City Audits. The City may conduct performance and financial audits of the BPDA. The BPDA agrees to cooperate in such audits.

10. INDEMNITIES AND INSURANCE

10.1 Indemnification by BPDA. The BPDA hereby agrees to indemnify and hold harmless the City, its officers, and employees from any and all claims, actions, causes of action, judgments, or liens occasioned by or arising out of the BPDA's negligence or the BPDA's failure to comply with applicable law in the BPDA's performance of this Agreement (except for any willful misconduct or gross negligence of the City and except for matters for which the City has agreed to indemnify the BPDA hereunder), and to defend for and on behalf of the City, its

officers, and employees, at its own expense, any such claim or cause of action, and, in the event of recovery thereon, to pay any judgment or lien arising therefrom, including any and all costs as a part thereof.

10.2 Indemnification by the City. The City hereby agrees to indemnify and hold harmless the BPDA, its officers, and employees from any and all claims, actions, causes of action, judgments, or liens occasioned by or arising out of the City's negligence or the City's failure to comply with applicable law in the City's performance of this Agreement (except for any willful misconduct or gross negligence of the BPDA and except for matters for which the BPDA has agreed to indemnify the City hereunder), and to defend for and on behalf of the BPDA, its officers, and employees, at its own expense, any such claim or cause of action, and, in the event of recovery thereon, to pay any judgment or lien arising therefrom, including any and all costs as a part thereof.

10.3 Insurance. The BPDA will maintain public liability insurance in an amount as specified by the Mayor and approved by the City Attorney sufficient to cover potential claims for bodily injury, death or disability, and for property damage that may arise from or be related to the BPDA's projects or activities in connection with a federal or public program. The City shall be named as an additional insured on such insurance policies.

10.4 Limitation of Liability. The Parties expressly understand and agree that any obligation or liability arising out of and/or incurred by the BPDA by reason of this Agreement, or the carrying out of any activity in connection therewith, shall be satisfied exclusively from the

assets and credit of the BPDA, and no creditor or any other person or entity shall have any recourse to any of the assets, credit, or services of the City on account of any debts, obligations, or liabilities of the BPDA. No member of the Board of the BPDA and no other officer, employee or agent of the BPDA shall be individually and personally liable on any obligation assumed by the BPDA by this Agreement, nor shall any Board member or other officer, employee or agent be individually and personally liable on any obligation assumed by the City by this Agreement.

11. COMPLIANCE WITH LAWS

11.1 Interest of Members, Officers, or Employees of Grantee Members of Local Governing Body or Other Public Officials. No member, officer, or employee of the City, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality, or localities, including the Board, who exercises any functions or responsibilities with respect to the program during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement, either for themselves or those with whom they have family or business ties.

11.2 Nondiscrimination. In all hiring or employment made possible by or resulting from this Agreement there will not be any discrimination against any employee or applicant for employment because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental or physical handicap. This requirement shall apply to, but not be limited to, the following:

employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices to be provided by HUD setting forth provisions of this clause. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental or physical handicap. Each participant in this Agreement will comply with all requirements imposed by or pursuant to regulations of HUD Title VI of the Civil Rights Act of 1964 and any subsequent acts.

11.3 Legal Base. The Parties, in carrying out and conducting the activities required hereunder and furnishing the necessary services, shall at all times carry out such services, and perform such activities in accordance with and pursuant to any and all laws of the United States of America, the State of Washington, and ordinances of the City, and any rules, regulations, or instructions of any agency or department thereof having or asserting authority or jurisdiction with reference to any service or activity carried on under and pursuant to this Agreement.

12. DEFAULT AND TERMINATION

12.1 Events of Default by BPDA. The following shall be events of default by the BPDA hereunder; provided, that the BPDA shall not be responsible for and to the extent of any default arising from the City's failure to perform its obligation hereunder:

12.1.1 If, through any cause, the BPDA fails to fulfill in timely and proper manner its obligations under this Agreement, or

12.1.2 If the BPDA materially violates any of the covenants, agreements or stipulations of this Agreement to be performed by the BPDA.

12.2 Cure Period; Termination for BPDA Default. Upon written notice by the City to the BPDA of the occurrence of an event of default, any and all of the City's obligations arising under and pursuant to this Agreement shall cease and terminate. Provided, however, that the BPDA shall be granted a reasonable period of time, not to exceed sixty (60) days, to remedy or correct any event of default. If such default cannot reasonably be cured in such 60-day period, then the BPDA shall have such additional time as is necessary to complete such cure so long as the BPDA is diligently pursuing such cure. If the BPDA does not cure an event of default prior to the expiration of the applicable cure period, the City may terminate the existence of the BPDA pursuant to RCW 35.21.730 et seq. and the BPDA Charter.

12.3 Effect of Termination of BPDA. During the continuance of an event of default, the City may withhold any payments to the BPDA for the purpose of setoff until such time as the exact amount of damages due the City from the BPDA is determined. Upon termination of the BPDA, any property, including real property, owned by the BPDA shall be transferred without cost to the City, or to another entity designated by the City.

