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~~CITY OF BELLINGHAM~~

~~CONTRACT#~~

Contract Authorization Routing

Number
(Assigned by FINANCE)

~~2005-0334~~ VO'D

Tracking Number AMHW-6F6P7F
Type Contract
Dept Executive

PFD 2005-0007

Contracting Party	Bellingham-Whatcom Public Facilities District	Original Cont #	
Name/Project #	Real Estate Transfer Agreement for the Mount Baker Theatre (RECORDED)*		
Termination Date	07/31/2005	If Contract is Extended, New Termination Date:	
City Project Mgr	Patricia Decker, Manager, Bellingham-Whatcom Public Facilities District		
Certificate of Insurance	☐ Attached ☐ Waived ☒ N/A		
Is Notary required?	No		
P.O. Required?	No	Maximum Payable \$\$	☐ See Contract
Exhibits Attached:	☒ Yes ☐ No		
Special Instructions:	Please scan original and place original in vault. Please e-mail scanned version to Alison Henshaw; Les Reardanz; and Sheila Hardy. Thank you.		

*SEE COB 2005-0297
for DOCUMENT (NOT RECORDED)

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

You are an Administrator of the approval process

Contract eRouter: In Process

Approvers	Title	Assigned	Notified	Received	Status Changed	Status
Marc L Hagen	Office Assistant I/PT	08/11/2005	08/11/2005	-	-	-

Approval Cycle Settings

- ☒ Approval conditions: 100 % approval
- ☒ Routing method: Serial (one at a time)
- ☒ Approvers: Marc L Hagen/finance/cob
- ☒ Allow Approver comments: Yes
- ☒ Automatically Delegate to Assistant..: Yes
- ☒ Automatically Skip Approvers...: Yes
- Days until skipped/delegated: 12 Weekdays
- 12 Weekdays

Notification

Access

8/12/05 Rec'd Finance

8/17/05 Filed

12/5/05 Moved to PFD Contract Database per L. Reardanz

SCANNED



2050706477

Page: 1 of 41

7/29/2005 2:57 PM

AGR \$59.00

Whatcom County, WA

Request of: BELLINGHAM CITY OF

AFTER RECORDING RETURN DOCUMENT TO:

Bellingham Whatcom Public Facilities District
104 West Magnolia Street, Suite 308
Bellingham, Washington 98225

~~CITY OF BELLINGHAM~~

~~CONTRACT#~~

~~2005-0334~~

PFD 2005-0007

DOCUMENT TITLE: *Real Estate Transfer Agreement for the Mount Baker Theatre*

GRANTORS: *City of Bellingham*

GRANTEE: *Bellingham-Whatcom Public Facilities District*

ABBREVIATED LEGAL DESCRIPTION: *Located in Mount Baker Theatre Building located on N. Commercial and Champion Streets, Lot 15, except N 1 foot, and Lots 16-24, Block 1, Plat of Central Whatcom, Whatcom County, Washington as filed August 31, 1883.*

Additional legal can be found at Exhibit A (page 6) of document.

ASSESSOR'S PARCEL NUMBER: *380 330 206 223 0002 380 330 206 223 0005*
380 330 206 223 0003
380 330 206 223 0006

**REAL ESTATE TRANSFER AGREEMENT
FOR THE MOUNT BAKER THEATRE**

**CITY OF BELLINGHAM
AND
BELLINGHAM WHATCOM PUBLIC FACILITIES DISTRICT**

This Real Estate Transfer Agreement (hereinafter "Agreement") sets forth the terms and conditions governing the transfer of the Mount Baker Theatre (hereinafter "Theatre") between the City of Bellingham (hereinafter the "City") and the Bellingham-Whatcom Public Facilities District (hereinafter "BWPFD"). The parties enter into this Agreement in consideration of the mutual covenants contained herein and agree as follows:

SECTION 1 - SCOPE OF TRANSFER

1.1 The City agrees to transfer to the BWPFD and the BWPFD agrees to accept the City's quit claim deed of the following described property (hereinafter the "Property") located in Whatcom County, State of Washington, as further described in **Exhibit A**, except for that portion of the Theatre property identified in Exhibit A that currently houses on the date of transfer hereunder the restaurant known as the Pacific Café, for community entertainment, and artistic purposes and subject to the terms and conditions contained hereinafter:

See Attached Exhibit A

1.2 The Property is shown in **Exhibit B**, a map, as the Mount Baker Theatre located at 106 North Commercial Street, Bellingham, Washington but does not include those portions that are already owned by the BWPFD.

SECTION 2 - TRANSFER TERMS

2.1 The Property's transfer shall only be for the period of the BWPFD's existence. Upon the BWPFD's termination and dissolution, the Property shall revert to the City. The BWPFD agrees to execute any and all documentation necessary to effectuate this reversionary interest.

2.2 The parties agree that they intend for the City's transferring of the Property to count toward the public or private source match requirement included in RCW 82.14.390, which imposes a sales and use tax for the purpose of funding the BWPFD's Regional Center. The Regional Center includes the Theatre and said funding allows for improvements and renovations to the Theatre. The parties further agree that the Property's historical value is, at a minimum, THREE MILLION SEVEN HUNDRED FIFTY-TWO THOUSAND SIX HUNDRED FIFTY DOLLARS (\$3,762,650.00), which is based upon the City's fixed asset costs for the Property. The parties recognize that the Property's actual appraised value is anticipated to be significantly higher.

2.3 The parties acknowledge that the Property is a community resource that has traditionally and historically been used to provide a wide variety of community, entertainment, and artistic events and performances. As the Property is to revert to the City upon the BWPFD's termination and dissolution under section 2.1 above, the parties intend for the Property to be used consistent with this traditional and historic practice so that the City's reversionary interest is protected. Consequently, the BWPFD covenants to use the Property in this manner.

2.4 In order to protect the City's reversionary interest and the traditional and historical use of the Property as provided for in section 2.3 above:

2.4.1 The BWPFD agrees that it will not sell, transfer, convey, alienate, or otherwise encumber the Property without the City's prior written authorization. Any alterations to the Property in excess of TEN THOUSAND DOLLARS (\$10,000.00) will be with the City's written approval. If the BWPFD violates this section, the City may terminate BWPFD's interest in the Property. Upon such termination, the Property shall revert to the City. For purposes of this section, the term "encumber" does not mean retainage that may result from a public works contracts to reconstruct, rehabilitate, or otherwise repair the Property.

2.4.2 The BWPFD agrees to execute a lease in the form attached hereto as **Exhibit C**, to operate and manage the Theatre and that any future leases of the Property shall be in a form consistent with **Exhibit C**. If the Property is not used as provided for in section 2.3, the BWPFD's interest in the Property shall terminate and the Property shall revert to the City.

2.4.3 The City will retain all operation, management, and maintenance responsibilities over the Property transferred hereunder, including but not limited to the following: a) the City shall be responsible for those maintenance and repair responsibilities as set forth in the attached lease (**Exhibit C**); b) the City shall insure the Property against casualty and loss; c) the City shall be responsible for occupancy of the Property by an appropriate tenant; and d) the City shall be responsible for managing the Property and the payment of any management and operational fees with regard to the Property

2.4.4 The City shall indemnify, defend, and save the BWPFD, its officers, agents, employees, and contractors, harmless from all losses, claims, damages, fines, penalties, liabilities, and expenses (including the BWPFD's personnel and overhead costs and attorneys' fees and other costs incurred in connection with such claims, regardless of whether claims involve litigation or bankruptcy) resulting from any actual or alleged injury to any person or from any actual or alleged loss of or damage to any property or any other damage or loss alleged to be attributable to the maintenance and repair of the Property. The City is required to name the BWPFD as an additional insured on its excess liability policy with respect to maintenance and repair of the Property. The City agrees that the foregoing indemnity specifically covers actions brought by its own employees. For this purpose, the City expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW as it relates to the City's obligations under this section 2.4.4.

SECTION 3 – TITLE TO PROPERTY

3.1 At Closing, the City shall convey and quit claim to the BWPFD title to the Property by a duly executed and acknowledged quit claim deed ("Deed") in the form as attached hereto as **Exhibit D**.

SECTION 4 – CLOSING

4.1 This transaction will be closed no later than July 31, 2005 ("Closing"), at which time the Deed will be delivered to the BWPFD. The Closing may be extended by the mutual written agreement of the parties. Closing shall mean that date upon which all documents necessary for this transaction are executed and when legal title and possession passes to the BWPFD subject to the terms and conditions contained herein.

4.2 The Bellingham City Council and the Bellingham-Whatcom Public Facility District Board must duly approve this Agreement and the transaction contemplated hereby prior to Closing. If the approval of both entities is not obtained, this Agreement will terminate, all documents will be returned the party executing them, and neither party will have any further rights or obligations hereunder, except as may otherwise be expressly provided for herein.

SECTION 5 – NOTICES

5.1 Any notice, approval, or authorization required under this Agreement ("Notices") must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or via facsimile. All Notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

City: City of Bellingham
Planning and Community Development
210 Lottie Street
Bellingham, WA 98225
Fax: (360) 738-7431

With copy to: City of Bellingham
Office of the City Attorney
210 Lottie Street
Bellingham, WA 98225
Fax: (360) 671-1262

BWPFD: Bellingham-Whatcom Public Facilities District
104 West Magnolia Street, Suite 308
Bellingham, WA 98225
Facsimile (360) 738-7452

With copy to: Brownlie Evans Wolf & Lee, LLP
Attn: Heather Wolf
119 North Commercial, Suite 1250
Bellingham, WA 98225
Fax: (360) 676-8058

Any Notice will be deemed to have been given when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and, if mailed, two business days after deposit in the U.S. mail, and, if delivered by facsimile, the same day as verified.

SECTION 6 – MISCELLANEOUS PROVISIONS

6.1 **Assignment.** Neither party may assign this Agreement or their rights hereunder without the prior written consent of the other party, which consent may be denied for any reason. This Agreement applies to and binds the heirs, executors, administrators, successors and assigns of the parties. The parties do not intend to create any rights, entitlements or benefits of any kind in any person or entity not expressly a party hereto.

6.2 **Counterparts; Faxed Signatures.** This Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

6.3 **Amendments.** This Agreement may be amended or modified only by a written instrument executed by authorized representatives of the City and BWPFD.

6.4 **Waiver.** Neither parties' waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

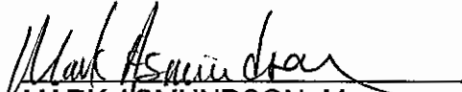
6.5 **Negotiation and Construction.** This Agreement and each of its terms and provisions have been explicitly negotiated between the parties and with advice of counsel, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

6.6 **Additional Acts.** Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to effect the Agreement and the transaction contemplated herein.

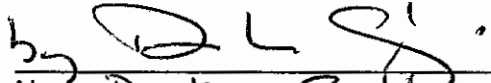
6.7 **Exhibits.** All exhibits referred to herein and attached hereto are expressly incorporated into this Agreement by this reference.

6.8 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the transfer of the Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.

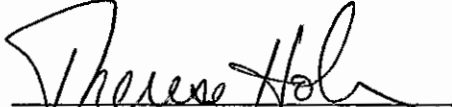
FOR THE CITY OF BELLINGHAM:


MARK ASMUNDSON, Mayor
210 Lottie Street
Bellingham WA 98225

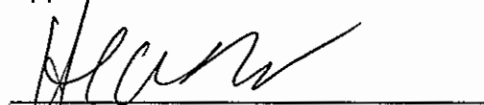
FOR PUBLIC FACILITIES DISTRICT:

by 
Name: Dunham Gooding
Title: president
Address: _____

Attest:


City Finance Director

Approved as to Form:


District Counsel

Department approval:


Department Head
Approved as to form:


Office of the City Attorney

Exhibits

Exhibit A Legal Description of Land Conveyed

Exhibit B Map

Exhibit C Form of Lease

Exhibit D Form of Quit Claim Deed

EXHIBIT A
Legal Description of Land Transferred

The Mount Baker Theatre Building consisting of the Theatre itself located at 106 North Commercial Street, office spaces within the Mount Baker Theatre Building, and additional area on Champion Street consisting of Apartments 2, 3, 6, and 7 of the Mount Baker Condominiums, being a portion of Lot 15, except the North 1 foot thereof, and Lots 16 through 24, inclusive, Block 1, Plat of Central Whatcom, Whatcom County, Washington, filed August 31, 1883, in the official records of the Whatcom County Auditor, including "Declaration Establishing Plan for Condominium Ownership", filed on April 5, 1976, in Volume 284, page 826, File Number 1212835; except for those premises currently leased to Patisserie, Inc. to operate a restaurant known as the "Pacific Café", located at 100 North Commercial Street (Bay Number 1) of the Mount Baker Theatre Building and containing approximately 994 square feet of floor area and 112 Champion Street (Bay Number 7) of the Mount Baker Theatre Building containing approximately 900 square feet of floor area.

