

ORDINANCE NO. 2008-05-047

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, AUTHORIZING THE CREATION OF A PUBLIC CORPORATION TO BE KNOWN AS THE BELLINGHAM PUBLIC DEVELOPMENT AUTHORITY AND APPROVING A CHARTER AND BYLAWS.

WHEREAS, pursuant to RCW 35.21.730 through 35.21.755, the City Council (the "Council") of the City of Bellingham, Washington (the "City") may authorize the creation of a public corporation as a separate legal entity to perform any lawful public purpose or public function as therein authorized; and .

WHEREAS, the City is fortunate to be a waterfront community located on Bellingham Bay opening onto northern Puget Sound within reach of the San Juan and Gulf Islands; and

WHEREAS, while successful and sustainable cities commonly take full as well as respectful advantage of attractive geographic locations, waterfront communities frequently have been challenged to reclaim their waterfronts from historic uses that no longer represent the highest and best potential use of a waterfront location and may also present environmental challenges; and

WHEREAS, the City is working to reclaim its waterfront, which historically has been largely dedicated to industrial uses such as forest products that have ceased to operate, leaving an asset with both significant challenges as well as substantial potential in their wake; and

WHEREAS, the City owns waterfront properties that are now or eventually will be available for redevelopment; and

WHEREAS, the City has worked with the Port of Bellingham (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; and

WHEREAS, 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 environment 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; and

WHEREAS, the downtown and Old Town historic district (“Old Town”) of the City are located adjacent to the waterfront and contain many buildings, public spaces, parking facilities, and other property of historic and civic importance; and

WHEREAS, City owned properties located downtown and in Old Town are in or will be in need of restoration and improvement; and

WHEREAS, the Council is committed to moving forward with the redevelopment of and improvements to downtown and Old Town and, subject to outcome of the environmental review process, with the redevelopment of the waterfront and has evaluated the possible use of a City-chartered public corporation to assist with these goals; and

WHEREAS, the Council also anticipates that the public corporation could manage redevelopment projects as needed in other areas of the City; and

WHEREAS, the City envisions a bright future for the community, including its downtown, Old Town and waterfront, retaining and nurturing historic uses, valued neighborhood characteristics, infrastructure and related activities while encouraging new private and public development in the City that would realize its economic potential as well as facilitating investment for supportive infrastructure and substantial public amenities and benefits such as parks, public waterfront access, parking facilities and anchoring the continued viability of the community, including downtown, the waterfront and Old Town; and

WHEREAS, the Council has determined that the creation and utilization of a public corporation would improve the effectiveness of City efforts to encourage redevelopment within the City through: (i) the elimination of existing environmental hazards at the waterfront; (ii) providing for public access to and enjoyment of the waterfront; (iii) working with public and private entities to assemble property for potential development; (iv) undertaking construction, improvement and restoration of buildings and infrastructure located downtown, on the waterfront, in Old Town and in other locations as determined by the Council; and (v) the reuse and utilization of these areas for both private and public facilities as will best serve the needs of the public and contribute to the economic, cultural and recreational revitalization and enhancement of significant and important areas of the City; and

WHEREAS, the City has determined that chartering a public corporation to function on its behalf in undertaking the redevelopment of the waterfront, downtown, Old Town and other redevelopment projects in the City as determined by the Council will create a highly focused and dedicated entity that will accelerate progress; allow the City to recruit citizens to the board of directors of the public corporation who will provide effective leadership and bring valuable expertise to its work; and enhance opportunities for meaningful cooperation

with the Port and others critical to the successful redevelopment of these areas, all while ensuring appropriate public oversight and accountability; and

WHEREAS, the relationship between the City and the public corporation will be further defined in one or more legally binding agreements between them specifically delineating the work to be undertaken by the corporation and other matters essential to its success while maintaining consistency with City policies, goals and priorities and providing for meaningful accountability; and

WHEREAS, the Council also intends that the work of the public corporation shall be consistent with the vision of the Waterfront Futures Group where applicable and that all development projects undertaken by the public corporation shall be consistent with the financial, social, and economic principles of the “Triple Bottom Line” approach to development; and

WHEREAS, the Council has been presented with drafts of a proposed charter (the “Charter”) and bylaws (the “Bylaws”) for the establishment and chartering of a public corporation to be known as the Bellingham Public Development Authority, which will have as its purpose the redevelopment of property located within the City, including but not limited to property located downtown, on the waterfront and in Old Town pursuant to the terms of this ordinance and the Charter; and

WHEREAS, it appears in the best interest of the City to approve the Charter and Bylaws for the Bellingham Public Development Authority as now proposed;

NOW, THEREFORE THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1: Authority Created—City Liability Limited.

A. Authority Created. The Council hereby authorizes the creation of a public corporation pursuant to RCW 35.21.730(5). The public corporation shall have all of the powers set forth in this ordinance, RCW 35.21.730 through 35.21.755, and its charter necessary to facilitate the redevelopment of property located within the City, including but not limited to property located downtown, on the waterfront and in Old Town, as well as other redevelopment projects as the Council deems necessary from time to time and to perform any other function specified in this ordinance or its charter.

B. Name. The name of the public corporation shall be the “Bellingham Public Development Authority” (hereinafter the “Authority”).

C. Seal. The corporate seal of the Authority shall carry the name of the Authority.

D. City Liability Limited. The Authority is an independent legal entity exclusively responsible for its own debts, obligations and liabilities. Except as specifically agreed in writing by the City, the Authority shall take no action that might impose liability upon the City. All liabilities incurred by the Authority shall be satisfied exclusively from the assets, credit, and properties of the Authority, and no creditor or other person shall have any right of action against or recourse to the City, its assets, credit, or services, on account of any debts, obligations, liabilities or acts or omissions of the Authority.

The charter of the Authority shall provide that the Authority is organized pursuant to this ordinance and RCW 35.21.730 through 35.21.755 and state as follows: “[A]ll liabilities incurred by the Authority shall be satisfied exclusively from the assets and properties of the Authority and no creditor or other person shall have any right of action against the City of Bellingham, Washington on account of any debts, obligations or liabilities of the Authority.” Such statement shall be displayed in a prominent location in the principal office or other offices of the Authority. It shall also be printed or stamped on all contracts, bonds, and other documents that may entail any debt or liability by the Authority.

Section 2: Powers--Generally. Except as otherwise limited by Washington State law, this ordinance, or the charter of the Authority, the Authority shall have and exercise all lawful powers necessary or convenient to effect the purposes for which the Authority is organized and to perform authorized corporate functions, including, without limitations, the power to:

- A. Own, lease, acquire, dispose of, exchange and sell real and personal property;
- B. Contract for any Authority purpose with individuals, associations and corporations, municipal corporations, any agency of the State government or its political subdivisions, and the State, any Indian Tribe, and the United States or any agency or department thereof;
- C. Sue and be sued in its name;
- D. Lend its funds, property, credit or services, borrow money, or act as a surety or guarantor for corporate purposes;
- E. Do anything a natural person may do;
- F. Perform and undertake all manner and type of community services and activities in furtherance of the carrying out of the purposes or objectives of any program or project heretofore or hereafter funded in whole or in part with funds received from the United States or any agency or department thereof, or any other program or project, whether or not funded with federal funds, which the Authority is authorized to undertake by Federal or Washington State law, City ordinance, City resolution, by agreement with the City, or as may otherwise be authorized by the City;

G. Provide and implement such municipal services and functions as the Council may by ordinance or resolution direct;

H. Transfer any funds, real or personal property, property interests, or services, with or without consideration;

I. Receive and administer federal or private funds, goods, or services for any lawful public purpose;

J. Purchase, acquire, lease, exchange, mortgage, encumber, improve, use, or otherwise transfer or grant security interests in real or personal property or any interests therein; grant or acquire options on real and personal property; and contract regarding the income or receipts from real property;

K. Issue negotiable bonds and notes in conformity with applicable provisions of the Uniform Commercial Code and Washington State law in such principal amounts, as in the discretion of the Authority, shall be necessary or appropriate to provide sufficient funds for achieving any corporate purposes; or to secure financial assistance, including funds from the United States, a state, or any political subdivision or agency of either for corporate projects and activities; provided, however, that all bonds and notes or liabilities occurring thereunder shall be satisfied exclusively from the assets, properties or credit of the Authority, and no creditor or other person shall have any recourse to the assets, credit or services of the City thereby, unless the Council shall by resolution expressly guarantee such bonds or notes;