12.4 Events of Default by City. The following shall be events of default by the City hereunder:

12.4.1 If, through any cause, the City fails to fulfill in timely and proper manner its obligations under this Agreement, or

12.4.2 If the City materially violates any of the covenants, agreements or stipulations of this Agreement to be performed by the City.

12.5 Cure Period; Termination for City Default. Upon written notice by the BPDA to the City of the occurrence of an event of default, the City shall be granted a reasonable period of time, not to exceed sixty (60) days, to remedy or correct any event of default. If such default cannot reasonably be cured in such 60-day period, then the City shall have such additional time as is necessary to complete such cure so long as the City is diligently pursuing such cure.

12.6 Dispute Resolution. Upon written notice by the BPDA to the City of the occurrence of an event of a continuing default, to the extent that the funds available to the BPDA in the Authority Fund are inadequate for the performance of a particular obligation hereunder, the BPDA may suspend its performance of such obligation unless and until such default is cured by the City. The Mayor and the BPDA Executive Director shall meet to resolve any default in a mutually agreeable manner. Failing agreement between the Mayor and the BPDA Executive Director, they shall identify, and the Parties shall participate in good faith in, a binding alternative dispute resolution process to do so.

13. MISCELLANEOUS

13.1 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, then that provision and the remainder of this Agreement shall continue in effect and be enforceable to the fullest extent permitted by law. It is the intention of the Parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

13.2 Integration and Amendment. This Agreement contains the entire integrated agreement between the Parties as to the matters covered herein. and supersedes any oral statements or representations or prior written matter not contained in this instrument as to the matters set forth herein. This Agreement shall not be modified except by a written document signed by both Parties.

13.3 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

13.4 Limitation on Third Party Rights. Nothing in this Agreement expressed or implied is intended or shall be construed to give to any person other than the City and the BPDA any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision herein contained; and all such covenants, conditions and

provisions are and shall be held to be for the sole and exclusive benefit of the City and the BPDA.

13.5 Construction. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it.

13.6 Counterparts. This Agreement may be executed in counterparts for the convenience of the Parties, and such counterparts shall together constitute one Agreement.

13.7 Force Majeure. Time periods for either party's performance under any provisions of this Agreement shall be extended for periods of time during which such performance is prevented due to circumstances beyond such party's reasonable control, including without limitations, strikes, embargoes, shortages of labor or materials, governmental regulations, acts of God, war or other strife.

14. NOTICES

14.1 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:

To the City: Mayor
210 Lottie Street
Bellingham, WA 98225

With a copy to: City Attorney
210 Lottie Street
Bellingham, WA 98225

To the Authority: Executive Director
Bellingham Public Development Authority
c/o 210 Lottie Street
Bellingham, WA 98225

With a copy to: Attorney for the Bellingham Public Development Authority
Gerry Johnson
K&L Gates
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158

15. WAIVER

15.1 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.

16. VENUE

16.1 The venue for any dispute related to this Agreement shall be Whatcom County, Washington.

17. EXCULPATION

17.1 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 or directors of the City or the Authority with respect to any obligations, terms, covenants and conditions of this Agreement.

18. TERM

18.1 This Agreement shall be effective upon the date that the City and the BPDA have signed the Agreement and shall remain in force until the earlier of: (i) December 31, 2010; or (ii) upon dissolution of the Authority as provided in Section 11 of Ordinance No. 2008-05-07 and Section 5 of the BPDA Charter.

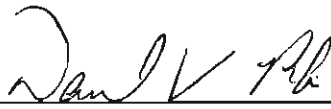
18.2 This Agreement shall terminate under circumstances where both parties mutually agree in writing that by operation of law, court order or, as a result of other facts and circumstances, whether within the control of the parties or not, it is impossible or impractical for the Authority to accomplish its purposes and fulfill its responsibilities under this Agreement.

18.3 This Agreement contains the entire agreement between the parties hereto and shall not be modified or amended in any manner except by an instrument in writing executed by the parties.

19. ADMINISTRATION

19.1 For purposes of communicating between the Authority and the City and administering their cooperative undertakings in this Agreement, the Executive Director of the Authority shall be the Authority's lead person and the Mayor shall designate a lead person for the City.

DATED this 20th day of November, 2008 for the **CITY OF BELLINGHAM:**



Mayor

ATTEST:



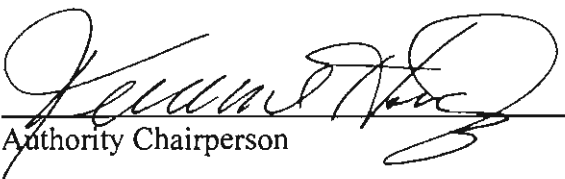
Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

EXECUTED this 29th day of October, 2008 for the **BELLINGHAM PUBLIC DEVELOPMENT AUTHORITY:**



Authority Chairperson