EXHIBIT B
Map of Land Transferred

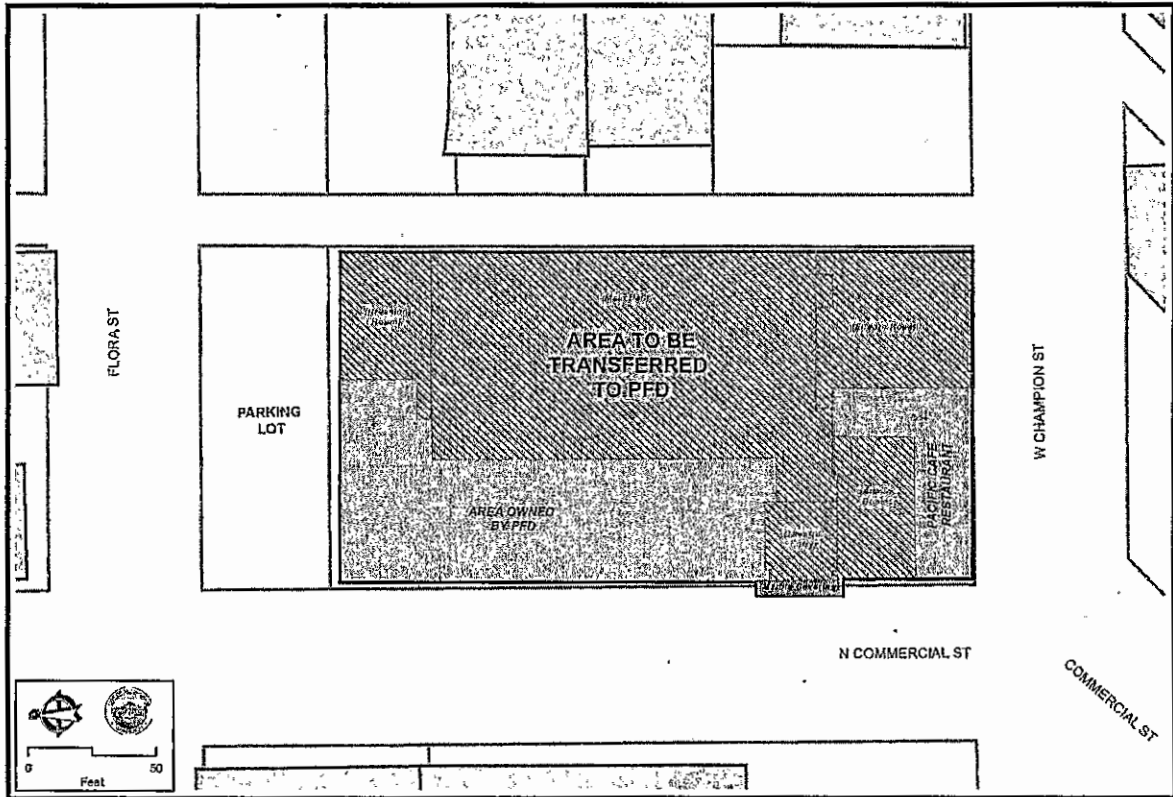


EXHIBIT C
Lease

LEASE

Between

THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT,
as Landlord,

and

THE MOUNT BAKER THEATRE,
as Tenant.

MOUNT BAKER THEATRE FACILITY LEASE AGREEMENT

This **MOUNT BAKER THEATRE FACILITY LEASE AGREEMENT** (this "**Lease**"), is entered into between the **BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT**, a municipal corporation of the State of Washington (hereinafter "**Landlord**"), and the **MOUNT BAKER THEATRE**, a Washington not-for-profit corporation in good standing (hereinafter "**Tenant**").

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

SECTION 1 – DEFINITIONS

1. **Lease Data.** The following definitions apply, except as otherwise specifically modified herein:

1.1 **Base Rent.** During the Lease Term (as defined at Section 1.6 below) of this Lease, Tenant shall pay the Base Rent on or before the tenth day of January of each year of this Lease.

1.2 **Bonds.** The LTGO [501(c)(3)] bonds issued by Landlord in order to finance the purchase of certain property comprising the Leased Premises and related improvements located thereon (defined at 1.4 below) and leased to Tenant hereunder.

1.3 **Commencement Date.** The 1st day of August 2005. See Section 3.1.

1.4 **Leased Premises.** The Leased Premises consist of the Mount Baker Theatre building (the "Theatre") located at 104 North Commercial Street, Bellingham, Washington along with those certain other properties the Landlord has purchased contiguous with and adjoining the Theatre on North Commercial Street, as legally described in Exhibit A and depicted on Exhibit B (as both are attached hereto and incorporated herein by this reference), together with all buildings and other improvements located thereon, except for that portion of the Theatre identified in Exhibit A that currently houses on the Commencement Date the restaurant known as the Pacific Cafe.

1.5 **Notice Addresses.**

Landlord: Belllingham-Whatcom Public Facilities District
 c/o The City of Bellingham
 Office of Neighborhoods and Community Development
 210 Lottie Street
 Bellingham, Washington 98225

With a Copy to: The City of Bellingham
 Legal Department
 210 Lottie Street
 Bellingham, Washington 98225

Tenant: Mount Baker Theatre
104 N. Commercial
Bellingham, WA 98225
Attn: Mr. Brad Burdick, Executive Director

With a Copy to: Brett & Daugert
300 No. Commercial Street
Bellingham, WA 98225

1.6 Lease Term. The period beginning on the Commencement Date and ending at midnight on the 31st day of December 2025 unless terminated sooner pursuant to the terms contained herein. See Section 3.1.

1.7 Use. Tenant shall use the Leased Premises only for public community theater related activities as further set forth below at Section 6.

SECTION 2 – PREMISES

2.1 Landlord leases to Tenant, and Tenant leases from Landlord, those certain premises and improvements referred to in Section 1.4 (the "**Leased Premises**"), subject to Landlord's reservation of all air and subsurface rights over and under the Leased Premises.

SECTION 3 - TERM

3.1 Primary Term. This Lease shall commence for the term identified herein in Section 1.6 on the 1st day of August 2005 (the "**Commencement Date**").

SECTION 4 - RENT

4.1 Base Rent. Tenant shall pay to Landlord, in care of the City Finance Director at City Hall, 210 Lottie Street, Bellingham, Washington 98225, without notice, set-off or deduction whatsoever, the Base Rent of One U.S. Dollar (\$1.00) per year. The Base Rent shall be due and payable on or before the tenth day of January of each year of this Lease.

4.2 Additional Rent. All other sums to be paid or reimbursed by Tenant to Landlord, whether or not so designated, shall be deemed "**Additional Rent**" for the purposes of this Lease. If Tenant defaults in the performance of any of its obligations hereunder, Landlord may, but shall not be obligated to, perform such obligations, and the cost thereof to Landlord shall also be Additional Rent. Unless otherwise specifically provided herein, Tenant shall pay Landlord all Additional Rent upon demand and in no event later than the date on which the next monthly Base Rent payment hereunder is due and payable.

SECTION 5 - TENANT'S RECORDS AND BOOKS OF ACCOUNT

5.1 Maintenance of Books. Tenant shall maintain an accounting system in accordance with generally accepted accounting practices recording the monthly amount of gross revenues made and services rendered, and all monies received, paid and expended in the business of Tenant and the business of any other person conducting business on the Leased Premises, together with all other information relevant to the revenues received on the Leased Premises. The books of account for each year and the gross income, sales and business tax returns with respect to such year and all pertinent original sales records which would normally be examined by a certified public accountant in an audit of Tenant's sales, shall be kept for a

period of six (6) years following the end of such year. Tenant shall provide Landlord with: (1) copies of Tenant's tax returns within one (1) month of the Landlord's request; and, (2) copies of Tenant's audited annual financial statements within one hundred and fifty (150) calendar days after the close of Tenant's fiscal year.

5.2 Examination by Landlord. Landlord, or its authorized representative or any governmental agency with jurisdiction, shall have the right to examine Tenant's books and records relative to its operations on the Leased Premises at the Leased Premises (or any other office location of Tenant) at any time during regular business hours.

SECTION 6 - CONDUCT OF BUSINESS

6.1 Use of Leased Premises. The parties acknowledge and agree that the Theatre is a community resource that has traditionally been used to provide a wide variety of community, entertainment, and artistic events and performances. Tenant will continue to operate the Theatre in a manner consistent with this practice. Accordingly, Tenant shall continuously during the Lease Term maintain and conduct on the Leased Premises an open-to-the-public theater type business for the purpose of providing those community theater related activities as set forth herein, to include, by way of example: stage productions and events/performances; films; administrative offices; shops; ticket sales; commercial rentals for artistic, literary, entertainment, or musical performances; community events, meetings, receptions, or other gatherings; and such other similar uses deemed by the Tenant and Landlord as artistic, cultural, and of a community benefit. Tenant shall not use or permit the use of the Leased Premises for any other business or purpose, without the prior written consent of Landlord. Tenant shall make reasonable efforts to prohibit smoking on the Leased Premises or in any buildings thereon. Alcohol may be served provided that all required permits and licenses are obtained. Tenant shall be allowed to sell food and beverages, merchandise and equipment on the Leased Premises related to its proper activities and programs.

6.2 Operation of Business.

6.2.1 Tenant shall conduct its business (per Section 6.1) on the Leased Premises so as to maximize the public benefit which can be produced therefrom, consistent with good business practices of similarly situated non-profit entities, unless prevented from doing so by causes beyond Tenant's reasonable control (which causes shall not include purely monetary factors). Tenant shall continue to operate, manage, and administer the Theatre in a manner consistent with the Theatre's role in the community, as described in Section 6.1 above. Operation, management, and administration may include, by way of example, scheduling and booking performances, exhibitions, and events at the Theatre; negotiating, executing, and administering contracts therefor; collecting applicable fees and charges for the Theatre's use; selling concessions, souvenirs, and novelty items related to the Theatre or its events; following applicable operational safety related codes and laws such as occupancy limits and maintaining charged fire extinguishers; managing the Theatre's historic pipe organ; and, managing the capital improvement plan, regular maintenance and facility management, and minor repairs as further provided for herein.

6.2.2 As further consideration to Landlord for this Lease, Tenant agrees that Landlord and the City of Bellingham shall have the right to use and occupy the Theatre during the term of this Agreement for no more than three non-performance related uses each without cost, on an annual basis, provided that Landlord and/or the City of Bellingham shall provide reasonable advance notice of its desire to use the Theatre and further provided that these uses do not interfere with the Tenant's commitment to a third party for a scheduled event, performance, or other use. If, after the Landlord or the City schedule one of their uses without cost, Tenant receives a request from a full paying customer wanting to rent the same space as scheduled for the Landlord's or City's use, Landlord or the City shall

use their best efforts to reschedule their event. All Landlord or City use of the Theatre beyond the three non-performance related uses each referred to above shall be at Tenant's actual cost to rent the space requested by the Landlord or City and shall be rented on a not-to-interfere basis with Tenant's commitments to a third party for a scheduled event, performance, or other use.

6.3 Tax-Exempt Status of the Bonds. It is the parties' intention and agreement that, pursuant to Section 103 of the Internal Revenue Code (the "Code"), the interest paid on the Bonds shall be excluded from gross income of the recipients of such interest for federal income tax purposes. In order to confirm and carry out such intention, Tenant covenants and agrees (1) to provide such certificates, opinions of Bond Counsel and other evidence as may be necessary or requested by Landlord to establish the exemption of the Bonds under Section 103 of the Code and the absence of arbitrage expectation under Section 148 and related sections of the Code; and (2) acting alone or with Landlord, to file such information and statements with the Internal Revenue Service as may be required to establish or preserve such exemption or as may be required by Section 103 or related sections of the Code. Tenant further covenants and agrees that it will not (a) take any action, (b) fail to take any action or (c) make any use of the Leased Premises which would cause the interest on the Bonds to be or become includable in the gross income of the bondowners for federal income tax purposes. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will take such action or actions, including, without limitation, consenting and agreeing to amendments to this Lease or any other documents as may be necessary, in the opinion of Bond Counsel, so that Tenant and all subsequent occupants of the Leased Premises comply fully and continuously with the Code, as applicable to the Bonds, and all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service, including, without limitation, the Treasury Regulations.