L. Contract for, lease, and accept transfers, gifts or loans of funds or property from the United States, a state, and any political subdivision or agency of either, including property acquired by any such governmental unit through the exercise of its power of eminent domain, and from corporations, associations, individuals or any other source, and to comply with the terms and conditions therefor;

M. Manage, on behalf of the United States, a state, and any political subdivision or agency of either, any property acquired by such entity through gift, purchase, construction, lease, assignment, default, or exercise of the power of eminent domain;

N. Recommend to appropriate governmental authorities public improvements and expenditures for areas located within the City;

O. Recommend to the United States, a state, and any political subdivision or agency of either, any property which, if committed or transferred to the Authority, would materially advance the public purpose for which the Authority is chartered;

P. Initiate, carry out, and complete such improvements of benefit to the public consistent with its charter as the United States, a state, and any political subdivision or agency of either may request;

Q. Recommend to the United States, a state, and any political subdivision or agency of either such tax, financing, and security measures as the Authority may deem appropriate to maximize the public interest in the City;

R. Provide advisory, consultative, training, educational, and community services or advice to individuals, associations, corporations, or governmental agencies, with or without charge;

S. Control the use and disposition of corporate property, assets, and credit;

T. Invest and reinvest its funds;

U. Fix and collect charges for services rendered or to be rendered, and establish the consideration for property transferred;

V. Sponsor, lease, manage, construct, own, or otherwise participate in housing projects, where such activity furthers the purpose for which the Authority is chartered;

W. Maintain books and records as appropriate for the conduct of its affairs;

X. Conduct corporate affairs, carry on its operations, and use its property as allowed by law and consistent with this ordinance, its charter and its bylaws; designate agents and engage employees, prescribing their duties, qualifications, and compensation; and secure the services of consultants for professional services, technical assistance, or advice;

Y. Identify and recommend to the United States, a state, and any political subdivision or agency of either, the acquisition by the appropriate governmental entity - for transfer to or use by the Authority - of property and property rights, which, if so acquired, whether through purchase or the exercise of eminent domain, and so transferred or used, would materially advance the purpose for which the Authority is chartered; and

Z. Exercise and enjoy such powers as may be authorized by law.

Section 3: Limitation of Powers. The activities and transactions of the Authority shall be limited in the following respects:

A. The Authority shall have no power of eminent domain nor any power to levy taxes or special assessments.

B. The Authority may not incur or create any liability that permits recourse by any contracting party or member of the public to any assets, services, resources, or credit of the City.

C. No funds, assets, or property of the Authority shall be used for any partisan political activity or to further the election or defeat of any candidate for public office; nor shall any funds or a substantial part of the activities of the Authority be used for publicity or educational purposes designed to support or defeat legislation pending before the Congress of the United States, or the legislature of the state or the Council; provided, however, that funds may be used for representatives of the Authority to communicate with members of Congress, state legislators or city council members concerning funding and other matters directly affecting the Authority, so long as such activities do not constitute a substantial part of the Authority's and unless such activities are specifically limited in its charter.

D. All funds, assets, or credit of the Authority shall be applied toward or expended upon services, projects, and activities authorized by its charter. No part of the net earnings of the Authority shall inure to the benefit of, or be distributable as such to, the board members or other private persons, except that the Authority is authorized and empowered to:

1. Reimburse Board Members, employees and others performing services for the Authority reasonable expenses actually incurred in performing their duties, and compensate employees and others performing services for the Authority a reasonable amount for services rendered;

2. Assist board members or employees as members of a general class of persons to be assisted by a corporate- approved project or activity to the same extent as other members of the class as long as no special privileges or treatment accrues to such board members or employees by reason of his or her status or position in the Authority;

3. Defend and indemnify any current or former board member or employee and their successors against all costs, expenses, judgments, and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with or resulting from any claim, action, or proceeding, civil or criminal, in which he or she is or may be made a party by reason of being or having been a board member or employee, or by reason of any action alleged to have been taken or omitted by him or her in such position, provided that he or she was acting in good faith on behalf of the Authority and within the scope of duties imposed or authorized by law. This power of indemnification shall not be exclusive of other rights to which board members or employees may be entitled as a matter of law;

4. Purchase insurance to protect and hold personally harmless any of its board members, employees and agents from any action, claim, or proceeding instituted

against the foregoing individuals arising out of the performance, in good faith, of duties for, or employment with, the Authority and to hold these individuals harmless from any expenses connected with the defense, settlement, or monetary judgments from such actions, claims, or proceedings. The purchase of such insurance and its policy limits shall be discretionary with the board, and such insurance shall not be considered to be compensation to the insured individuals. The powers conferred by this subsection shall not be exclusive of any other powers conferred by law to purchase liability insurance; and

5. Sell assets for a consideration greater than their reasonable market value or acquisition costs, charge more for services than the expense of providing them, or otherwise secure an increment in a transaction, or carry out any other transaction or activity, as long as such gain is not the object or purpose of the Authority's transactions or activities and is applied to or expended upon services, projects, and activities as aforesaid.

E. The Authority shall not issue shares of stock, pay dividends, make private distribution of assets, make loans to its board members or employees or otherwise engage in business for private gain.

Section 4: Charter. The charter of the Authority (the "Charter") is hereby approved in the form set forth at Exhibit A. The Charter shall be issued in duplicate originals, each signed by the Mayor and bearing the City seal attested by the City Clerk. One original shall be filed with the Clerk of the Council and filed as a public record. A duplicate original shall be provided to the Authority.

The Charter may be amended by the Mayor to comply with changes in Washington State law with subsequent notice to the City Council or to make the Charter consistent with the provisions of this ordinance as it may be amended by the Council from time to time. Charter amendments proposed by the Mayor for such purposes shall not require subsequent approval of the board of directors of the Authority. The Charter may also be amended by resolution of the board of directors of the Authority subject to approval by the Mayor and confirmation by the City Council. Any Charter amendment adopted by resolution of the board of directors must be consistent with the terms of this ordinance. After adoption of a Charter amendment, the revised Charter shall be issued and filed in the same manner as the original Charter.

Section 5: Effect of Issuance of Charter. The Authority shall commence its existence effective upon issuance of its Charter and appointment and confirmation of the initial board of directors as provided in the Charter. Except as against the state or the City in a proceeding to cancel or revoke the Charter, delivery of a duplicate original Charter shall conclusively establish that the Authority has been established in compliance with the procedures of this ordinance.

Section 6: Board of Directors; Officers. A board consisting of seven members (the "Board") is hereby established to govern the affairs of the Authority. The Board Members shall be appointed and serve their terms as provided in the Charter. All corporate powers of the Authority shall be exercised by or under the authority of the Board; and the business, property and affairs of the authority shall be managed under the supervision of the Board, except as may be otherwise provided by law or in the Charter.

The Board shall have two or more officers as provided in the Charter. The officers shall manage the daily affairs and operations of the Authority. The same person shall not serve as both the chairperson of the Authority and the officer responsible for the custody of funds and maintenance of accounts and finances. Any officer responsible for accounts and finances shall file with the Authority a fidelity bond in an amount determined by the Authority to be adequate and appropriate and may hold the office only as long as such a bond continues in effect. The chairperson shall be the agent of the Authority for service of process. The Authority may, by resolution, designate other agents to receive or initiate process.

Section 7: Meeting. Within ninety (90) days after issuance of the Charter and appointment and confirmation of the initial Board, the Mayor or his designee shall call an organizational meeting of the initial Board, giving at least ten (10) days' advance written notice to each, unless waived in writing. At such meeting, the Board shall organize itself, appoint officers, select its place of business, adopt a code of ethics policy, and approve an initial operating agreement. All Board meetings, including executive, all other permanent and ad hoc committee meetings, shall be open to the public to the extent required by chapter 42.30 RCW.

