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## EFFICIENT AND EFFECTIVE USES OF PUBLIC CORPORATIONS/PDAS

by

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Under RCW 35.21.730, et seq., general purpose local government may establish "public corporations, commissions or authorities." These special purpose quasi-municipal corporations have become known as "PDAs" throughout the State as a consequence of Seattle's proclivity for concluding the names of its public corporations with the phrase "preservation and development authority." Thus, Seattle has chartered the Pike Place Market Preservation and Development Authority; the Seattle Chinatown-International District Preservation and Development Authority; ~~the~~ Historic Seattle Preservation and Development Authority and so forth. Amid cries for the ~~creation~~ creation of a public corporation to manage the Seattle Center, wags have speculated that it inevitably would be called the Fun Forest/Food Circus Preservation and Development Authority. Although the moniker applies only in Seattle and many communities have established public corporations for a host of public purposes, we seem stuck with the acronym as generic shorthand for the entity.

### PDA-TYPE PROJECTS

The PDA mechanism has been used to undertake fairly mundane public projects including even the financing of a new city hall. However, in my experience it is most effectively and appropriately reserved for unusual endeavors which, for a variety of reasons, the parent municipality would rather not undertake itself. The characteristics of PDA projects vary but I tend to look for one or more of the following criteria in evaluating whether any particular activity may be susceptible to its use:

- A. Complex, unique or special purpose project or enterprise which is best farmed out to an organization which will concentrate on its success to the exclusion of everything else;
- B. A public/private joint venture; and
- C. An enterprise which, while appropriately public, is either essentially entrepreneurial in nature or represents a business risk the municipality is unwilling to assume.

Specific examples of an enterprise or project which fundamentally reflects each of these criteria may be the best way to elaborate on them. Attached are charts which further describe two of these "case study" projects.

### A COMPLEX, SPECIAL PROJECT

Seattle's largest and nearest suburb has become a city in its own right. No longer a bedroom community, Bellevue finds itself the State's fourth largest city with a stand-alone economy of major significance. For several years, it has perceived a major opportunity in the convention and visitor industry and has struggled with the development of its own convention

center. Two and a half years ago, Bellevue chartered the Bellevue Convention Center Authority (no Preservation, no Development) to finance, develop and operate its new facility. The City had little interest in undertaking the project itself and was attracted to the PDA model for several reasons. It realized that the project warranted its own institution which would do nothing else. Such an institution also could draw upon private sector expertise and support in ways the City itself could not. Resolution of complicated property acquisition and financing issues were aided by the use of a PDA. Finally, the City wanted to legally insulate itself from the project.

Site acquisition has been completed. The striking design of the \$30 million, 300,000 square foot project was finished earlier this year. Bid to a select group of prequalified contractors, the project was delayed when the lowest bid exceeded the architect's estimate by 10 percent. The project has recently gone out for rebid. However, an initiative aimed at blocking it by seeking voter approval of BCCA's financing was filed early this year. The City refused to put the matter to the voters because its subject matter (amending the BCCA charter) was inappropriate for an initiative. In May, the Superior Court for King County concurred. An appeal to the Supreme Court is pending.

The attached schematics depict the project in greater detail.

Having looked at some example PDA projects, I now offer some general but certainly not exhaustive observations on their attributes. Obviously, there are many more but these strike me as the more significant and are collected under the rubrics of what PDAs can and cannot do.

#### A PUBLIC/PRIVATE JOINT VENTURE

In 1985, the not-for-profit Seattle Art Museum (SAM), previously frustrated in its determination to develop a new art museum in downtown Seattle and saddled with an unbearable mortgage on a block and a half of downtown real estate, turned to the City of Seattle for help. The City shared SAM's interest in seeing a major museum built downtown to further bolster the vitality of the central business district and enhance the community's cultural opportunities. Neither entity had the resources to undertake the \$100 million project alone. So, specifically at SAM's request, the City chartered the Museum Development Authority of Seattle (MDA) (it being a new project, "Preservation and" were blessedly omitted from its name). The composition of the MDA's Board reflects the partnership. The nine-member Board consists of three SAM appointees; three Mayoral appointees; and three chosen by those six. All are subject to confirmation by the Seattle City Council.

A complicated series of documents allocated responsibilities for project financing, design, construction and operation among the City, SAM and the MDA. The MDA's first chore was to secure the future museum's site by acquiring it from SAM. The MDA issued \$33,680,000 in bonds, effectively refinancing SAM's former mortgage at tax-exempt rates low enough and with a term long enough to make it affordable. After the voters approved a special levy for the museum in 1987, the City pledged its proceeds to the MDA, against which the MDA issued a second series of bonds raising \$24,795,000 for project construction. SAM agreed to raise privately the balance of the funding necessary to complete the \$64 million total construction project. SAM hired world famous architect Robert Venturi to design its new home. The MDA is building the museum which will be finished at the end of this year. The attached schematics illustrate the relationships and responsibilities.