6.4 Appearance of Leased Premises. Tenant shall maintain the Leased Premises in a clean, orderly and neat appearance, permitting no nuisance of any type to originate on, or come from the Leased Premises and neither committing waste nor permitting any waste to be committed thereon. All garbage and refuse shall be kept in sealed containers, which are removed at regular intervals.

6.5 Unlawful Use. Tenant shall not use or permit the Leased Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance, rule or regulation ("**Applicable Laws**") or in any manner that may create a nuisance. Tenant shall promptly comply, at its sole expense, with, and obtain all licenses and permits required by Applicable Laws and with the requirements of any board or similar body, relating to or affecting the condition, use or occupancy of the Leased Premises or the business conducted thereon.

6.6 Hazardous Materials. Tenant shall not store, use, sell, release, generate or dispose of any Hazardous Materials in, on or about the Leased Premises without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion, and the execution of a separate agreement allowing such acts. "**Hazardous Material**" shall mean any matter (whether gaseous, liquid or solid) which is or may be harmful to persons or property, and which may now or hereafter be regulated under any Applicable Laws pertaining to health, industrial hygiene or the environment, including, without limitation, any asbestos and/or asbestos containing materials. "Hazardous Material" shall not include ordinary cleaning and maintenance products which are used with due care and in strict compliance with Applicable Laws and the instructions of the manufacturer of such products in the reasonable and prudent conduct of Tenant's business on the Leased Premises. Notwithstanding anything else set forth herein, Tenant's obligations under this Section 6.6 shall survive the expiration of this Lease.

6.7 Liens and Encumbrances. Tenant shall keep the Leased Premises free and clear of all liens and encumbrances arising from or out of its use and occupancy of the Leased Premises. If any lien is filed against the Leased Premises or Landlord's underlying property as a result of the action or inaction of Tenant or its employees, agents or contractors, Tenant shall upon demand provide Landlord with a bond in the amount required by law to remove the lien of record.

6.8 Signs. Without Landlord's written consent, Tenant shall not erect or place, or permit to be erected or placed, or maintain any signs, lettering or other advertising matter of any nature or kind whatsoever on the exterior walls of the Leased Premises other than the marquee. Tenant agrees to abide by all sign criteria established by Landlord. Tenant shall remove all signs installed by Tenant at its expense, and it shall repair all damage resulting from such installation or removal, either by the end of the Lease term or the earlier termination of the Lease.

6.9 Parking. Parking on the Leased Premises shall be operated pursuant to the Parking Facility Management Agreement, attached hereto as Exhibit D. Said Parking Agreement provides for certain use of the parking lot by the Tenant for evening events and valet parking for these events. At any time Tenant uses or operates the parking lot for its special events and/or valet parking, Tenant shall indemnify, defend and save Landlord, its officers, agents, employees and contractors, harmless from all losses, claims, damages, fines, penalties, liabilities and expenses (including Landlord's personnel and overhead costs and attorneys' fees and other costs incurred in connection with such claims, regardless of whether claims involve litigation or bankruptcy) resulting from any actual or alleged injury to any person or from any actual or alleged loss of or damage to any property or any other damage or loss alleged to be attributable to Tenant's operation or occupation of the parking lot upon the Leased Premises or caused by or resulting from any act or omission or breach of Applicable Laws by Tenant or any licensee, assignee, or concessionaire, or of any officer, agent, employee, guest or invitee of any such person in, or about the parking lot located on the Leased Premises or Tenant's breach of its obligations hereunder. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification provided for in this Section with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease.

SECTION 7 - UTILITIES AND OTHER CHARGES

7.1 Utility Charges. Tenant shall be responsible for, and pay prior to delinquency, all charges for utilities or services used or consumed on, or supplied to, the Leased Premises, including the charges, if any, for installing meters for them and all utility charges accruing during Tenant's possession of the Leased Premises prior to the execution hereof. Meter locations and installation methods shall be subject to Landlord's prior written approval. If Landlord elects to furnish any of the utilities, Tenant shall pay Landlord all charges levied by Landlord in accordance with rates established from time to time for the same. Landlord shall not be liable for an interruption of the supply of any such utilities to the Leased Premises.

7.2 Licenses and Taxes. Tenant shall collect and pay when due all applicable license, admission, excise, business and occupation and other fees and taxes arising from Tenant's use of the Leased Premises and all personal property taxes levied with respect to all personal property located at the Leased Premises. If any governmental authority levies a tax or license fee against Landlord or Tenant because of this Lease, such tax or license fee shall be paid by Tenant, either directly, if required by law, or by reimbursing Landlord for the amount thereof upon demand. If Landlord pays any such amount directly to the taxing authority, Tenant shall reimburse Landlord no later than thirty (30) days after the receipt from Landlord of a written request for reimbursement.

7.3 Assessments. Tenant shall pay Landlord as Additional Rent, any surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Leased Premises and any taxes levied or assessed in lieu thereof, in whole or in part.

SECTION 8 – CONDITION OF PREMISES; ALTERATIONS

8.1 Condition of Leased Premises. Tenant acknowledges that it has examined the Leased Premises and is in all respects familiar with it and the improvements thereon. Tenant accepts the Leased Premises and the improvements thereon "AS IS". The parties recognize that there are punch-list items from the Phase I Theatre remodel that are still being rectified on the Commencement Date. Tenant further acknowledges that, except for those representations and warranties expressly set forth herein, Landlord has made no representations and warranties to Tenant with respect to the Leased Premises, and that Landlord has no obligation to perform any work in the Leased Premises or to install any Tenant improvements therein. Landlord shall not be liable for any latent defect in the Leased Premises.

8.2 Alterations by Tenant. Tenant shall not make any alterations, additions or improvements in or to the Leased Premises costing more than Ten Thousand Dollars (\$10,000) without Landlord's prior written approval, which may be denied in Landlord's sole discretion. Tenant acknowledges that the Theatre is a designated historical landmark and, as such, that Tenant agrees to comply with all applicable landmark preservation codes, rules, laws, and regulations, including but not limited to BMC Chapter 17.80 as it currently exists or may hereafter be amended. All such alterations, additions and improvements shall be performed at Tenant's sole cost and liability by a contractor approved in writing by Landlord and in a good and workmanlike manner, in accordance with all Applicable Laws, ordinances, rules and regulations, and in a manner (a) consistent with the plans and specifications submitted to and approved by Landlord in writing and any conditions imposed by Landlord, (b) which includes acceptable insurance/bond coverage for Landlord's benefit and (c) which does not affect the structural integrity of the building. All such alterations, additions and improvements, except trade fixtures and appliances and equipment not affixed to the Leased Premises, shall immediately become the property of Landlord without any obligation on its part to pay therefor, and shall not be removed by Tenant unless so directed by Landlord in connection with their installation or prior to the termination or expiration of this Lease.

SECTION 9 - MAINTENANCE OF PREMISES

9.1 Maintenance and Repair Responsibilities. Pursuant to the Transfer Agreement, dated _____, 2005, between the Landlord and the City of Bellingham, the City of Bellingham shall be solely responsible for any and all maintenance and repair responsibilities that would otherwise be the responsibility of the Landlord. Landlord shall have no responsibility for any maintenance and repair of the Leased Premises. The maintenance and repair responsibilities of the Tenant and the City of Bellingham are set forth in Exhibit C, which is expressly incorporated herein by this reference. The City's point of contact for maintenance issues is its Facilities Manager, who is currently Myron Carlson.

SECTION 10 - INDEMNITY AND INSURANCE

10.1 Indemnification.

10.1.1 Landlord shall not be liable for any injury to any person, or for any loss of or damage to any property (including, without limitation, property of Tenant) occurring in or about the Leased Premises from any cause whatsoever. Tenant shall indemnify, defend and save Landlord, its officers, agents, employees and contractors, harmless from all losses, claims, damages, fines, penalties, liabilities and expenses (including Landlord's personnel and overhead costs and attorneys' fees and other costs incurred in

connection with such claims, regardless of whether claims involve litigation or bankruptcy) resulting from any actual or alleged injury to any person or from any actual or alleged loss of or damage to any property or any other damage or loss alleged to be attributable to Tenant's operation or occupation of the Leased Premises or caused by or resulting from any act or omission or breach of Applicable Laws by Tenant or any licensee, assignee, or concessionaire, or of any officer, agent, employee, guest or invitee of any such person in, or about the Leased Premises or Tenant's breach of its obligations hereunder. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification provided for in this Section with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease.

10.1.2 Tenant shall promptly notify Landlord of casualties or accidents occurring in or about the Leased Premises. Notwithstanding the foregoing, if losses, claims, liabilities, damages, liens, costs and expenses so arising are caused by the concurrent negligence of both Landlord and Tenant, their employees, agents, invitees and licensees, Tenant shall indemnify Landlord only to the extent of Tenant's own negligence or that of its officers, agents, employees, guests or invitees.

10.1.3 The foregoing indemnity is specifically and expressly intended to constitute a waiver of Tenant's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the full extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent of their negligence. LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

10.2 Insurance.

10.2.1 Tenant shall obtain and maintain in effect, at its own expense, throughout the Lease Term: (1) comprehensive or commercial general liability insurance for claims of personal injury, property damage, and general liability, including liquor legal liability, in the amount of not less than \$2,000,000 per occurrence to indemnify Landlord, City, and Tenant against such claims; and, (2) insurance, or sufficient and adequate self insurance, covering all of Tenant's personal property, equipment, inventory, revenues, improvements, and trade fixtures. Tenant shall submit to Landlord before the Commencement Date (and annually thereafter) an insurance certificate reflecting the required coverage, naming the Landlord and the City as co-insureds, and bearing an endorsement that the same shall not be canceled nor materially reduced in coverage or limits without thirty (30) days prior written notice to Landlord and the City. If Tenant fails to maintain such insurance, Landlord may immediately obtain such for Tenant's account as a non-exclusive remedy, and Tenant shall reimburse Landlord for the full expense thereof upon demand.

10.2.2 Tenant shall require all persons or entities using the main stage of the Theatre to maintain and provide such insurance coverage to include comprehensive general liability in the minimum amount of \$2,000,000 per occurrence for personal injury and for property damage and to include the Tenant, Landlord, and the City of Bellingham as additional insureds thereunder. Governmental agencies, such as school districts and municipal entities, may be exempted from this requirement provided the governmental agency produces reliable evidence of equal or greater self-insurance.

10.2.3 Landlord and Tenant, for themselves and their respective insurers, agree to and hereby do, to the extent the damage or injury to their property or other liability is covered by insurance, release each other of and from any and all claims, demands, actions, and causes of action that each may have or claim to have against the other for loss or damage to the property of the other, both real and personal, notwithstanding that any such loss or damage may be due to or the result of the negligence of either party hereto or their respective employees or agents.

10.2.4 All insurance required under this Lease shall (a) be issued by insurance companies authorized to do business in the State of Washington and acceptable to Landlord; (b) be issued as a primary policy, or under the blanket policy, not contributing with and not in excess of coverage which Landlord may carry; and, (c) in the case of the liability policy, contain a contractual liability coverage endorsement covering Tenant's indemnification duty.

SECTION 11 – ASSIGNMENT, SUBLETTING AND DEED OF TRUST

11.1 Assignment or Sublease. Tenant shall not sublet, in whole or in any part, the Leased Premises, nor shall Tenant assign, transfer or otherwise encumber this Lease or any interest thereunder whether directly or by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of Landlord, which consent may be conditioned upon receipt of an opinion of bond counsel to Landlord to the effect that such subleasing or assignment will not have an adverse effect on the tax-exempt status of the Bonds. Given the unique character of the Leased Premises, and the value of the operations conducted thereon to the communities of Bellingham and Whatcom County, Landlord shall have sole discretion over the granting of such consent. Any assignment or sublease without Landlord's prior written consent shall, at Landlord's discretionary option, be voidable.

11.2 Assignment by Landlord. If Landlord transfers the Leased Premises to the City of Bellingham, the City of Bellingham shall assume Landlord's obligations arising thereafter and Landlord shall thereupon be relieved of all liabilities arising thereafter; however, this Lease shall otherwise remain in full force and effect.

SECTION 12 - DESTRUCTION OF PREMISES; CASUALTY

12.1 Partial Destruction. If the Leased Premises are rendered partially untenantable by fire or other casualty, Tenant shall be required to continue to operate the unaffected portion of the Leased Premises in as full compliance with the terms and conditions of this Lease as is reasonably attainable. Tenant shall have no right to terminate this Lease as the result of any damage or destruction to the Leased Premises unless Landlord causes such damage or destruction.