Section 8: Bylaws. The initial bylaws (the "Bylaws") of the Authority are hereby approved in the form set forth at Exhibit B. The power to alter, amend, or repeal the Bylaws or adopt new ones shall be vested in the Board except as otherwise provided in the Charter. The Bylaws shall be consistent with the Charter. In the event of a conflict between the Bylaws and this ordinance or the Charter, this ordinance or the Charter, as the case may be, shall control.

Section 9: Funds of the Authority. All money belonging to or collected for the use of the Authority coming into the hands of any officer thereof shall immediately be deposited with the treasurer or other legal depository to the credit of the Authority for the benefit of the funds to which they belong. The use of funds of the Authority for any purpose not authorized by law by any officer having possession or control thereof is prohibited.

Section 10: Discrimination Prohibited. Membership to the Board shall not be directly or indirectly based upon or limited by age, race, color, religion, sex, national origin, or the

presence of any physical handicap. Furthermore, the Authority shall not discriminate in any matter related to employment because of age, race, color, sex, national origin, or the presence of any physical handicap. The Authority shall, in all solicitation or advertisements for employees placed by or on behalf of the Authority, if any, state that all qualified applicants will receive consideration for employment without regard to age, race, color, religion, sex, national origin, or the presence of any physical handicap.

Section 11: Dissolution.

A. The Authority may be dissolved for any reason by an affirmative finding of the Council that dissolution is warranted. The Council shall make such affirmative finding in a resolution at or after the Council holds a public hearing, held with notice to the Authority and its Board. Dissolution shall be accomplished as provided in the Charter, and shall not take effect until proper provision has been made for disposition of all Authority assets and liabilities.

B. Upon enactment of a resolution by the Council for dissolution of the Authority, the Authority shall file a dissolution statement signed by its chairperson setting forth:

1. The name and principal office of the Authority;
2. The debts, obligations and liabilities of the Authority, and the property and assets available to satisfy the same; the provisions to be made for satisfaction of outstanding liabilities and performance of executory contracts; and the estimated time for completion of its dissolution;
3. Any pending litigation or contingent liabilities;
4. The Board resolution providing for such dissolution and the date(s) and proceedings leading toward its adoption, whenever the dissolution be voluntary; and
5. A list of persons to be notified upon completion of the dissolution.

The Mayor shall review the dissolution statement filed and oversee the dissolution to protect the public interest and prevent impairment of obligation, or if so authorized by law, authorize or initiate proceedings in the Superior Court for the appointment and supervision of a receiver for such purposes.

Upon satisfactory completion of dissolution proceedings, the City shall indicate such dissolution by inscription of "charter cancelled" on the original Charter of the Authority, on file with the Clerk of the Council and, when available, on the duplicate original of the Authority, and the existence of the Authority shall cease. The City shall give notice thereof

pursuant to Washington State law and to other persons requested by the Authority in its dissolution statement.

C. Upon dissolution of the Authority or the winding up of its affairs, title to all remaining assets or property of the Authority shall vest in the City unless the City or trustee or court has provided for the transfer of any Authority rights, assets or property to a qualified entity or entities to fulfill the purposes for which the Authority was chartered.

Section 12: Insurance. The Authority shall maintain in full force and effect public liability insurance in an amount sufficient to cover potential claims for bodily injury, death or disability and for property damage, which may arise from or be related to projects and activities of the Authority, naming the City as an additional insured.

Section 13: Annual Reports. The Authority shall, within three months after the end of its fiscal year, file an annual report with the City Finance Director, the Council and the Mayor or the Mayor's designee containing an audited statement of assets and liabilities, income and expenditures and changes in its financial position during the previous year; a summary of significant accomplishments; a list of depositories used; a projected operating budget for the current fiscal year; a summary of projects and activities to be undertaken during the current year; a list of officers of the Board; and a list of individuals that are bonded pursuant to Section 6 of this ordinance. The Authority shall also answer fully and within a reasonable time any written inquiries by City officials in the course of their duties about its finances, organization or activities.

Section 14: Access to Records. The Authority shall keep an official journal containing the minutes of proceedings at all meetings of the Board and any meetings of any membership and the resolutions of the Board. Any person shall have access to records and information of the Authority to the extent required by Washington State law.

Section 15: Bonds and Notes. Bonds and notes issued by the Authority may be secured by the full faith and credit of the Authority or may be made payable solely out of certain revenues and receipts as may be designated in the proceedings under which the issuance of the bonds or notes are authorized. All bonds or notes issued shall carry in a prominent place thereon the statement set forth in Section 1(D) of this ordinance. All bonds and notes or liabilities occurring thereunder shall be satisfied exclusively from the assets or credit of the Authority, and no creditor or other person shall have any recourse to the assets, credit, or services of the City thereby, unless the City shall expressly, in writing, guarantee such bonds or notes.

Bonds and notes of the Authority may be sold at such price or prices, at public or private sale, in such manner and from time to time as may be determined by the Authority,

provided no bonds may be sold at private sale without prior City approval. Bonds and notes may be payable at such place or places whether within or without the State, may bear interest at such rate or rates, may be in such form and denominations and of such tenor and maturities, may be in bearer form or in registered form as to principal and interest or as to principal alone, reserve such rights to redeem at such price or prices and after such notice or notices and on such terms and conditions, all as the Authority may determine and provide in the proceedings under which such bonds and notes shall be issued.

The Authority may at the time of the issuance of such bonds and notes make such covenants with the purchasers and holders of said bonds and notes as it may deem necessary to secure and guarantee the payment of the principal thereof and the interest thereon, including but not limited to: covenants to set aside adequate reserves to guarantee payment of principal and interest; to appoint a trustee or trustees to safeguard the expenditure of the proceeds of sale of such bonds and notes and to take possession and use or operate and manage corporate assets securing the bonds and notes in event of default or insolvency or the Authority, with such powers as maybe contained in any covenants relating to the bonds and notes; and to limit the amount, time, and conditions under which additional bonds and notes may be issued or debts incurred.

The Authority may pay expenses, premiums and commissions which it may deem necessary in connection with the issuance and sale of its bonds and notes and take such other actions or make such commitments as are necessary or convenient in the issuance and servicing of such bonds and notes and as are consistent with this ordinance although not enumerated herein.

Section 16: Public Corporation. The Authority is a public corporation created pursuant to RCW 35.21.730 through 35.21.755 as a separate legal entity from the City and is not an advisory board created pursuant to Section 7.01 of the Bellingham City Charter.

Section 17: Ancillary Authority. The Mayor or the Mayor's designee is granted all such power and authority as reasonably necessary or convenient to enable him or her to administer this ordinance efficiently and to perform the duties imposed in this ordinance or the Charter.

Section 18: Liberal Construction. This ordinance shall be liberally construed so as to effectuate its purposes and the purposes of RCW 35.21.730 through 35.21.755.

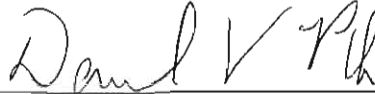
Passed by Council this 5th day of May, 2008.


COUNCIL PRESIDENT

Ordinance -- Bellingham Public
Development Authority - 12

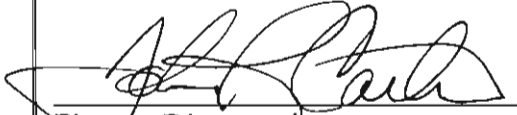
City of Bellingham
CITY ATTORNEY
210 Lottic Street
Bellingham, Washington 98225
Telephone (360) 778-8270

Approved by me this 8th day of May, 2008.



Mayor

Attest:



Finance Director

Approved as to form:


Office of the City Attorney

Published: May 9, 2008

CHARTER
OF
BELLINGHAM PUBLIC DEVELOPMENT AUTHORITY

City of Bellingham
CITY ATTORNEY
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Bellingham, Washington 98225
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**CHARTER
OF
BELLINGHAM PUBLIC DEVELOPMENT AUTHORITY**

ARTICLE I

NAME AND AUTHORITY SEAL

The name of this corporation shall be the "Bellingham Public Development Authority" (hereinafter referred to as the "Authority"). The corporate seal of the Authority shall be a circle with the name of the Authority and the word "SEAL" inscribed therein.

ARTICLE II

**AUTHORITY FOR BELLINGHAM PUBLIC
DEVELOPMENT AUTHORITY: LIMIT ON LIABILITY**

Section 1. Authority.