## AN ENTREPRENEURIAL ENTERPRISE

One of the best examples of an entrepreneurial enterprise among the many PDAs that we represent is the Pacific Hospital Preservation and Development Authority, known in the Seattle area as Pacific Medical Center (PMC). PMC was established by the City of Seattle in 1981 to acquire and operate the former U.S. Public Health Service Hospital on Seattle's Beacon Hill when the Reagan administration decided to close the Public Health Service (USPHS) direct care system nationwide. Most of the larger USPHS facilities were transferred to local not-for-profit corporations; only in Seattle was a public entity formed. At the time, not everyone in City hall was enthusiastic about chartering a City public corporation to go into the health care business. However, the USPHS Hospital provided essential specialty medical care for the City's growing network of free neighborhood clinics and could not be readily replaced. A task force including representatives of major private health care providers advised then Mayor Royer that the City's health care delivery system could not pick up the slack. So a public authority was formed to go into the health care business with the notion that its conventional lines of business would support the institution's continuing public mission. The skeptics required that the Authority's charter preclude it from seeking City operating support, however.

PMC was launched into the health care business just when the industry was about to be turned upside down by increasing competition; private sector alarm over and determination to do something about rapidly escalating costs; and deregulation. PMC had the benefit of a dedicated board, staff and providers. It also had a mission worth fighting for and loyal patients. And it had a federal franchise to continue to provide health care to its traditional patients, largely retired military and their families for which it was compensated by the Government at commercial reimbursement rates. This franchise and the institution's survival generally also enjoyed the steadfast support of literally generations of elected officials, particularly the State's Congressional Delegation.

Although it has not been without very significant challenges, PMC today has grown to a multi-site system focused on the managed care approach to the delivery of health services. It has its own health maintenance organization, satellite clinics throughout the Seattle metropolitan area and boasts one of the largest and most highly regarded medical staffs in the region. Fundamentally, it also continues to fulfill its mission.

### WHAT CAN A PDA DO?

As these case studies illustrate, PDAs can be tremendously useful tools to implement municipal public purposes. Obviously, they can undertake projects like those described above which meet one or more of the three criteria mentioned at the outset. They also can issue tax-exempt debt. They can protect their parent municipalities from liability associated with their activities.<sup>1</sup> RCW 35.21.730 provides explicit authority for municipalities to transfer funds or

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<sup>1</sup> RCW 35.21.730 limits the liability of parent governments for PDA activities. Several unpublished superior court decisions have confirmed the effectiveness of this provision, most recently in the celebrated litigation surrounding the so-called Urban Group "investments" in Seattle's Pike Place Market, City of Seattle v. Cliffhouse

property to PDAs, of which there are innumerable examples. As we have seen, PDAs can draw private sector expertise and political support for public projects. They are inherently more flexible than their parent governments in hiring, procurement and so forth. But they are not a panacea and are not without limitations and costs.

#### WHAT CAN'T THEY DO?

PDAs are public entities and cannot be used to avoid the State Constitution and statutes that apply to municipalities generally. (They often can be more creative in dealing with them, though.) In our firm, we take the position that PDAs cannot do things their parents are not themselves authorized to undertake. For instance, we have advised cities that they may not use a PDA to develop and operate a nursing home or engage in public education. Most importantly, PDAs cannot print money. Quite simply, if a project is not inherently feasible, the mere establishment of a PDA will not magically make it so.

I hope these brief observations have been appropriate and helpful. If questions occur to you as you review these materials, please feel free to contact me.

## PDA-TYPE PROJECTS

1. COMPLEX, UNIQUE OR SPECIAL PURPOSE PROJECT OR ENTERPRISE WHICH IS BEST FARMED OUT TO AN ORGANIZATION WHICH WILL CONCENTRATE ON ITS SUCCESS TO THE EXCLUSION OF EVERYTHING ELSE;
2. A PUBLIC/PRIVATE JOINT VENTURE; AND
3. AN ENTERPRISE WHICH, WHILE APPROPRIATELY PUBLIC, IS EITHER ESSENTIALLY ENTREPRENEURIAL IN NATURE OR REPRESENTS A BUSINESS RISK THE MUNICIPAL IS UNWILLING TO ASSUME.

## WHAT CAN A PDA DO?

- ISSUE TAX-EXEMPT DEBT.
- PROTECT THEIR PARENT MUNICIPALITIES FROM LIABILITY ASSOCIATED WITH THEIR ACTIVITIES.
- RECEIVE FUNDS OR PROPERTY FROM MUNICIPALITIES.
- DRAW PRIVATE SECTOR EXPERTISE AND POLITICAL SUPPORT FOR PUBLIC PROJECTS.
- BE MORE FLEXIBLE THAN THEIR PARENT GOVERNMENTS IN HIRING, PROCUREMENT AND SO FORTH.

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- IN OUR FIRM, WE TAKE THE POSITION THAT PDAS CANNOT DO THINGS THEIR PARENTS ARE NOT THEMSELVES AUTHORIZED TO UNDERTAKE.
- PDAS CAN'T PRINT MONEY.