12.2 Total Destruction. If the Leased Premises are completely destroyed by fire or other casualty or damaged to such an extent that the damage can not be repaired within six (6) weeks working time, the Landlord shall have the option to terminate this lease upon thirty (30) days written notice. In the event that this section shall become applicable, Landlord shall advise Tenant within thirty (30) days after receiving notice of the damage whether Landlord has elected to continue this Lease or terminate it. If Landlord elects to continue this Lease, it shall commence and prosecute with due diligence any work necessary to restore or repair the Leased Premises as soon as is commercially practicable. If Landlord shall fail to notify Tenant of its election within said thirty (30) day period, Landlord shall be deemed to have elected to terminate this Lease and this Lease shall automatically terminate after sixty (60) days after the occurrence of the fire or other casualty to the Leased Premises. Tenant shall have no right to terminate this Lease as the result of any damage or destruction to the Leased Premises unless Landlord causes such damage or destruction.

SECTION 13- EMINENT DOMAIN

13.1 Taking. In the event all or a substantial part of the Leased Premises is taken or damaged by the right of eminent domain, or purchased by the condemnor in lieu thereof ("Taking"), so as to render the remaining premises economically unusable for the purposes provided for in this Lease, then this Lease

shall be automatically terminated as of the time of the Taking. In the event of a partial Taking that does not render the Leased Premises economically unusable, this Lease shall continue in full force and effect.

13.2 Damages. Landlord reserves all right to the entire damage award or payment for any taking by eminent domain or a transfer in lieu thereof, and Tenant waives all claim(s) whatsoever against Landlord and/or the governmental authority exercising eminent domain for damages for termination of its leasehold interest in the Leased Premises or for interference with its business. Tenant shall, however, have the right to claim from the condemning authority all compensation that may be recoverable by Tenant on account of any moving costs or loss or damage to Tenant's merchandise, furniture, trade fixtures and equipment, provided, however, that Tenant may claim such damages only if they are awarded separately in the eminent domain proceeding and not as part, or in reduction, of Landlord's damages.

SECTION 14 - DEFAULT

14.1 Default by Tenant.

14.1.1 Time is of the essence of this Lease. If Tenant fails to comply with any covenant, term or condition of this Lease or if a trustee or receiver is appointed for Tenant's assets, or if Tenant makes an assignment for the benefit of creditors, or if Tenant vacates or abandons the Leased Premises, and if such failure continues for, or is not remedied within three (3) days (or, if no default in the payment of rent is involved, within twenty (20) days) after notice in writing thereof given by Landlord to Tenant specifying the failure, then Landlord may, in its sole discretion:

- (a) Declare the term hereof ended and reenter the Leased Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or hereunder; or
- (b) Without declaring this Lease terminated, reenter the Leased Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid rentals and other charges, which have become payable, or which may thereafter become payable; or
- (c) Even though it may have reentered the Leased Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Leased Premises.

14.1.2 If Landlord reenters the Leased Premises under option 14.1.1(b) above, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rental or other charges thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions hereof unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease. If Landlord enters or takes possession of the Leased Premises, Landlord shall have the right, but not the obligation, to remove all or any of the personal property located therein and place the same in storage at a public warehouse at the expense and risk of Tenant.

14.1.3 If Landlord elects to terminate this Lease pursuant to the provisions of options 14.1.1(a) or 14.1.1(c) above, Landlord may recover from Tenant as damages, any amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by Landlord in (a) retaking possession of the Leased Premises, including reasonable attorneys' fees therefor, (b) maintaining or preserving the Leased Premises after such default, (c) preparing the Leased Premises for reletting to a new tenant, including repairs or alterations to the

Leased Premises for such reletting, (d) leasing commissions, and (e) any other costs necessary or appropriate to relet the Leased Premises; plus, at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted by the laws of the State of Washington.

14.1.4 This Lease may be terminated by either party upon thirty days written notice if Tenant no longer provides management services as outlined in Section 6.1, Subsection 6.2.1 and the Tenant's Management Services Agreement with the City of Bellingham. Notwithstanding notice of termination and while a termination notice is pending, the parties shall continue to perform their obligations hereunder in good faith. Further, the parties will work cooperatively and in good faith with each other and the City to honor any Theatre rentals that were entered into before the date the termination notice under this Subsection 14.1.4 was received.

14.2 Default by Landlord. In the event that Landlord breaches or fails to perform any term or condition of this Lease and, if such breach or failure shall continue or shall not be remedied within sixty (60) days after Tenant's written notice thereof (which shall specify the matter claimed to be breached or defaulted), the parties agree to resolve the dispute by binding arbitration. In the case of a failure which reasonably requires more than sixty (60) days to cure, Landlord shall commence to remedy the same within sixty (60) days following receipt of written notice thereof and shall diligently work to remedy the failure. Tenant agrees that, in that case, the matter will not be submitted to binding arbitration until the grace period has elapsed or until Landlord fails to diligently work to remedy the failure.

14.3 Legal Expenses. If either party to this Lease consults an attorney in order to enforce any of the terms of this Lease, the prevailing party in any action (to include alternative dispute resolution methods) shall be entitled to reimbursement by the non-prevailing party of the prevailing party's reasonable costs and attorneys' fees, whether such costs and attorneys' fees are incurred with or without litigation, in a bankruptcy court (i.e., in a motion for assumption or rejection of the Lease, etc.), or on appeal.

14.4 Remedies Cumulative; Waiver. Landlord's remedies hereunder are cumulative, and not exclusive, and Landlord's exercise of any right or remedy shall not be deemed to waive, or alter, affect or prejudice any other right or remedy which Landlord may have under this Lease or at law or in equity, including the right to cure Tenant's default on Tenant's behalf and recover from Tenant upon demand all costs and expenses incurred by Landlord in connection therewith, including interest thereon. Neither the acceptance of rent nor any other acts or omissions of Landlord at any time or times after the happening of any default or breach by Tenant shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel, terminate or forfeit this Lease, or estop Landlord from promptly exercising any other option, right or remedy that it may have under any term or provisions of this Lease, or at law or in equity.

SECTION 15 - ACCESS BY LANDLORD

15.1 Right of Entry. Landlord and its agents shall have the right to enter the Leased Premises at any time to examine the same, and to make such repairs, alterations, improvements or additions as Landlord may deem necessary or desirable. If Tenant is not personally present to permit entry and an entry is necessary or permissible, Landlord may enter the same by master key or may forcibly enter the same, without rendering Landlord liable therefor. Tenant shall not change the locks to the Leased Premises without first advising Landlord thereof and providing Landlord with a master key.

SECTION 16 - SURRENDER OF PREMISES

16.1 Surrender of Leased Premises. At the expiration or sooner termination of this Lease, Tenant shall return the Leased Premises to Landlord in the same condition in which received (or, if altered, then the Leased Premises shall be returned in such permitted altered condition, unless otherwise directed by Landlord), reasonable wear and tear excepted. Tenant shall remove any trade fixtures and appliances and equipment that do not become a part of the Leased Premises, and shall restore the Leased Premises to the condition they were in prior to the installation of said items. Tenant's obligation to perform this covenant shall survive the expiration or termination of this Lease.

16.2 Holding Over. If Tenant holds over after the expiration of the term hereof with Landlord's express prior written consent, such holding over shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein, which tenancy may be terminated by either party upon at least thirty (30) days' written notice to the other party, effective as of the last day of a calendar month. If Tenant holds over without Landlord's express prior written consent, such shall constitute a tenancy at will, terminable upon notice from Landlord and Tenant shall be liable for all damages suffered by Landlord as a consequence of such holding over.

SECTION 17 - MISCELLANEOUS

17.1 Notices. Any notices required in accordance with any of the provisions herein shall be delivered personally, sent by overnight courier or mailed by registered or certified mail to the addresses set forth in Section 1.5 or to such other address as a party shall from time to time advise in writing. If mailed, a notice shall be deemed received three (3) business days after the postmark affixed on the envelope by the United States Post Office.

17.2 Successors or Assigns. All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and their respective heirs, administrators, executors, successors and permitted assigns.

17.3 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

17.4 Recording. Tenant shall not record this Lease or a memorandum hereof without the prior written consent of Landlord.

17.5 Force Majeure. Neither party shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of terrorism, acts of civil or military authorities, fire, floods, windstorm, earthquake, strikes or other labor disturbances, civil commotion or disorder or war.

17.6 Tenant's Authority. Tenant warrants that its execution of this Lease has been duly authorized in accordance with its constituent documents.

17.7 No Partnership Between Landlord and Tenant. The provisions of this Lease are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture,

partnership, or any other similar relationship between the parties. Tenant maintains its own independent business, is eligible for and does file with the Internal Revenue Service, has an account with the State Department of Revenue along with a unified business identifier number, and maintains its own books and records for its business.

17.8 Headings. The headings in this Lease are for convenience only and do not in any way limit or affect the terms and provisions hereof.

17.9 Gender. Wherever appropriate in this Lease, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.

17.10 Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

17.11 Quiet Enjoyment. So long as Tenant pays the Rent and performs all of its obligations in this Lease, Landlord or anyone claiming by, through or under Landlord will not disturb Tenant's possession of the Leased Premises.

17.12 Tenant's Employees/Non-Discrimination. No personnel employed or utilized by the Tenant shall acquire any rights or status as an employee or agent of the Public Facilities District or the City of Bellingham for any purpose. The Tenant shall be responsible in full for any payment due its employees, including Workmen's Compensation, insurance, payroll deduction and all related costs. Upon Landlord's request, Tenant shall provide to Landlord a record of Workman's Compensation and all insurance maintained as reasonably required by Landlord. Tenant shall not discriminate, in employment, provision of services, or any other activity, against any person on the grounds of race, color, creed, disability, age or sex.

17.13 Execution by Landlord and Tenant. Landlord shall not be deemed to have made an offer to Tenant by furnishing Tenant with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between Landlord and Tenant until all parties hereto have executed this Lease and fully executed copies have been delivered to Landlord and Tenant.

17.14 Entire Agreement - Applicable Law. This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of Landlord and Tenant concerning the Leased Premises, and supersede any other agreements or understanding, oral or written, between Landlord and Tenant in this regard. The parties do not intend to modify any other agreement between them by this Lease unless specifically provided for herein. Any subsequent modification or amendment of this Lease shall be binding upon Landlord and Tenant only if in writing and signed by both. This Lease shall be governed by, and construed in accordance with the laws of the state of Washington without recourse to any principle of Conflicts of Laws. To the extent authorized by law, venue in any lawsuit brought under this Lease shall be in the Superior Court of Whatcom County, Washington.

TENANT

Dated _____, 200____

By _____
Its _____

LANDLORD

Dated _____, 200__

By _____

Its _____

APPROVED AS TO FORM:

Bellingham-Whatcom Public Facilities District Counsel

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of **THE MOUNT BAKER THEATRE**, the nonprofit corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said nonprofit corporation, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

Signature

Print Name _____

NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My commission expires _____.

STATE OF WASHINGTON)

COUNTY OF _____)

On this _____ day of _____, 200__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of **THE BELLINGHAM-WHATCOM**

PUBLIC FACILITIES DISTRICT, the municipal corporation of the State of Washington that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation of the State of Washington, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

Signature

Print Name

NOTARY PUBLIC in and for the State of
Washington, residing at _____

My commission expires _____

EXHIBIT A—Legal Description of the Leased Premises

The Mount Baker Theatre Building consisting of the Theatre itself located at 106 North Commercial Street, office spaces within the Mount Baker Theatre Building, and additional area on Champion Street consisting of the Apartments of the Mount Baker Condominiums, being a portion of Lot 15, except the North 1 foot thereof, and Lots 16 through 24, inclusive, Block 1, Plat of Central Whatcom, Whatcom County, Washington, filed August 31, 1883, in the official records of the Whatcom County Auditor, including "Declaration Establishing Plan for Condominium Ownership", filed on April 5, 1976, in Volume 284, page 826, File Number 1212835; except for those premises currently leased to Patisserie, Inc. to operate a restaurant known as the "Pacific Café", located at 100 North Commercial Street (Bay Number 1) of the Mount Baker Theatre Building and containing approximately 994 square feet of floor area and 112 Champion Street (Bay Number 7) of the Mount Baker Theatre Building containing approximately 900 square feet of floor area.

EXHIBIT B—Map/Plat of the Leased Premises

EXHIBIT C—MAINTENANCE AND REPAIR RESPONSIBILITIES

I. Definitions. As used in this Section, the following definitions shall apply:

1.1 “End of useful life as determined by City” shall mean the good faith and reasonable determination by City that equipment or component thereof no longer functions and cannot be economically repaired or (in the case of a component) replaced.

1.2 “Major maintenance” shall mean work required when equipment or a structural or non-structural building element has reached the end of its useful life and must be replaced.