The Authority is a public corporation organized pursuant to Ordinance No. ___ of the City of Bellingham, Washington (the "City") adopted on April __, 2008, as existing or as hereinafter amended (the "Enabling Ordinance"), and pursuant to Revised Code of Washington ("RCW") 35.21.730 through 35.21.755, as the same now exist or may hereafter be amended, or any successor act or acts.

Section 2. Limitation on Liability.

All debts, obligations and liabilities incurred by the Authority shall be satisfied exclusively from the assets and properties of the Authority and no creditor or other person shall have any right of action against City on account of any debts, obligations, or liabilities of the Authority.

Section 3. Mandatory Disclaimer.

The following disclaimer shall be posted in a prominent place where the public may readily see it in the Authority's principal and other offices. It shall also be printed or stamped on all contracts, bonds, and other documents that may entail any debt or liability by the Authority.

The Bellingham Public Development Authority is organized pursuant to Ordinance No. ___ of the City of Bellingham, Washington adopted on April ___, 2008, as existing or as hereinafter amended, and RCW 35.21.730 through 35.21.755. RCW 35.21.750 provides as follows: “[A]ll liabilities incurred by such public corporation, commission, or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission, or authority and no creditor or other person shall have any right of action against the city, town, or county creating such corporation, commission, or authority on account of any debts, obligations or liabilities of such public corporation, commission, or authority.”

ARTICLE III

DURATION OF AUTHORITY

The duration of this corporation shall be perpetual.

ARTICLE IV

PURPOSE OF AUTHORITY

The purpose of the Authority is to provide an independent legal entity under RCW 35.21.730-.755 and the Enabling Ordinance to undertake, assist with, otherwise facilitate, and advocate for the redevelopment of the Bellingham waterfront, downtown and Old Town historic district (“Old Town”) and to undertake other projects of the City as determined necessary by the City Council. The Authority will be directly responsible for the development of property owned by the City but may also undertake, assist with and otherwise facilitate the development of property owned by others. The Authority may also undertake, assist with, otherwise facilitate and advocate for the provision of infrastructure, parking facilities, parks and open space, and other public amenities and facilities necessary for and supportive of the successful redevelopment of property including, but not limited to, property located downtown, on the waterfront and in Old Town.

Although the Authority may be called upon to assist the City or other public entities with the development, maintenance and operation of public facilities located in the City, the priority focus of the Authority shall be the redevelopment of the waterfront for commercial, civic, marine, industrial, institutional, recreational or residential projects, and the acquisition, redevelopment, restoration, improvement, operation and management of buildings and other property located in downtown Bellingham and in Old Town for commercial, civic, institutional, recreational or residential projects. To accomplish these purposes, the Authority shall coordinate and work with the Bellingham Parking Commission created pursuant to chapter 35.86A RCW and chapter 2.02 of the Bellingham Municipal Code to

address issues related to the availability and preservation of on-street and off-street parking, including but not limited to, the redevelopment, management, and operation of parking facilities owned by the City. Consistent with applicable law and utilizing all lawful means, the Authority shall also work with for-profit and not-for-profit entities to facilitate and maximize private sector participation in such projects.

Redevelopment of the waterfront by and through the efforts of the Authority serves essential public purposes by relieving environmental contamination; providing public access to and enjoyment of the waterfront; undertaking development of an underutilized area in a manner consistent with City planning and regulations; facilitating private investment which will build the City's tax base; and providing for a mixed-use development with residence, civic, retail, offices, marine and light industry, institutional uses, as well as infrastructure, parks, trails, other recreational and shoreline amenities all of which will serve the public. Redevelopment of property located within the City, including downtown, on the waterfront and in Old Town, by and through the efforts of the Authority serves essential public purposes by restoring, improving and maintaining buildings of historic and civic significance; undertaking redevelopment efforts in a manner consistent with City planning and regulations; addressing parking concerns and coordinating with the Bellingham Parking Commission to maximize limited resources; facilitating private investment which will build the City's tax base; and maximizing the potential use of these districts to encourage public and private investment. Redevelopment of these and other areas in the City by the Authority, specifically including, but not limited to, the acquisition and/or management of property, preparation of property for redevelopment and disposition of such property to other public, not-for-profit or for-profit entities for redevelopment consistent with the Authority's purpose, is an essential governmental function to be carried out on behalf of the City.

The work of the Authority shall be consistent with the Waterfront Futures Group vision where applicable and all development projects undertaken by the Authority shall be consistent with the financial, social, and environmental principles outlined in the "Triple Bottom Line" approach to property development.

The work of the Authority shall be consistent with development plans and regulations adopted by the City. Specific obligations and responsibilities of both the City and the Authority will be defined in one or more binding contractual agreements between them providing for matters such as City support for Authority operations; delineation of Authority priorities and tasks to be undertaken; and identification of procedures under which the Authority will undertake redevelopment of City owned properties and, potentially, property owned by others.

For the purpose of securing the exemption from Federal income taxation for interest on obligations of the Authority, the Authority constitutes an authority and instrumentality of the City (within the meaning of those terms in regulations of the United States Treasury and

rulings of the Internal Revenue Service prescribed pursuant to Section 103 and Section 145 of the Internal Revenue Code of 1986, as amended).

ARTICLE V

POWERS OF AUTHORITY

Except as otherwise limited by Washington State law, the Authority shall have all powers necessary or convenient to effect the purposes for which the Authority is organized and to perform authorized Authority functions, including without limitation the power to:

1. Own, lease, acquire, dispose of, exchange and sell real and personal property;
2. Contract for any Authority purpose with individuals, associations and corporations, municipal corporations, any agency of the State of Washington (the "State") or its political subdivisions, and the State, any Indian Tribe, and the United States or any agency or department thereof;
3. Sue and be sued in its name;
4. Lend its funds, property, credit or services, borrow money, or act as a surety or guarantor for corporate purposes;
5. Do anything a natural person may do;
6. Perform and undertake all manner and type of community services and activities in furtherance of the carrying out of the purposes or objectives of any program or project heretofore or hereafter funded in whole or in part with funds received from the United States or any agency or department thereof, or any other program or project, whether or not funded with federal funds, which the Authority is authorized to undertake by Federal or State law, City ordinance, City resolution, by agreement with the City, or as may otherwise be authorized by the City;
7. Provide and implement such municipal services and functions as the City Council may by ordinance or resolution direct;
8. Transfer any funds, real or personal property, property interests, or services, with or without consideration;
9. Receive and administer federal or private funds, goods, or services for any lawful public purpose;
10. Purchase, acquire, lease, exchange, mortgage, encumber, improve, use, or otherwise transfer or grant security interests in real or personal property or any

interests therein; grant or acquire options on real and personal property; and contract regarding the income or receipts from real property;

11. Issue negotiable bonds and notes in conformity with applicable provisions of the Uniform Commercial Code and State law in such principal amounts, as in the discretion of the Authority, shall be necessary or appropriate to provide sufficient funds for achieving any Authority purpose; or to secure financial assistance, including funds from the United States, a state, or any political subdivision or agency of either for corporate projects and activities; provided, however, that all bonds and notes or liabilities occurring hereunder shall be satisfied exclusively from the assets, properties or credit of the Authority, and no creditor or other person shall have any recourse to the assets, credit or services of the City, unless the City Council shall by resolution expressly guarantee such bonds or notes;

12. Contract for, lease, and accept transfers, gifts or loans of funds or property from the United States, a state, and any political subdivision or agency of either, including property acquired by any such governmental unit through the exercise of its power of eminent domain, and from corporations, associations, individuals or any other source, and to comply with the terms and conditions therefor;

13. Manage, on behalf of the United States, a state, and any political subdivision or agency of either, any property acquired by such entity through gift, purchase, construction, lease, assignment, default, or exercise of the power of eminent domain;

14. Initiate, carry out, and complete such improvements of benefit to the public consistent with this Charter as the United States, a state, and any political subdivision or agency of either may request;

15. Recommend to the United States, a state, and any political subdivision or agency of either such tax, financing, and security measures as the Authority may deem appropriate to maximize the public interest in the City;

16. Provide advisory, consultative, training, educational, and community services or advice to individuals, associations, corporations, or governmental agencies, with or without charge;

17. Control the use and disposition of corporate property, assets, and credit;

18. Invest and reinvest Authority funds;

19. Fix and collect charges for services rendered or to be rendered, and establish the consideration for property transferred;

20. Maintain books and records as appropriate for the conduct of Authority affairs;
21. Conduct corporate affairs, carry on its operations, and use its property as allowed by law and consistent with the Enabling Ordinance, this Charter and the Authority's bylaws (the "Bylaws"); designate agents, and engage employees, prescribing their duties, qualifications, and compensation; and secure the services of consultants for professional services, technical assistance, or advice. Employment with the Authority shall be at-will;
22. Exercise any power granted to the Authority under the Enabling Ordinance, or any other applicable ordinance, except as expressly limited by the terms of this Charter; and
23. Exercise and enjoy such powers as may be authorized by law.

ARTICLE VI

LIMITS ON AUTHORITY POWERS

The Authority in all activities and transactions shall be limited in the following respects:

1. The Authority shall have no power of eminent domain or any power to levy taxes or special assessments.
2. The Authority may not incur or create any liability that permits recourse by any contracting party or member of the public to any assets, services, resources, or credit of the City.
3. No funds, assets, or property of the Authority shall be used for any partisan political activity or to further the election or defeat of any candidate for public office; nor shall any funds or a substantial part of the activities of the Authority be used for publicity or educational purposes designed to support or defeat legislation pending before the Congress of the United States, or the legislature of the State or the City Council; provided, however, that funds may be used for representatives of the Authority to communicate with members of Congress, State legislators or members of the City Council concerning funding and other matters directly affecting the Authority, so long as such activities do not constitute a substantial part of the Authority's activities.
4. All funds, assets, or credit of the Authority shall be applied toward or expended upon services, projects, and activities authorized by this Charter. No part of the net earnings of the Authority shall inure to the benefit of, or be distributable as

such to, Board Members, officers or other private persons, except that the Authority is authorized and empowered to:

- a. Reimburse Board Members, employees and others performing services for the Authority reasonable expenses actually incurred in performing their duties, and compensate employees and others performing services for the Authority a reasonable amount for services rendered;
- b. Assist Authority Board Members or employees as members of a general class of persons to be assisted by a corporate-approved project or activity to the same extent as other members of the class as long as no special privileges or treatment accrues to such Board Member or employee by reason of his or her status or position in the Authority;
- c. Defend and indemnify any current or former Board Member or employee and their successors against all costs, expenses, judgments, and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with or resulting from any claim, action, or proceeding, civil or criminal, in which he or she is or may be made a party by reason of being or having been a Board Member or employee or by reason of any action alleged to have been taken or omitted by him or her in such position, provided that he or she was acting in good faith on behalf of the Authority and within the scope of duties imposed or authorized by law. This power of indemnification shall not be exclusive of other rights to which Board Members or employees may be entitled as a matter of law;
- d. Purchase insurance to protect and hold personally harmless any current or former Board Member or employee and their successors from any action, claim, or proceeding instituted against the foregoing individuals arising out of the performance, in good faith, of duties for, or employment with, the Authority and to hold these individuals harmless from any expenses connected with the defense, settlement, or monetary judgments from such actions, claims, or proceedings. The purchase of such insurance and its policy limits shall be discretionary with the Board Members, and such insurance shall not be considered to be compensation to the insured individuals. The powers conferred by this subsection shall not be exclusive of any other powers conferred by law to purchase liability insurance; and
- e. Sell assets for a consideration greater than their reasonable market value or acquisition costs, charge more for services than the expense of providing them, or otherwise secure an increment in a transaction, or carry out any other transaction or activity, as long as such gain is not the object or purpose of the Authority's transactions or activities and is applied to or expended upon services, projects, and activities as aforesaid.

5. The Authority shall not issue shares of stock, pay dividends, make private distribution of assets, make loans to its Board Members or employees or otherwise engage in business for private gain.

ARTICLE VII

ORGANIZATION OF AUTHORITY

Section 1. Board of Directors.

The management of all Authority affairs shall reside in a Board of Directors. The Board shall be composed of seven (7) members. All appointments to the Board shall be made by the City Mayor and confirmed by the City Council. Members should be civic or business leaders with experience relevant to the purpose of the Authority in such fields as finance, corporate management, real estate development, industrial development, law, technology, or construction management. Members of the Bellingham Parking Commission and the Bellingham-Whatcom Public Facilities District may serve as members of the Board of Directors. Members are not required to be residents of the City. No member of the Authority Board of Directors may be an official or employee of the City nor hold any elected office during his or her term on the Board.

Section 2. Tenure of Board Members.

Board Members shall be appointed for three-year terms, except as provided herein for the initial Board Members. Except as otherwise provided herein, all Board Members shall continue to serve on the Board until a successor is appointed and confirmed in the same manner as the initial appointments. The City Council shall divide the initial Board Members into four classes, one class with one (1) member who shall serve an initial one-year term, one class with two (2) members who shall serve an initial two-year term; one class with two (2) members who shall serve an initial three-year term; and one class with two (2) members who shall serve an initial four-year term. At the regular Board meeting that coincides most closely with the first anniversary of the issuance of this Charter, the term of the initial Board Member with an one-year term shall expire, provided that he or she shall continue in office until his or her successor is appointed by the City Mayor and confirmed by the City Council. Successors shall serve three-year terms. This procedure shall continue annually as to successive classes of Board Members with expiring terms so that at the regular meeting of the Board that coincides most closely with each anniversary of the issuance of this Charter, a new class of Board Members shall take office, provided that each person so selected shall hold office for the three-year term for which he or she is selected and until his or her successor shall have been selected. There shall be no restriction on Board Members serving successive terms.

Section 3. Consecutive Absences.

Any Board Member who is absent for three (3) consecutive regular meetings without excuse may, by resolution duly adopted by a majority vote of the whole Board, be deemed to have forfeited his or her position as Board Member.

Section 4. Removal of Board Members.

If it is determined for any reason that any or all of the Board Members should be removed, with or without cause, the City Council may by resolution remove any or all Board Members. Board Members removed pursuant to this section shall be provided notice of his or her removal which shall be effective immediately. Any successor shall be selected in the same manner as initial appointments and shall hold office for the unexpired term.

Section 5. Vacancy on Board of Directors.

A vacancy or vacancies on the Board of Directors shall be deemed to exist in case of the death, disability, resignation, removal, or forfeiture of membership as provided herein. Vacancies during and at the expiration of the term of a Board Member shall be filled for the unexpired term as soon as possible in the same manner as initial appointments. The Board of Directors shall fill any office that becomes vacant with a successor who shall hold office for the unexpired term and until his or her successor shall have been duly appointed and qualified.

Section 6. Duties of Board Members.

A general or particular authorization or review and concurrence of the Board by resolution shall be necessary for any of the following transactions:

1. Transfer or conveyance of an interest in real estate, other than release of a lien or satisfaction of a mortgage after payment has been received, or the execution of a lease for a current term less than one (1) year;
2. The contracting of debts, issuances of notes, debentures, or bonds, and the mortgaging or pledging of corporate assets to secure the same;
3. To the extent permitted by Washington State law, donation of money, property or other assets belonging to the Authority;
4. An action by Authority as a surety or guarantor;
5. All capital expenditures in excess of \$50,000, and all other transactions in which:

- a. The consideration exchanged or received by the Authority exceeds the greater of one percent of the previous year's operating budget or \$50,000, whichever is larger,
 - b. The performance by the Authority shall extend over a period of one (1) year from the date of execution of an agreement therefor, or
 - c. The Authority assumes duties to the City, the State, the United States or other governmental entity;
6. Any project or activity outside the limits of the City;
 7. Adoption of an annual budget and a separate capital budget;
 8. Certification of annual reports and statements to be filed with the City Finance Director as true and correct in the opinion of the Board and of its members except as noted;
 9. Proposed amendments to this Charter or the Bylaws; and
 10. Such other transactions, duties, and responsibilities as this Charter shall repose in the Board or require Board participation by resolution.

Section 7. Voting Requirements/Quorum.