1.3 “Preventive” shall mean work accomplished to avoid routine repair and/or extend the useful life of equipment or structural or non-structural building elements.

1.4 “Routine” shall mean all work required when equipment or a structural or non-structural building element is damaged or partially or fully inoperable.

1.5 “Theatre Equipment” shall include, by way of example and not limitation, curtains, orchestra shell, and equipment used for lighting and sound.

II. Tenant’s Responsibilities. As part of its operation and management responsibilities and duties, the Tenant agrees to manage the Theatre facility, including the personal property contained thereon, in good and presentable condition during the term of this Agreement. The Tenant agrees to undertake to ensure the following facility management tasks are accomplished and to coordinate with the City to determine if any public bidding, contracting, or contractor living wage requirements are applicable:

2.1 *Routine.*

2.1.1 Interior doors: Repair as needed.

2.1.2 Seats: Repair as needed.

2.1.3 Potable water system and waste water system: Repair or replace showers, sinks, water closets, urinals, sump pump, all dispensers and drinking fountains, as needed.

2.1.4 Electrical fixtures: Repair components, including fixtures and lamps.

2.1.5 Marquee and tower lights: Replace lights and repair marquee computer equipment as needed.

2.1.6 Theatre Equipment: All theatre operational equipment is to be maintained and repaired as needed.

2.2 *Preventive*

2.2.1 Fixed seats: Quarterly inspect and adjust.

2.2.2 Doors: Quarterly inspect, adjust and lubricate interior doors.

- 2.2.3 Interior surfaces (walls, ceilings, floors, etc.): Inspect and repair or paint quarterly except where scaffolding is required.
- 2.2.4 Windows: Inspect quarterly.
- 2.2.5 Plumbing: Quarterly inspect and repair showers, sinks, water closets, urinals, sump pump, all dispensers and drinking fountains.
- 2.2.6 Interior finishes: Maintain according to standards to prevent the necessity of any major maintenance.
- 2.2.7 Theatre Equipment: All theatre operational equipment shall receive a quarterly inspection and repair.
- 2.2.8 Heating System: Regularly back flush the system.
- 2.2.9 Interior: Normal janitorial cleaning, such as, by way of example and not limitation, cleaning walls, ceilings, floors, bathrooms, offices and all other interior finishes and accessories as needed.
- 2.2.10 Furnishings: Clean and repair all furnishings for useful life.

2.3 *Major Maintenance.*

- 2.3.1 Interior finishes: Repair flooring and paint surfaces except where scaffolding is required in lobby, theatre ceiling, upper walls and mezzanine ceilings as needed. Areas requiring scaffolding will be repaired by mutual agreement determined as a part of the annual inspections.
- 2.3.2 Seats: Reupholster/replace seats.
- 2.3.3 Electrical: Fixture modifications or repair/replacement.
- 2.3.4 Plumbing, heating, sewage systems, exterior walls and roof: No responsibility unless caused by the negligence of Manager's officers, directors, employees, agents, invitee, or user of the premises with Manager's permission.

III. City's Responsibilities. The City will retain the following facility related tasks that the parties agree are beyond the Tenant's professional service capability and expertise:

3.1 *Routine.*

- 3.1.1 Roof: Complete repairs.
- 3.1.2 Exterior: Complete repairs.
- 3.1.3 Doors: Repair exterior doors.
- 3.1.4 Exterior Walls: Remove graffiti as needed.

- 3.1.5 Windows: Repair as needed.
- 3.1.6 Potable water system: Repair the lines within the building to the fixtures.
- 3.17 Atmospheric systems (including boiler system, heating, ventilation, hot water tanks): Repair as needed.
- 3.2 *Preventive.*
 - 3.2.1 Roof: Inspect annually, clean gutters and drains, flood -coat every five (5) years or as needed.
 - 3.2.2 Exterior walls: Inspect, seal or paint every five years or as needed.
 - 3.2.3 Exterior doors wooden, metal and roll -up: Inspect, lubricate and adjust as needed.
 - 3.2.4 Marquee and tower: Perform annual checks for electrical systems and structural or other weaknesses.
 - 3.2.5 Sprinkler Systems: Inspect annually, repair and replace as needed, and ensure compliance to code, if required.
 - 3.2.6 Heating System: Regular maintenance other than back flushing the system.
- 3.3 *Major Maintenance.*
 - 3.3.1 Roof: Replace when existing roof at the end of useful life.
 - 3.3.2 Exterior doors: Replace at end of useful life.
 - 3.3.3 Atmospheric systems (including boiler system, heating, cooling, hot water tanks): Replace when components have reached the end of their useful life (estimated replacement times vary).
 - 3.3.4 Interior finishes: Replace any damaged or irreparably harmed part of the interior that the Manager does not maintain per the terms of this Agreement.
 - 3.3.5 Marquee and tower: When components have reached the end of their useful life.
 - 3.3.6 Plumbing, potable water and waste water system: Replace supply and waste lines up to the fixtures and the fixtures, component pipes (but not the plumbing or water fixtures to which they are attached which are maintained by Manager) when they have reached the end of their useful lives.
 - 3.3.7 Electrical: Replace components of the electrical service when they have reached the end of their useful lives.

3.3.8 Sewer: Replace the sewer and side sewer leading to the Theatre when they have reached the end of their useful lives.

3.3.9 Exterior walls: Repair or replace any damage to exterior walls.

3.3.10 Sump Pump: Replace components when they have reached the end of their useful lives.

IV Maintenance Inspections.

4.1 *Inspections.* Except as provided elsewhere in the Agreement, the parties agree to perform maintenance inspections annually in July, to notify each other in writing of any repairs determined to be reasonably necessary in their respective areas of responsibility, and to work cooperatively to set an appropriate timeline to complete the design ated repairs, subject to budget and resource constraints. Upon receipt of such notice, each party shall have ten (10) calendar days to determine whether such repairs are reasonably necessary. Each party will notify the other party in writing if there are any repairs that they feel are unnecessary. The parties agree to use their best efforts to negotiate a reasonable settlement of the repair request at issue within fifteen (15) calendar days from the notification that one party feels a repair or repairs are unnecessary. If after a good faith effort, the parties do not reach a reasonable settlement, the parties shall timely submit the dispute to an agreed-upon arbitrator who has knowledge in the area of building maintenance, repair and engineering, and the decision rendered by such arbitrator shall be binding and may be entered in a court having competent jurisdiction of the matter. The responsible party shall thereafter make such repairs as determined by the arbitrator and subject to funds available.

4.2 If the losing party fails to make such ordered repairs within a reasonable period of time, the prevailing party, after giving the losing party five (5) days written notice, may make such repairs and charge the losing party the cost thereof, which is subject to funds available. The losing party is not relieved of the responsibility to inspect and maintain the Premises and perform maintenance thereof.

V. Notification. Each party shall provide the other with prompt written notice of those items needing repair or maintenance upon becoming aware of the actual or approaching need for such repair or maintenance. Each party shall promptly commence work listed under its responsibilities, defined above, and shall pursue the completion of such work with due and reasonable diligence under the circumstances.

VI. Damage or Injury to the Theatre. In the event the Theatre is damaged or injured in any manner or nature whatsoever, said damage or injury being caused by the carelessness, negligence or improper conduct on the part of either party, its agents, employees, guests, invitees or licensees (the "Injuring Party"), then in each such instance, the Injuring Party shall promptly cause the said damage or injury to be fully repaired at the Injuring Party's own cost and expense. If the Injuring Party fails to accomplish such repairs, the other, non-injuring party may accomplish the repairs and send the invoice to the Injuring Party for reimbursement. The Injuring Party shall pay the other, non-injuring party within thirty (30) calendar days.

VII. Emergency. In the event of any unanticipated emergency that will result in the Theatre being immediately shut down, the parties will work cooperatively to remedy the emergency and determine responsibility subsequently. "Emergency" shall include, without limitation, any interruption of electrical, heating, plumbing and cooling service that, given the Theatre's age and condition, cannot be predicted or prevented by routine maintenance.

VIII. Tenant's Responsibility to Maintain Records. The Tenant shall maintain and provide to the City, upon written request, complete and accurate records of all routine repairs, preventive maintenance, major maintenance, replacements and service contracts undertaken by or on behalf of the Tenant.

IX. Failure to Maintain. If Tenant fails to keep and maintain the Leased Premises in the condition as set forth herein, Landlord may, at its option and as a non-exclusive remedy, put or cause the same to be put in the condition required thereunder, and Tenant shall pay Landlord the entire cost thereof upon demand.

////

////

Bellingham-Whatcom.
Public Facilities District
Ms. Patricia Decker, Manager
104 W. Magnolia, Suite 308
Bellingham, WA 98225

360-738-7451

Re: 104 N. Commercial, Bellingham, WA

CONFIDENTIAL, PLEASE

NOT FOR PUBLICATION

Parking No. WU13

Date 3/10/05

1. The effective date of this agreement is March 15, 2005.
2. This letter agreement sets forth in writing our understanding that Diamond Parking Services LLC ("Diamond Parking") will operate a parking facility on the above referenced property 24 hours a day, 7 days a week as an independent contractor under the terms and conditions set forth below.
3. It is our understanding that the Undersigned is the Owner or authorized representative of the above referenced property, hereinafter referred to as "Owner", and that there are no zoning or other restrictions that would prohibit the use of the property as a public parking facility.
4. Diamond Parking will keep the parking facility in a neat and clean condition, and if available, will be allowed to enter 48 hours prior to the effective date for the purpose of installing signs and fixtures. Diamond Parking will have the right to make any operating improvements that are necessary to operate the parking facility. All improvements such as trade fixtures, signs, lights, bumpers, pay boxes and attendant's facilities that are installed by Diamond Parking at its own expense will remain the property of Diamond Parking. Upon removal of these improvements, Diamond Parking will restore the property to its original condition.
5. For Its management services, Diamond Parking will be paid an amount for each month equal to the sum of (i) \$125.00, plus (ii) an amount equal to forty percent (40%) of gross parking revenue generated by the parking facility less \$125.00. However in no event shall the total monthly compensation paid to Diamond Parking under this agreement exceed two times (i) above, or \$250.00. Percentage rent will be paid on or before the twenty-fifth (25th) day of the following month.
6. Diamond Parking will keep complete and accurate records of all income relating to this parking facility. Said records will be available for inspection by Owner or Owner's authorized representative at any reasonable time.

7. The initial term of this agreement shall commence on March 10, 2005, and expire on December 31, 2005. This agreement shall automatically renew for successive one-month terms, unless this agreement is terminated as provided in accordance with the following sentence. This agreement may be terminated at any time by either of the parties by giving thirty (30) days advance written notice to the other party.

Diamond Parking acknowledges that the parking facility was acquired with the proceeds of tax-exempt bonds and that the continuing tax-exemption of such bond depends, in part, on how the parking facility is used. In furtherance of the foregoing, Diamond Parking will cause parking stalls in the parking facility to be provided to the general public, on a first-come first-served basis (with no priority rights be afforded to any person or business), for periods of time no longer than one month, and for parking fees that represent the fair market value for the parking privileges being purchased. Any arrangement entered into by Diamond Parking with others for use of the parking facility shall be entered at arm's-length.

8. Upon termination of this agreement, Diamond Parking will vacate the parking facility leaving it in good condition, less damage by fire, the elements, or ordinary wear and tear.
9. All personal property of Diamond Parking or its effects of any kind or description whatsoever left on or about the Premises shall be at Diamond Parking's sole risk and Owner shall not be liable or responsible for any damage done to or loss of such personal property or effects. In addition, Owner shall not be liable or responsible for damage, loss or injury suffered by Diamond Parking, its employees, agents, or guests arising from any manner whatsoever.

Diamond Parking shall indemnify and hold the Bellingham-Whatcom Public Facilities District and its successors and assigns, and their respective officers, directors, employees, members, and agents harmless from and against any claim, demand, action, proceeding, loss, damage, suit, cost or expense, including but not limited to reasonable attorneys' fees and costs, arising exclusively from or related in any matter to the operation of the parking lot as well as to Diamond Parking's negligent acts or omissions in the performance of its duties and/or responsibilities under this Agreement, except to the extent caused by Owner's negligence or willful act.

Should any disputes arise with respect to the applicability and/or interpretation of the parties' respective rights to indemnification, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in addition to any other remedy. The parties' rights regarding indemnification shall survive the expiration or earlier termination of this Lease.