1. Any resolution authorizing or approving an action described in Section 6 shall require an affirmative vote of a majority of the Board Members voting on the issue; provided, that such majority equals not less than one-third (1/3) of the Board's total voting membership.
2. Four (4) voting members must be present at any regular or special meeting of the Board to comprise a quorum, and for the Board to transact any business.
3. Proxy voting shall not be allowed.
4. Amendments to this Charter and the adoption and amendment of Bylaws shall require an affirmative vote of a majority of the Board's voting membership representing two-thirds (2/3) of the Board Members voting on the issue and not less than four (4) members.

Section 8. Right to Indemnification.

Each person who was, or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any actual or threatened action, suit, or

proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a Board Member or employee of the Authority, whether the basis of such proceeding is alleged action in an official capacity as a director, trustee, officer, employee, or agent, or in any other capacity, shall be indemnified and held harmless by the Authority to the full extent permitted by applicable law as then in effect, against all expense, liability and loss (including attorneys' fees, judgments, fines and amounts to be paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to be in such position and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in this section, with respect to proceedings seeking to enforce rights to indemnification, the Authority shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors; provided, further, the right to indemnification conferred in this section shall be a contract right and shall include the right to be paid by the Authority the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that the payment of such expenses in advance of the final disposition of a proceedings shall be made only upon delivery to the Authority of an undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such person is not entitled to be indemnified under this section or otherwise.

Provided, further, that the foregoing indemnity shall not indemnify any person from or on account of:

1. Acts or omissions of such person finally adjudged to be intentional misconduct or a knowing violation of law; or
2. Any transaction with respect to which it was finally adjudged that such person personally received a benefit in money, property, or services to which such person was not legally entitled.

If a claim under this section is not paid in full by the Authority within sixty (60) days after a written claim has been received by the Authority, except in the case of a claim for expenses incurred in defending a proceeding in advance of its final disposition, in which case the applicable period shall be twenty (20) days, the claimant may at any time thereafter bring suit against the Authority to recover the unpaid amount of the claim and, to the extent successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. The claimant shall be presumed to be entitled to indemnification under this section upon submission of a written claim (and, in an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition, where the required undertaking has been tendered to the Authority), and thereafter the Authority shall have the burden of proof to overcome the presumption that the claimant is so entitled. Neither the failure of the Authority (including the Board of Directors or

independent legal counsel) to have made a determination prior to the commencement of such action that indemnification of or reimbursement or advancement of expenses to the claimant is proper nor a determination by the Authority (including its Board of Directors or independent legal counsel) that the claimant is not entitled to indemnification or to the reimbursement or advancement of expenses shall be a defense to the action or create a presumption that the claimant is not so entitled.

The right of indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Charter, Bylaws, any agreement, or otherwise.

The Authority shall maintain in full force and effect public liability insurance in an amount sufficient to cover potential claims for bodily injury, death or disability and for property damage, which may arise from or be related to projects and activities of the Authority, its Board of Directors, staff and employees, naming the City as an additional insured.

Section 9. Conflict of Interest and Code of Ethics.

Members of the Board of Directors and the Authority staff shall be considered City officials for the purpose of the City Code of Ethics, chapter 5.01 of the Bellingham Municipal Code. The Authority shall, by resolution, adopt a code of ethics policy for Board Members and employees which shall require an individual annual disclosure statement that includes the disclosure of any ownership of property within the Authority area. Any Board Member with such ownership interest shall recuse him or herself from participating in discussions, deliberations, preliminary negotiations, and votes if such property is directly benefiting from such action. All candidates for Board membership will be required to disclose any information concerning actions or activities of the candidate or his/her immediate family that present a potential conflict of interest as a Board Member. Candidates whose employment, financial interests, and/or other transactions are determined by the Board to be in conflict with the interests of the Authority will be ineligible for Board membership. A resolution containing the code of ethics policy shall be adopted at the initial meeting of the Board.

ARTICLE VIII

OFFICERS OF AUTHORITY

Section 1. Tenure of Officers.

The Board Members shall elect from among themselves the following Authority officers: Chairperson, Treasurer and Secretary. The Chairperson and the Treasurer may not be the same person. The term of any officer shall expire at such time as such officer's membership

on the Board ceases or terminates, or at such sooner time as the term of office expires and the office has been filled by appointment or reappointment. The Authority may, under Article X of this Charter, adopt Bylaws providing for additional officers, and, to the extent not inconsistent with this Charter, may adopt Bylaws governing the offices and tenure of officers; the number of positions, powers and duties, and term of each office; the manner of appointment, selection, or election of office holders and the appointing, selection, or electing authority; performance of duties of the office upon illness, death, incapacity, or absence of the officer; the filling of vacancies; and any qualification for the office and conditions upon exercising its powers.

Section 2. Duties of Officers.

The officers of the Authority shall have the following duties:

1. **Chairperson.** Subject to the control of the Board of Directors, the Chairperson shall have general supervision, direction and control of the business and affairs of the Authority. On matters decided by the Authority, unless otherwise required under the Enabling Ordinance or by this Charter, the signature of the Chairperson alone is sufficient to bind the corporation.
2. **Treasurer.** The Treasurer shall receive and faithfully keep all funds of the Authority and deposit same in such bank or banks as may be designated by the Board of Directors. The Treasurer shall discharge such other duties as prescribed by the Board of Directors. Before taking office, the Treasurer shall, in cooperation with the City Finance Director, file a bond in an amount determined by the Authority with the Secretary of the Authority and shall continue in office only so long as such bond continues in effect.
3. **Secretary.** The Secretary shall keep or authorize others to keep a full and complete record of the meetings of the Board of Directors, committees, when acting on behalf of the Board, and to the extent they are separate, the meetings of the officers with appropriate minutes; shall keep the seal of the Authority and affix the same to such papers and such instruments as may be required in the regular course of business, shall make service of such notices as may be necessary or proper, shall supervise the keeping of the books and other records and ledgers and other written documents comprising the business and purpose of the Authority, and shall discharge such other duties as pertain to the office as prescribed by the Board of Directors.

Section 3. Incapacity of Officers.

In the event the Secretary is unable to perform the duties of the office due to illness, death, or other incapacity, the Chairperson of the Authority is authorized to perform such duties without further authorization; but if the Chairperson is unavailable, the Treasurer is

authorized to perform such duties of the Secretary without further authorization. If the Treasurer or the Chairperson is the officer who is incapacitated, the Secretary shall be authorized to perform such duties without further authorization. The Treasurer is not authorized to perform the duties of the Chairperson, nor is the Chairperson authorized to perform the duties of the Treasurer.

Section 4. Administration.

The Board may appoint, designate, employ, and remove an executive director of the Authority and such other personnel as determined to be needed by the Board, who shall be responsible to the Board for the administration of the affairs of the Authority as may be authorized from time to time by resolution of the Board. Employment shall be at-will. The executive director may be authorized or delegated by the Authority to: (i) supervise and be responsible for the effective management of the administrative affairs of the Authority; (ii) sign documents and contracts on behalf of the Authority; and (iii) perform such other duties as delegated or assigned by the Board.

ARTICLE IX

COMMENCEMENT OF AUTHORITY

The Authority shall come into existence and be authorized to take action at such time as this Charter is approved by the City Council and the initial Board Members are appointed by the Mayor and confirmed by the City Council, in accordance with Section 5 of the Enabling Ordinance.

ARTICLE X

BYLAWS

The Authority shall adopt Bylaws to provide rules for governing the Authority and its activities that are not inconsistent with this Charter. The adoption of the Bylaws and any amendments thereto, require a vote of the Board Members as provided by Article VII Section 7(4) of this Charter. Among other things, the Authority shall provide in the Bylaws for the following:

1. The creation of committees of the Authority and the responsibilities of any such committee.
2. Suspension or removal of Authority officers and conditions which would require such suspension or removal.
3. Establish the principal office of the Authority.
4. Any matters set forth in the Enabling Ordinance (and any other applicable City ordinances) and not inconsistent with this Charter or not provided for herein.

ARTICLE XI

MEETINGS OF THE AUTHORITY

Section 1. Time and Place of Meetings.