Diamond Parking shall purchase, and maintain at its sole cost and expense, comprehensive general liability and property damage insurance insuring the Premises and the parking

operations, placed with a reputable and financially strong insurance carrier. The minimum limits of insurance shall be:

- (a) General Liability - \$2,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$5,000,000 aggregate limit;
- (b) Automobile Liability - \$1,000,000 combined single limit per accident for bodily injury and property damage;
- (c) Workers' Compensation: Statutory requirements of the state of residence or \$1,000,000 per occurrence, whichever is greater;

Such policies shall name Owner as additional insured with a severability of interests endorsement and the carrier(s) shall be required to give Owner at least thirty (30) days advance written notice of non-renewal or cancellation. Upon ten (10) days of mutual execution of this Agreement, Diamond Parking shall give Owner or its representative a Certificate(s) of Insurance, together with an additional insured endorsement, reflecting the required coverages.

Both parties hereby waive all rights of recovery against the other on account of loss or damage to each party or its property or the property of others under its control to the extent that such loss or damage is insured under any insurance policies which either party is required to carry pursuant to the terms of this Agreement.

- 10. Coordination of snow removal on the parking facility will be the responsibility of Diamond Parking. The cost of snow removal will be deducted from the Owner's share of the parking facility revenues.
- 11. Structural, mechanical, or other installations and any alterations required by law or regulations pertaining to air quality, environmental protection, provisions required by the Americans with Disabilities Act, or other similar governmental rules or regulations will remain the responsibility of the Owner.
- 12. This agreement may be withdrawn by Diamond Parking if not executed by Owner within sixty (60) days.
- 13. Your signature on a copy of this cancelable letter agreement will constitute your acceptance of these terms and conditions. Thank you.

It is AGREED this _____ day of _____, 2005.

BELLINGHAM-WHATCOM
PUBLIC FACILITIES
DISTRICT

DIAMOND PARKING
SERVICES LLC

Print: Dunham Gooding

Signed
by: _____

Title: President

Print: Jerry Chambers

Attest:
Title: Treasurer

Print: Patricia R. Decker

Signed
by: _____
Title: Manager

Print: Heather Wolf

Signed
by: _____
Title: Counsel

Tax
ID: 26-0073333

Email: pdecker@cob.org

Print: Jon Diamond

Signed
by: _____

Title: Its Member

Tax
ID: _____

Email: Jon.diamond@diamondparking.com

APPROVED PER INTERLOCAL AGREEMENT WITH THE
BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT:

Print: Mark Asmundson

Signed
by: _____

Title: Mayor, City of Bellingham

Print: Therese Holm

Attest: _____

Title: Finance Director,
City of Bellingham

Print: Les Reardanz

Signed
by: _____

Title: Assistant City Attorney, City of
Bellingham

EXHIBIT D
Quit Claim Deed

AFTER RECORDING RETURN TO:

Bellingham-Whatcom Public Facilities District
104 West Magnolia Street, Suite 308
Bellingham, Washington 98225

QUIT CLAIM DEED

The Grantor, the City of Bellingham, Washington, a municipal corporation, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration, conveys and quit claims to Grantee, the Bellingham-Whatcom Public Facilities District, a municipal corporation, for the life of the Grantee and subject to Grantee's covenant to follow the conditions contained in Real Estate Transfer Agreement for the Mount Baker Theatre, which is incorporated herein and is recorded with the Whatcom County Auditor under Auditor File Number _____, the following described real estate, situated in the County of Whatcom, State of Washington:

The Mount Baker Theatre Building consisting of the Theatre itself located at 106 North Commercial Street, office spaces within the Mount Baker Theatre Building, and additional area on Champion Street consisting of Apartments 2, 3, 6, and 7 of the Mount Baker Condominiums, being a portion of Lot 15, except the North 1 foot thereof, and Lots 16 through 24, inclusive, Block 1, Plat of Central Whatcom, Whatcom County, Washington, filed August 31, 1883, in the official records of the Whatcom County Auditor, including "Declaration Establishing Plan for Condominium Ownership", filed on April 5, 1976, in Volume 284, page 826, File Number 1212835; except for those premises currently leased to Patisserie, Inc. to operate a restaurant known as the "Pacific Café", located at 100 North Commercial Street (Bay Number 1) of the Mount Baker Theatre Building and containing approximately 994 square feet of floor area and 112 Champion Street (Bay Number 7) of the Mount Baker Theatre Building containing approximately 900 square feet of floor area.

DATED this ____ day of _____, 2005.

Mayor Mark Asmundson

Attest:

Approved as to Form:

Finance Director

Office of the City Attorney

Grantee's Acceptance

The Grantee has read, understands, and hereby accepts the Quit Claim Deed and the applicable covenants.

Dated this ____ day of _____, 2005.

Name: _____
Title: _____

Approved as to Form:

Public Facility District Counsel

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this _____ day of _____, 2005, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared MARK ASMUNDSON, to me known to be the person who signed as MAYOR of the CITY OF BELLINGHAM, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the corporation, that he was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My Appointment Expires: _____

CITY OF BELLINGHAM CONTRACT#

Contract Authorization Routing

Number
(Assigned by FINANCE)

PFD 2005-0001

Tracking Number AMHW-6AKPHZ
Type Contract
Dept: Executive

Contracting Party	Diamond Parking Services LLC	Original Cont #	
Name/Project #	PFD-owned lot at 216 Grand Avenue		
Termination Date	12/31/2010	If Contract is Extended, New Termination Date:	
City Project Mgr	Patricia Decker, PFD Manager		
Certificate of Insurance ☒ Attached ☐ Waived ☐ N/A			
Is Notary required?	No		
P.O. Required?	No	Maximum Payable \$\$	☒ See Contract
Exhibits Attached:	☐ Yes ☒ No		
Special Instructions:	Agreement submitted in duplicate. Please sign both copies. Cheryl - please e-mail a fully signed original to me and scan into the PFD database. Marc - please place one original in vault and return one to me. Thank you. Alison Henshaw.		

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

You are an Administrator of the approval process

Contract eRouter: In Process

Approvers	Title	Assigned	Notified	Received	Status Changed	Status
<i>gr</i> Kerry L Messer	Legal Administrative Assistant	03/17/2005	03/17/2005	-	-	-
Renie B Hill	Executive Receptionist/Assistant	-	-	-	-	-
Kristina J Bowker	AM	-	-	-	-	-
Cheryl K Lord	Office Technician	-	-	-	-	-
Marc L Hagen	Domino/Lotus Notes Administrator	-	-	-	-	-
	Office Assistant I/PT					

Approval Cycle Settings

- ☒ Approval conditions: 100 % approval
- ☒ Routing method: Serial (one at a time)
- ☒ Approvers:
 - Kerry L Messer/legal/cob
 - Renie B Hill/mayor/cob
 - Kristina J Bowker/mayor/cob
 - Cheryl K Lord/itsd/cob
 - Marc L Hagen/finance/cob
- ☒ Allow Approver comments: Yes
- ☒ Automatically Delegate to Assistant..: No
- ☒ Automatically Skip Approvers...: Yes
- Days until skipped/delegated: 30 Weekdays
- 30 Weekdays

3/24/05 Reelid Feraru
3/24/05 scan



DIAMOND PARKING SERVICES LLC

2600 Elliott Avenue, #A Phone: (206) 284-6303
Seattle, WA 98121 Fax: (206) 260-6390

CITY OF BELLINGHAM

CONTRACT #

RF 2005-0001

Bellingham-Whatcom.
Public Facilities District
Ms. Patricia Decker, Manager
104 W. Magnolia, Suite 308
Bellingham, WA 98225

CONFIDENTIAL, PLEASE

NOT FOR PUBLICATION

Parking No. WW14

Date 3/10/05

360-738-7451

Re: 216 Grand Ave, Bellingham, WA

1. The effective date of this agreement is March 15, 2005.
2. This letter agreement sets forth in writing our understanding that Diamond Parking Services LLC ("Diamond Parking") will operate a parking facility on the above referenced property 24 hours a day, 7 days a week as an independent contractor under the terms and conditions set forth below.
3. It is our understanding that the Undersigned is the Owner or authorized representative of the above referenced property, hereinafter referred to as "Owner", and that there are no zoning or other restrictions that would prohibit the use of the property as a public parking facility.
4. Diamond Parking will keep the parking facility in a neat and clean condition, and if available, will be allowed to enter 48 hours prior to the effective date for the purpose of installing signs and fixtures. Diamond Parking will have the right to make any operating improvements that are necessary to operate the parking facility. All improvements such as trade fixtures, signs, lights, bumpers, pay boxes and attendant's facilities that are installed by Diamond Parking at its own expense will remain the property of Diamond Parking. Upon removal of these improvements, Diamond Parking will restore the property to its original condition.
5. For its management services, Diamond Parking will be paid an amount for each month equal to the sum of (i) \$200.00, plus (ii) an amount equal to twenty five percent (25%) of gross parking revenue generated by the parking facility less \$200.00. However in no event shall the total monthly compensation paid to Diamond Parking under this agreement exceed two times (i) above, or \$400.00. Percentage revenue sharing will be paid on or before the twenty-fifth (25th) day of the following month.
6. Diamond Parking will keep complete and accurate records of all income relating to this parking facility. Said records will be available for inspection by Owner or Owner's authorized representative at any reasonable time.

7. The initial term of this agreement shall commence on March 15, 2005, and expire on December 31, 2005. This agreement shall automatically renew for successive one-month terms, unless this agreement is terminated as provided in accordance with the following sentence. This agreement may be terminated at any time by either of the parties by giving thirty (30) days advance written notice to the other party.

Diamond Parking acknowledges that the parking facility was acquired with the proceeds of tax-exempt bonds and that the continuing tax-exemption of such bond depends, in part, on how the parking facility is used. In furtherance of the foregoing, Diamond Parking will cause parking stalls in the parking facility to be provided to the general public, on a first-come first-served basis (with no priority rights be afforded to any person or business), for periods of time no longer than one month, and for parking fees that represent the fair market value for the parking privileges being purchased. Any arrangement entered into by Diamond Parking with others for use of the parking facility shall be entered at arm's-length.

8. Upon termination of this agreement, Diamond Parking will vacate the parking facility leaving it in good condition, less damage by fire, the elements, or ordinary wear and tear.
9. All personal property of Diamond Parking or its effects of any kind or description whatsoever left on or about the Premises shall be at Diamond Parking's sole risk and Owner shall not be liable or responsible for any damage done to or loss of such personal property or effects. In addition, Owner shall not be liable or responsible for damage, loss or injury suffered by Diamond Parking, its employees, agents, or guests arising from any manner whatsoever.

Diamond Parking shall indemnify and hold the Bellingham-Whatcom Public Facilities District and its successors and assigns, and their respective officers, directors, employees, members, and agents harmless from and against any claim, demand, action, proceeding, loss, damage, suit, cost or expense, including but not limited to reasonable attorneys' fees and costs, arising exclusively from or related in any matter to the operation of the parking lot as well as to Diamond Parking's negligent acts or omissions in the performance of its duties and/or responsibilities under this Agreement, except to the extent caused by Owner's negligence or willful act.

Should any disputes arise with respect to the applicability and/or interpretation of the parties' respective rights to indemnification, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in addition to any other remedy. The parties' rights regarding indemnification shall survive the expiration or earlier termination of this Lease.

Diamond Parking shall purchase, and maintain at its sole cost and expense, comprehensive general liability and property damage insurance insuring the Premises and the parking operations, placed with a reputable and financially strong insurance carrier. The minimum limits of insurance shall be:

- (a) General Liability - \$2,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$5,000,000 aggregate limit;
- (b) Automobile Liability - \$1,000,000 combined single limit per accident for bodily injury and property damage;
- (c) Workers' Compensation: Statutory requirements of the state of residence or \$1,000,000 per occurrence, whichever is greater;

Such policies shall name Owner as additional insured with a severability of interests endorsement and the carrier(s) shall be required to give Owner at least thirty (30) days advance written notice of non-renewal or cancellation. Upon ten (10) days of mutual execution of this Agreement, Diamond Parking shall give Owner or its representative a Certificate(s) of Insurance, together with an additional insured endorsement, reflecting the required coverages.

Both parties hereby waive all rights of recovery against the other on account of loss or damage to each party or its property or the property of others under its control to the extent that such loss or damage is insured under any insurance policies which either party is required to carry pursuant to the terms of this Agreement.

- 10. Coordination of snow removal on the parking facility will be the responsibility of Diamond Parking. The cost of snow removal will be deducted from the Owner's share of the parking facility revenues.
- 11. Structural, mechanical, or other installations and any alterations required by law or regulations pertaining to air quality, environmental protection, provisions required by the Americans with Disabilities Act, or other similar governmental rules or regulations will remain the responsibility of the Owner.
- 12. This agreement may be withdrawn by Diamond Parking if not executed by Owner within sixty (60) days.
- 13. Your signature on a copy of this cancelable letter agreement will constitute your acceptance of these terms and conditions. Thank you.