Regular meetings of the Board shall be held at least quarterly at a regular time and place to be determined by the Board by resolution. At the last regular meeting of the calendar year, the Board shall adopt a resolution specifying the date, time and place of regular meetings for the upcoming calendar year. A copy of the resolution shall be distributed in the same manner as notice of special meetings is provided pursuant to Section 3 below. Special meetings of the Board may be held at any place at any time whenever called by the Chairperson or a majority of the Board Members.

Section 2. Notice of Meetings.

No notice of regular meetings shall be required, except for the first regular meeting after any change in the time or place of such meeting adopted by resolution of the Board as provided above. Notice of such changed regular meeting shall be given by the Secretary or by the person or persons calling the meeting by email or by personal communication over the telephone to each Board Member least 24 hours prior to the time of the meeting or by at least three (3) days' notice by mail, telegram or written communication. If mailed, notice

shall be mailed by United States mail, postage prepaid, to the last known address of each Board Member.

Section 3. Notice of Special Board Meetings.

Notice of all special meetings of the Board of Directors shall be given by the Secretary or by the person or persons calling the special meeting in accordance with RCW 42.30.080 by delivering personally, by email or by mail written notice at least 24 hours prior to the time of the meeting to each Board Member, to each local newspaper of general circulation and to each radio or television station that has requested notice and to any other individual specifically requesting it in writing. The call and notice of all special meetings shall specify the time and place of all special meetings and the business to be transacted. Final disposition shall not be taken by the Board on any other matters at such special meetings. At any regular meeting of the Board, any business may be transacted and the Board may exercise all of its powers.

Section 4. Waiver of Notice.

Notice as provided in Sections 2 and 3 hereof may be dispensed with as to any member of the Board who at or prior to the time the meeting convenes files with the Board of the Authority a written waiver of notice or who is actually present at the meeting at the time it convenes. Such notice may also be dispensed with as to special meetings called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, where time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage. Notice, as provided in Article XIII of this Charter concerning proposed amendments to this Charter or Bylaws and votes on such amendments, may not be waived.

Section 5. Notice to Mayor.

Notice of all meetings and proposed agendas and minutes of all meetings of the Board shall be given to the Mayor or his or her designee and filed with the City Clerk.

Section 6. Open Public Meetings.

All Board meetings, including executive, all other permanent and ad hoc committee meetings, shall be open to the public to the extent required by chapter 42.30 RCW. The Board and committees may hold executive sessions to consider matters enumerated in chapter 42.30 RCW or privileged matters recognized by law, and shall enter the cause therefor in its official journal. Notice of meetings shall be given in a manner consistent with the Enabling Ordinance and chapter 42.30 RCW. In addition, the Authority shall provide reasonable notice of meetings to any individual specifically requesting it in writing. At such meetings, any person shall have a reasonable opportunity to address the Board either orally or by written petition.

Section 7. Telephonic Participation

Board Members may participate in a regular or special meeting through the use of any means of communication by which all Board Members and members of the public participating in such meeting can hear each other during the meeting. Any Board Member participating in a meeting by such means is deemed to be present in person at the meeting for all purposes including, but not limited to, establishing a quorum.

Section 8. Parliamentary Authority.

The rules in Robert's Rules of Order (newly revised) shall govern the Authority in all cases to which they are applicable, where they are not inconsistent with this Charter or with the special rules of order of the Authority set forth in the Bylaws.

Section 9. Minutes.

Copies of the minutes of all regular or special meetings of the Board shall be available to any person or organization that requests them. The minutes of all Board meetings shall include a record of individual votes on all matters requiring Board approval.

ARTICLE XII

CONSTITUENCY

There shall be no constituency of the Authority.

ARTICLE XIII

AMENDMENTS TO CHARTER AND BYLAWS

1. This Charter may be amended by the Mayor to comply with changes in Washington State law with subsequent notice to the City Council or to make this Charter consistent with the provisions of the Enabling Ordinance as it may be amended from time to time. Such amendments shall be provided to the Board at least thirty (30) days' prior to the effective date of the proposed amendment. Such amendments will not require Board approval. Notice of any proposed amendment shall include the text of the amendment presented in a format with strikes over material to be deleted and underline under new material and shall be accompanied by a statement of its purpose and effect.

This Charter may also be amended by resolution of the Board subject to approval by the Mayor and confirmation by the City Council as provided herein. Any Charter amendment adopted by resolution of the Board must be consistent with the terms of the Enabling Ordinance. Any Board member may propose an amendment to this Charter at any meeting (regular or special) of which thirty (30) days' advance notice has been given to each member of the Board, to each member of City Council and to the Mayor for review and recommendations. Notice of any proposed amendment shall include the text of the amendment presented in a format with strikes over material to be deleted and underline under new material and shall be accompanied by a statement of its purpose and effect. The City Council and the Mayor shall, within fifteen (15) days of receipt of the proposed amendment, make a recommendation to the Board concerning the acceptability or otherwise of the amendment.

If notice of a proposed amendment to this Charter is given as provided in the preceding paragraph, and information including the text of the proposed amendment and a statement of its purpose and effect, then the Board may vote on the proposed amendment at the same meeting as the one at which the amendment is introduced. If such notice and information is not so provided, the Board may not vote on the proposed amendment until the next regular Board meeting or special meeting of which thirty (30) days' advance notice has been given. Germane amendments to the proposed amendment within the scope of the original amendment will be permitted at the meeting at which the vote is taken. Resolutions of the Board approving proposed amendments to this Charter require an affirmative vote of Board Members as provided in Article VII, Section 7 of this Charter.

All amendments shall be issued duplicate originals, each signed by the Mayor and bearing the City Seal attested by the City Clerk, at which time such amendment of this Charter shall be effective. One original shall be filed by the City Clerk and filed as a public record. A duplicate original shall be delivered to the Authority.

The Board may also adopt a resolution proposing to the Mayor and the City Council an amendment to the Charter and/or the Enabling Ordinance.

2. Any Board Member may propose an amendment to the Bylaws (which may consist of a new set of Bylaws) at any meeting (regular or special) of which thirty (30) days' advance notice has been given to each Board Member and the Mayor. Notice of any proposed amendment shall include the text of the amendment presented in a format with strikes over material to be deleted and underline under new material and shall be accompanied by a statement of its purpose and effect. If notice of a proposed amendment to this Charter is given as provided in the preceding paragraph, and information including the text of the proposed amendment and a statement of its purpose and effect, then the Board may vote on the proposed amendment at the same meeting as the one at which the amendment is introduced. If

such notice and information is not so provided, the Board may not vote on the proposed amendment until the next regular Board meeting or special meeting of which thirty (30) days' advance notice has been given. Germane amendments to the proposed amendment within the scope of the original amendment will be permitted at the meeting at which the vote is taken.

Resolutions of the Authority approving amendments to the Bylaws by unanimous vote may be implemented at such time as selected by the Authority in the Resolution without further action. Resolutions approving amendments to the Bylaws with less than a unanimous vote cannot take effect until ten (10) days after filing with the City Finance Director. The Chairperson of the Authority shall file such resolution within three (3) days of its adoption. In any event, copies of the amendments shall be filed with the City Finance Director as a public record.

ARTICLE XIV

MISCELLANEOUS

Section 1. Geographic Limitation.

The Authority may conduct activities outside of the City upon determination by the Board and the City Council that each such activity will further the purposes of the Authority, subject, however, to the applicable limitations set forth in RCW 35.21.740.

Section 2. Safeguarding of Funds.

Authority funds shall be deposited in a qualified public depository as determined by the Washington Public Deposit Protection Commission.

Section 3. Public Records.

The Authority shall maintain all of its records in a manner consistent with the Preservation and Destruction of Public Records Act, chapter 40.14 RCW. The public shall have access to records and information of the Authority to the extent as may be required by applicable laws.

Section 4. Reports and Information; Audits.

Within three (3) months after the end of the Authority's fiscal year, the Authority shall file an annual report with the City Finance Director, the City Council and the Mayor's designee containing an audited statement of assets and liabilities, income and expenditures and changes in the Authority's financial position during the previous year; a summary of significant accomplishments; a list of depositories used; a projected operating budget for the

current fiscal year; a summary of projects and activities to be undertaken during the current year; a list of a list of officers of the Board; and a list of individuals that are bonded pursuant to Section 6 of the Enabling Ordinance.