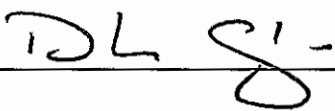
Diamond Parking Services LLC
Parking Facility Management Agreement

It is AGREED this 16th day of March, 2005.

BELLINGHAM-WHATCOM
PUBLIC FACILITIES
DISTRICT

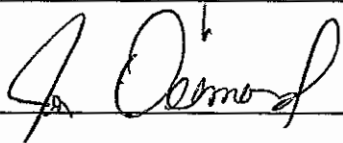
DIAMOND PARKING
SERVICES LLC

Print: Dunham Gooding

Signed
by: 

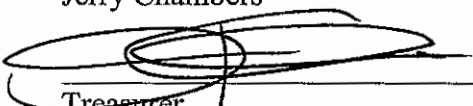
Title: President

Print: Jon Diamond

Signed
by: 

Title: Its Member

Print: Jerry Chambers

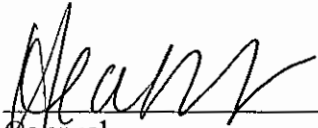
Attest: 
Title: Treasurer

Print: Patricia R. Decker

Signed
by: 

Title: Manager

Print: Heather Wolf

Signed
by: 
Title: Counsel

Tax
ID: 26-0073333

Email: pdecker@cob.org

Tax
ID: _____

Email: Jon.diamond@diamondparking.com

Diamond Parking Services LLC
Parking Facility Management Agreement

APPROVED PER INTERLOCAL AGREEMENT WITH THE
BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT:

Print: Mark Asmündson

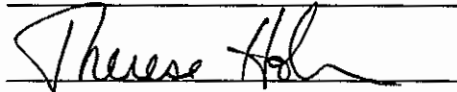
Signed
by:

 **MAR 22 2005**

Title: Mayor, City of Bellingham

Print: Therese Holm

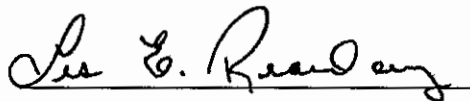
Attest:



Title: Finance Director,
City of Bellingham

Print: Les Reardanz

Signed
by:



Title: Assistant City Attorney, City of
Bellingham

ACORD CERTIFICATE OF LIABILITY INSURANCE

PF02-2005-0001

DATE (MM/DD/YYYY)
04/06/2005

PRODUCER (206)545-4800 FAX (206)545-4849
C. Don Filer Agency, Inc.
4201 Roosevelt Way NE
Seattle, WA 98105-6608
Shari Lofquist

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Diamond Parking Services Inc
3161 Elliott Ave
Seattle, WA 98121

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Chubb Custom Insurance Co
INSURER B: National Union Fire Ins Co
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY	79491919	07/15/2004	07/15/2005	EACH OCCURRENCE \$ 1,000,000
	☒	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	☐	CLAIMS MADE ☒ OCCUR				MED EXP (Any one person) \$
	☒	Employers Liab				PERSONAL & ADV INJURY \$ 1,000,000
		☒ Ded. \$100000				GENERAL AGGREGATE \$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG \$ 1,000,000
		☐ POLICY ☐ PRO- JECT ☐ LOC				
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$ 0
	☐	ANY AUTO				BODILY INJURY (Per person) \$
	☐	ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	☐	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	☐	HIRED AUTOS				
	☐	NON-OWNED AUTOS				
A		GARAGE LIABILITY	79491919	07/15/2004	07/15/2005	AUTO ONLY - EA ACCIDENT \$ 0
	☐	ANY AUTO				OTHER THAN EA ACC \$ 1,000,000 AUTO ONLY: AGG \$ 2,000,000
B		EXCESS/UMBRELLA LIABILITY	BE2681174	07/15/2004	07/15/2005	EACH OCCURRENCE \$ 1,000,000
	☒	OCCUR ☐ CLAIMS MADE				AGGREGATE \$ 1,000,000
	☐	DEDUCTIBLE				\$
	☐	RETENTION \$				\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	79491919	07/15/2004	07/15/2005	WC STATU- TORY LIMITS ☒ OTH- ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A		OTHER Garage Keepers Legal Liability	79491919	07/15/2004	07/15/2005	\$150,000 per vehicle \$1,000,000 per location

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Re: Station WW14 - 216 Grand Avenue, Bellingham, WA & WW13 - 104 N Commercial, Bellingham, WA
Certificate holder is hereby named as additional insured.

CERTIFICATE HOLDER

Bellingham-Whatcom Public Facilities District
Patricia Decker
104 W Magnolia Suite 308
Bellingham, WA 98225

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Shari Lofquist/SHARI

Shari Lofquist

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD™ CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
07/15/2005PRODUCER (206)545-4800 FAX (206)545-4849
C. Don Filer Agency, Inc.
4201 Roosevelt Way NE
Seattle, WA 98105-6608
Shari LofquistTHIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.INSURED Diamond Parking, Inc.
3161 Elliott Ave.
Seattle, WA 98121

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Chubb Custom Insurance Co

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY	79491919	07/15/2005	07/15/2006	EACH OCCURRENCE	\$ 1,000,000
		☒ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
		☐ CLAIMS MADE ☒ OCCUR				MED EXP (Any one person)	\$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY	\$ 1,000,000
		☐ POLICY ☐ PRO-JECT ☐ LOC				GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ 1,000,000
A		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$
		☐ ANY AUTO				BODILY INJURY (Per person)	\$
		☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		☐ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		☐ HIRED AUTOS					
		☐ NON-OWNED AUTOS					
A		GARAGE LIABILITY	79491919	07/15/2005	07/15/2006	AUTO ONLY - EA ACCIDENT	\$ 150,000
		☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	\$ 1,000,000
		☒ GarageKeepers				AGG	\$ 1,000,000
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	\$
		☐ DEDUCTIBLE					\$
		☐ RETENTION \$					\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	79491919	07/15/2005	07/15/2006	☐ WC STATUTORY LIMITS ☒ OTHER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
		OTHER				E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Re: Station WW14 - 216 Grand Avenue, Bellingham, WA & WW13 - 104 N Commercial, Bellingham, WA
Certificate holder is hereby named as additional insured.

CERTIFICATE HOLDER

Bellingham-Whatcom Public Facilities District
Patricia Decker
104 W Magnolia Suite 308
Bellingham, WA 98225

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.AUTHORIZED REPRESENTATIVE 

IMPORTANT

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If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

CITY OF BELLINGHAM
CONTRACT #
PFD 2005-0002

Contract Authorization Routing

Number
 (Assigned by FINANCE)

Tracking Number AMHW-6AKPAB
 Type Contract
 Dept: Executive

Contracting Party	Diamond Parking Services LLC		Original Cont #	
Name/Project #	PFD-owned lot at 104 N. Commercial			
Termination Date	12/31/2010	If Contract is Extended, New Termination Date:		
City Project Mgr	Patricia Decker, PFD Manager			
Certificate of Insurance ☒ Attached ☐ Waived ☐ N/A				
Is Notary required?	No			
P.O. Required?	No	Maximum Payable \$\$		☒ See Contract
Exhibits Attached:	☐ Yes ☒ No			
Special Instructions:	Agreement submitted in duplicate. Please sign both copies. Cheryl - please e-mail a fully signed original to me and scan into the PFD database. Marc - please place one original in vault and return one to me. Thank you. Alison Henshaw. <i>3-24-05</i>			

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

You are an Administrator of the approval process

Contract eRouter: In Process

Approvers	Title	Assigned	Notified	Received	Status Changed	Status
Kerry L Messer	Legal Administrative Assistant	03/17/2005	03/17/2005	-	-	-
Renie B Hill	Executive Receptionist/Assistant	-	-	-	-	-
Kristina J Bowker	AM	-	-	-	-	-
Cheryl K Lord	Office Technician	-	-	-	-	-
Marc L Hagen	Domino/Lotus Notes Administrator	-	-	-	-	-
	Office Assistant I/PT					

Approval Cycle Settings

- ☒ Approval conditions: 100 % approval
- ☒ Routing method: Serial (one at a time)
- ☒ Approvers:
 - Kerry L Messer/legal/cob
 - Renie B Hill/mayor/cob
 - Kristina J Bowker/mayor/cob
 - Cheryl K Lord/itsd/cob
 - Marc L Hagen/finance/cob
- ☒ Allow Approver comments: Yes
- ☒ Automatically Delegate to Assistant...: No
- ☒ Automatically Skip Approvers...: Yes
 - Days until skipped/delegated: 30 Weekdays
 - 30 Weekdays

3/24/05 Rec'd Finance
3/24/05 Scan



DIAMOND PARKING SERVICES LLC

2600 Elliott Avenue, #A Phone: (206) 284-6303
Seattle, WA 98121 Fax: (206) 269-6390

CITY OF BELLINGHAM
CONTRACT #

AFD 2005-0002

Bellingham-Whatcom.
Public Facilities District
Ms. Patricia Decker, Manager
104 W. Magnolia, Suite 308
Bellingham, WA 98225

CONFIDENTIAL, PLEASE

NOT FOR PUBLICATION

Parking No. WM13

Date 3/10/05

360-738-7451

Re: 104 N. Commercial, Bellingham, WA

1. The effective date of this agreement is March 15, 2005.
2. This letter agreement sets forth in writing our understanding that Diamond Parking Services LLC ("Diamond Parking") will operate a parking facility on the above referenced property 24 hours a day, 7 days a week as an independent contractor under the terms and conditions set forth below.
3. It is our understanding that the Undersigned is the Owner or authorized representative of the above referenced property, hereinafter referred to as "Owner", and that there are no zoning or other restrictions that would prohibit the use of the property as a public parking facility.
4. Diamond Parking will keep the parking facility in a neat and clean condition, and if available, will be allowed to enter 48 hours prior to the effective date for the purpose of installing signs and fixtures. Diamond Parking will have the right to make any operating improvements that are necessary to operate the parking facility. All improvements such as trade fixtures, signs, lights, bumpers, pay boxes and attendant's facilities that are installed by Diamond Parking at its own expense will remain the property of Diamond Parking. Upon removal of these improvements, Diamond Parking will restore the property to its original condition.
5. For Its management services, Diamond Parking will be paid an amount for each month equal to the sum of (i) \$125.00, plus (ii) an amount equal to forty percent (40%) of gross parking revenue generated by the parking facility less \$125.00. However in no event shall the total monthly compensation paid to Diamond Parking under this agreement exceed two times (i) above, or \$250.00. Percentage rent will be paid on or before the twenty-fifth (25th) day of the following month.
6. Diamond Parking will keep complete and accurate records of all income relating to this parking facility. Said records will be available for inspection by Owner or Owner's authorized representative at any reasonable time.

7. The initial term of this agreement shall commence on March 15, 2005, and expire on December 31, 2005. This agreement shall automatically renew for successive one-month terms, unless this agreement is terminated as provided in accordance with the following sentence. This agreement may be terminated at any time by either of the parties by giving thirty (30) days advance written notice to the other party.

Diamond Parking acknowledges that the parking facility was acquired with the proceeds of tax-exempt bonds and that the continuing tax-exemption of such bond depends, in part, on how the parking facility is used. In furtherance of the foregoing, Diamond Parking will cause parking stalls in the parking facility to be provided to the general public, on a first-come first-served basis (with no priority rights be afforded to any person or business), for periods of time no longer than one month, and for parking fees that represent the fair market value for the parking privileges being purchased. Any arrangement entered into by Diamond Parking with others for use of the parking facility shall be entered at arm's-length.

8. Upon termination of this agreement, Diamond Parking will vacate the parking facility leaving it in good condition, less damage by fire, the elements, or ordinary wear and tear.
9. All personal property of Diamond Parking or its effects of any kind or description whatsoever left on or about the Premises shall be at Diamond Parking's sole risk and Owner shall not be liable or responsible for any damage done to or loss of such personal property or effects. In addition, Owner shall not be liable or responsible for damage, loss or injury suffered by Diamond Parking, its employees, agents, or guests arising from any manner whatsoever.

Diamond Parking shall indemnify and hold the Bellingham-Whatcom Public Facilities District and its successors and assigns, and their respective officers, directors, employees, members, and agents harmless from and against any claim, demand, action, proceeding, loss, damage, suit, cost or expense, including but not limited to reasonable attorneys' fees and costs, arising exclusively from or related in any matter to the operation of the parking lot as well as to Diamond Parking's negligent acts or omissions in the performance of its duties and/or responsibilities under this Agreement, except to the extent caused by Owner's negligence or willful act.