The Authority shall, at any time during normal business hours and as often as the Mayor, the Finance Director or the State Auditor deem necessary, make available to the Mayor, the Finance Director and the State Auditor for examination all of the Authority's financial records, and shall permit the Mayor, Finance Director and State Auditor to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all the aforesaid matters.

Section 5. Dissolution.

Dissolution proceedings may be initiated by the City Council or, if the Board makes an affirmative finding that dissolution is necessary or appropriate, the Board may adopt a resolution requesting the City to dissolve the Authority. In either case, dissolution of the Authority requires an affirmative finding of the City Council that dissolution is warranted. The City Council shall make such affirmative finding in a resolution at or after the City Council holds a public hearing, held with notice to the Authority and affording the Authority a reasonable opportunity to be heard and present evidence. Notice of such public hearing shall be given to the Authority at least thirty (30) days prior to the hearing.

If the Authority is dissolved, the Authority shall file a dissolution statement pursuant to Section 11(B) of the Enabling Ordinance and assets of the Authority shall be distributed pursuant to Section 11(C) of the Enabling Ordinance.

Section 6. Nondiscrimination.

Pursuant to Section 10 of the Enabling Ordinance, membership to the Board shall not be directly or indirectly based upon or limited by age, race, color, religion, sex, national origin, or the presence of any physical handicap. Furthermore, the Authority shall not discriminate in any matter related to employment because of age, race, color, sex, national original, or the presence of any physical handicap. The Authority shall, in all solicitation or advertisements for employees placed by or on behalf of the Authority, if any, state that all qualified applicants will receive consideration for employment without regard to age, race, color, religion, sex, national origin, or the presence of any physical handicap.

Section 7. Nonexclusive Charter.

This Charter is nonexclusive and does not preclude the granting by the City of other charters to establish additional public corporations pursuant to City ordinance.

Section 8. Mayor or His or Her Designee.

The term " Mayor" or his or her designee as used in this Charter shall mean the Mayor of the City of Bellingham, any successor official, and any other person authorized to act in his or her stead.

This Charter is APPROVED this 8th day of May, 2008.



Mayor, City of Bellingham

ATTEST:



City Finance Director

**BYLAWS
OF
BELLINGHAM PUBLIC DEVELOPMENT AUTHORITY**

ARTICLE I. MEMBERSHIP

Section 1.1 Board Tenure. For the purpose of determining tenure for members of the Bellingham Public Development Authority (the "Authority") Board of Directors (the "Board") the anniversary of the issuance of the Authority Charter (the "Charter") shall be April ____, 2008 of each year.

Section 1.2 Vacancies. A vacancy or vacancies on the Board shall be deemed to exist in the case of the death, disability, resignation or removal of any Board Member as provided in the Authority's Charter.

ARTICLE II. OFFICERS AND COMMITTEES

Section 2.1 Officers Designated. The officers of the Board shall be a Chairperson, Treasurer and Secretary, each of whom shall be elected by the Board. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board. No person may simultaneously hold more than one office. In addition to the powers and duties specified below, the officers shall have such powers and perform such duties as the Board may prescribe.

Section 2.2 Election, Qualification and Term of Office. Each of the officers shall be elected by the Board from among its members pursuant to the Charter. The officers shall be elected by the Board at the first regular meeting after the term of new or reappointed Board members commences each year, for a one-year term, and each officer shall hold office during said one-year term and until his or her successor is elected. The first officers of the Board shall be elected by the Board at its original meeting.

Section 2.3 Powers and Duties. The officers of the Authority shall have the following duties:

(a) **Chairperson.** Subject to the control of the Board, the Chairperson shall have general supervision, direction and control of the business and affairs of the Authority. On matters decided by the Authority, unless otherwise required pursuant to Ordinance No. __ of the City of Bellingham, Washington (the "City") adopted on April __, 2008 (the "Enabling Ordinance") or by the Charter, the signature of the Chairperson alone is sufficient to bind the corporation.

(b) **Treasurer.** The Treasurer shall receive and faithfully keep all funds of the Authority and deposit same in such bank or banks as may be designated by the

Board. The Treasurer shall discharge such other duties as prescribed by the Board. Before taking office, the Treasurer shall file a bond in an amount determined by the Authority with the Secretary of the Authority and shall continue in office only so long as such bond continues in effect.

(c) **Secretary.** The Secretary shall keep or authorize others to keep a full and complete record of the meetings of the Board, committees, when acting on behalf of the Board, and to the extent they are separate, the meetings of the officers with appropriate minutes; shall keep the seal of the Authority and affix the same to such papers and such instruments as may be required in the regular course of business, shall make service of such notices as may be necessary or proper, shall supervise the keeping of the books and other records and ledgers and other written documents comprising the business and purpose of the Authority, and shall discharge such other duties as pertain to the office as prescribed by the Board.

Section 2.4 Removal From Office. Pursuant to the terms of the Charter and upon reasonable prior notice to all Board Members of the alleged reasons for dismissal, the Board by an affirmative vote of the majority of the Board Members may remove any officer of the Board from his or her office whenever in its judgment the best interests of the Authority will be served thereby.

Section 2.5 Vacancies. The Board shall fill any office which becomes vacant with a successor who shall hold office for the unexpired term and until his or her successor shall have been duly appointed and qualified.

Section 2.6 Disclosure Statement. The Authority shall, by resolution, adopt a code of ethics policy for Board Members and employees which shall require an individual annual disclosure statement that requires the disclosure of any ownership of property within the Authority area. Any Board Member with such ownership interest shall recuse him or herself from participating in discussions, deliberations, preliminary negotiations, and votes if such property is directly benefiting from such action. All candidates for Board membership will be required to disclose any information concerning actions or activities of the candidate or his/her immediate family that present a potential conflict of interest as a Board Member. Candidates whose employment, financial interests, and/or other transactions are determined by the Board to be in conflict with the interests of the Authority will be ineligible for Board membership. A resolution containing the code of ethics policy shall be adopted at the initial meeting of the Board.

Section 2.7 Reimbursement. The Board may reimburse Board Members, employees and others performing services for the Authority reasonable expenses actually incurred in performing their duties..

Section 2.8 Establishment of Committees. The Board may, by resolution, designate one or more other committees, each consisting of one or more members, to advise the

Board or, on matters other than those described in the Charter to act for and on behalf of the Board. The designation of any such committee and the delegation thereto of authority shall not operate to relieve any Board Member of any responsibility imposed by law.

Section 2.9 Executive Committee. The Executive Committee of the Authority shall consist of the Chairperson (who also serves as chair of the Executive Committee), Treasurer, Secretary of the Board, and such other members of the Board as the chair may select. Except as provided in those provisions of Article VII, Section 6 of the Charter, the Executive Committee shall have and exercise such powers of the Board as the Board shall from time to time provide by resolution.

ARTICLE III. ADMINISTRATIVE PROVISIONS

Section 3.1 Books and Records. The Authority shall keep current and complete books and records of account and shall keep minutes of the proceedings of its Board and its committees having any of the authority of the Board.

Section 3.2 Indemnification. The Authority elects to defend and indemnify its present and former Board Members and employees and their successors, spouses, and marital communities to the full extent authorized by law and the Charter. This right of indemnification shall inure in perpetuity to each Board Member and employee, and his or her spouse and marital community, commencing as soon as he or she has the full powers and responsibilities of his or her position, and in the event of his or her death shall extend to his or her heirs, legal representatives, and estate. Each person who shall act as a Board Member or employee of the Authority shall be deemed to do so in reliance upon such indemnification, and such rights shall not be exclusive of any other right which he or she may have.

Section 3.3 Principal Office. The principal office of the Authority shall be _____, Bellingham, Washington _____.

Section 3.4 Fiscal Year. The Fiscal Year of the Authority shall begin [January 1] and end [December 31] of each year, except the first fiscal year which shall run from the date the Charter was issued to [December 31, 2008].

ARTICLE IV. APPROVAL OF BYLAWS

Approved by the Enabling Ordinance adopted by the City Council on April ___, 2008.