Should any disputes arise with respect to the applicability and/or interpretation of the parties' respective rights to indemnification, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in addition to any other remedy. The parties' rights regarding indemnification shall survive the expiration or earlier termination of this Lease.

Diamond Parking shall purchase, and maintain at its sole cost and expense, comprehensive general liability and property damage insurance insuring the Premises and the parking

operations, placed with a reputable and financially strong insurance carrier. The minimum limits of insurance shall be:

- (a) General Liability - \$2,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$5,000,000 aggregate limit;
- (b) Automobile Liability - \$1,000,000 combined single limit per accident for bodily injury and property damage;
- (c) Workers' Compensation: Statutory requirements of the state of residence or \$1,000,000 per occurrence, whichever is greater;

Such policies shall name Owner as additional insured with a severability of interests endorsement and the carrier(s) shall be required to give Owner at least thirty (30) days advance written notice of non-renewal or cancellation. Upon ten (10) days of mutual execution of this Agreement, Diamond Parking shall give Owner or its representative a Certificate(s) of Insurance, together with an additional insured endorsement, reflecting the required coverages.

Both parties hereby waive all rights of recovery against the other on account of loss or damage to each party or its property or the property of others under its control to the extent that such loss or damage is insured under any insurance policies which either party is required to carry pursuant to the terms of this Agreement.

- 10. Coordination of snow removal on the parking facility will be the responsibility of Diamond Parking. The cost of snow removal will be deducted from the Owner's share of the parking facility revenues.
- 11. Structural, mechanical, or other installations and any alterations required by law or regulations pertaining to air quality, environmental protection, provisions required by the Americans with Disabilities Act, or other similar governmental rules or regulations will remain the responsibility of the Owner.
- 12. This agreement may be withdrawn by Diamond Parking if not executed by Owner within sixty (60) days.
- 13. Your signature on a copy of this cancelable letter agreement will constitute your acceptance of these terms and conditions. Thank you.

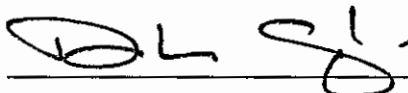
Diamond Parking Services LLC
Parking Facility Management Agreement

It is AGREED this 16th day of March, 2005.

BELLINGHAM-WHATCOM
PUBLIC FACILITIES
DISTRICT

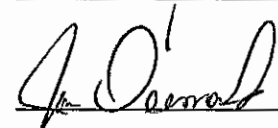
DIAMOND PARKING
SERVICES LLC

Print: Dunham Gooding

Signed by: 

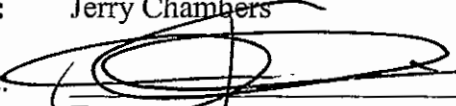
Title: President

Print: Jon Diamond

Signed by: 

Title: Its Member

Print: Jerry Chambers

Attest: 
Title: Treasurer

Print: Patricia R. Decker

Signed by: 

Title: Manager

Print: Heather Wolf

Signed by: 

Title: Counsel

Tax ID: 26-0073333

Email: pdecker@cob.org

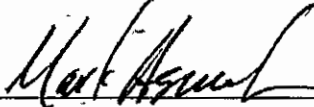
Tax ID: _____

Email: Jon.diamond@diamondparking.com

Diamond Parking Services LLC
Parking Facility Management Agreement

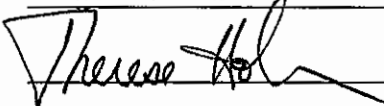
APPROVED PER INTERLOCAL AGREEMENT WITH THE
BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT:

Print: Mark Asmundson

Signed
by:  MAR 22 2005

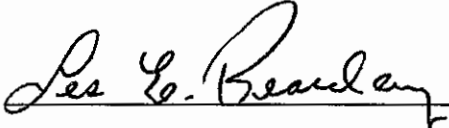
Title: Mayor, City of Bellingham

Print: Therese Holm

Attest: 

Title: Finance Director,
City of Bellingham

Print: Les Reardanz

Signed
by: 

Title: Assistant City Attorney, City of
Bellingham

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/15/2005

PRODUCER (206)545-4800 FAX (206)545-4849

C. Don Filer Agency, Inc.

4201 Roosevelt Way NE

Seattle, WA 98105-6608

Shari Lofquist

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC #

INSURED Diamond Parking, Inc.

3161 Elliott Ave.

Seattle, WA 98121

INSURER A: Chubb Custom Insurance Co

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY	79491919	07/15/2005	07/15/2006	EACH OCCURRENCE \$ 1,000,000
	☒	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	☐	CLAIMS MADE ☒ OCCUR				MED EXP (Any one person) \$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY \$ 1,000,000
		☐ POLICY ☐ PROJECT ☐ LOC				GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ 1,000,000
A		AUTOMOBILE LIABILITY	79491919	07/15/2005	07/15/2006	COMBINED SINGLE LIMIT (Ea accident) \$
	☐	ANY AUTO				BODILY INJURY (Per person) \$
	☐	ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	☐	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	☐	HIRED AUTOS				
	☐	NON-OWNED AUTOS				
A		GARAGE LIABILITY	79491919	07/15/2005	07/15/2006	AUTO ONLY - EA ACCIDENT \$ 150,000
	☐	ANY AUTO				OTHER THAN EA ACC \$ 1,000,000
	☒	GarageKeepers				AUTO ONLY: AGG \$ 1,000,000
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
	☐	OCCUR ☐ CLAIMS MADE				AGGREGATE \$
	☐	DEDUCTIBLE				\$
	☐	RETENTION \$				\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	79491919	07/15/2005	07/15/2006	WC STATUTORY LIMITS ☒ OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
		OTHER				E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Re: Station WW14 - 216 Grand Avenue, Bellingham, WA & WW13 - 104 N Commercial, Bellingham, WA

Certificate holder is hereby named as additional insured.

CERTIFICATE HOLDER

Bellingham-Whatcom Public Facilities District
Patricia Decker
104 W Magnolia Suite 308
Bellingham, WA 98225

CANCELLATION

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AUTHORIZED REPRESENTATIVE

IMPORTANT

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PFD

Contract Authorization Routing

Number
(Assigned by FINANCE)

PFD 2005-0005

Tracking Number AMHW-6F6P2T
Type Contract
Dept: Executive

Contracting Party	Mount Baker Theatre	Original Cont #	
Name/Project #	Lease between Bellingham-Whatcom Public Facilities District and Mount Baker Theatre		
Termination Date	12/31/2025	If Contract is Extended, New Termination Date:	
City Project Mgr	Patricia Decker, Manager, Bellingham-Whatcom Public Facilities District		
Certificate of Insurance ☐ Attached ☐ Waived ☒ N/A			
Is Notary required?	No		
P.O. Required?	No	Maximum Payable \$\$	☒ See Contract
Exhibits Attached:	☒ Yes ☐ No		
Special Instructions:	Please scan into PFD database and place original in vault. Thank you.		

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

You are an Administrator of the approval process

Contract eRouter: In Process

Approvers	Title	Assigned	Notified	Received	Status Changed	Status
Marc L Hagen	Office Assistant I/PT	08/11/2005	08/11/2005	-	-	-

Approval Cycle Settings

- ☒ Approval conditions: 100 % approval
- ☒ Routing method: Serial (one at a time)
- ☒ Approvers: Marc L Hagen/finance/cob
- ☒ Allow Approver comments: Yes
- ☒ Automatically Delegate to Assistant...: Yes
- ☒ Automatically Skip Approvers...: Yes
- Days until skipped/delegated: 12 Weekdays
- 12 Weekdays

Notification

Access

8/12/05 Rec'd Finance
8/12/05 Scan

PFD2005-0005

LEASE

Between

THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT,
as Landlord,

and

THE MOUNT BAKER THEATRE,
as Tenant.

MOUNT BAKER THEATRE FACILITY LEASE AGREEMENT

This **MOUNT BAKER THEATRE FACILITY LEASE AGREEMENT** (this "Lease"), is entered into between the **BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT**, a municipal corporation of the State of Washington (hereinafter "**Landlord**"), and the **MOUNT BAKER THEATRE**, a Washington not-for-profit corporation in good standing (hereinafter "**Tenant**").

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

SECTION 1 – DEFINITIONS

1. **Lease Data.** The following definitions apply, except as otherwise specifically modified herein:

1.1 **Base Rent.** During the Lease Term (as defined at Section 1.6 below) of this Lease, Tenant shall pay the Base Rent on or before the tenth day of January of each year of this Lease.

1.2 **Bonds.** The LTGO [501(c)(3)] bonds issued by Landlord in order to finance the purchase of certain property comprising the Leased Premises and related improvements located thereon (defined at 1.4 below) and leased to Tenant hereunder.

1.3 **Commencement Date.** The 1st day of August 2005. See Section 3.1.

1.4 **Leased Premises.** The Leased Premises consist of the Mount Baker Theatre building (the "Theatre") located at 104 North Commercial Street, Bellingham, Washington along with those certain other properties the Landlord has purchased contiguous with and adjoining the Theatre on North Commercial Street, as legally described in Exhibit A and depicted on Exhibit B (as both are attached hereto and incorporated herein by this reference), together with all buildings and other improvements located thereon, except for that portion of the Theatre identified in Exhibit A that currently houses on the Commencement Date the restaurant known as the Pacific Cafe.

1.5 **Notice Addresses.**

Landlord: Bellingham-Whatcom Public Facilities District
 c/o The City of Bellingham
 Office of Neighborhoods and Community Development
 210 Lottie Street
 Bellingham, Washington 98225

With a Copy to: The City of Bellingham
 Legal Department
 210 Lottie Street
 Bellingham, Washington 98225

Tenant: Mount Baker Theatre
104 N. Commercial
Bellingham, WA 98225
Attn: Mr. Brad Burdick, Executive Director

With a Copy to: Brett & Daugert
300 No. Commercial Street
Bellingham, WA 98225

1.6 Lease Term. The period beginning on the Commencement Date and ending at midnight on the 31st day of December 2025 unless terminated sooner pursuant to the terms contained herein. See Section 3.1.

1.7 Use. Tenant shall use the Leased Premises only for public community theater related activities as further set forth below at Section 6.

SECTION 2 – PREMISES

2.1 Landlord leases to Tenant, and Tenant leases from Landlord, those certain premises and improvements referred to in Section 1.4 (the "**Leased Premises**"), subject to Landlord's reservation of all air and subsurface rights over and under the Leased Premises.

SECTION 3 - TERM

3.1 Primary Term. This Lease shall commence for the term identified herein in Section 1.6 on the 1st day of August 2005 (the "**Commencement Date**").

SECTION 4 - RENT

4.1 Base Rent. Tenant shall pay to Landlord, in care of the City Finance Director at City Hall, 210 Lottie Street, Bellingham, Washington 98225, without notice, set-off or deduction whatsoever, the Base Rent of One U.S. Dollar (\$1.00) per year. The Base Rent shall be due and payable on or before the tenth day of January of each year of this Lease.

4.2 Additional Rent. All other sums to be paid or reimbursed by Tenant to Landlord, whether or not so designated, shall be deemed "**Additional Rent**" for the purposes of this Lease. If Tenant defaults in the performance of any of its obligations hereunder, Landlord may, but shall not be obligated to, perform such obligations, and the cost thereof to Landlord shall also be Additional Rent. Unless otherwise specifically provided herein, Tenant shall pay Landlord all Additional Rent upon demand and in no event later than the date on which the next monthly Base Rent payment hereunder is due and payable.

SECTION 5 - TENANT'S RECORDS AND BOOKS OF ACCOUNT

5.1 Maintenance of Books. Tenant shall maintain an accounting system in accordance with generally accepted accounting practices recording the monthly amount of gross revenues made and services rendered, and all monies received, paid and expended in the business of Tenant and the business of any other person conducting business on the Leased Premises, together with all other information relevant to the revenues received on the Leased Premises. The books of account for each year and the gross income, sales and business tax returns with respect to such year and all pertinent original sales records which would normally be examined by a certified public accountant in an audit of Tenant's sales, shall be kept for a

period of six (6) years following the end of such year. Tenant shall provide Landlord with: (1) copies of Tenant's tax returns within one (1) month of the Landlord's request; and, (2) copies of Tenant's audited annual financial statements within one hundred and fifty (150) calendar days after the close of Tenant's fiscal year.

5.2 Examination by Landlord. Landlord, or its authorized representative or any governmental agency with jurisdiction, shall have the right to examine Tenant's books and records relative to its operations on the Leased Premises at the Leased Premises (or any other office location of Tenant) at any time during regular business hours.

SECTION 6 - CONDUCT OF BUSINESS

6.1 Use of Leased Premises. The parties acknowledge and agree that the Theatre is a community resource that has traditionally been used to provide a wide variety of community, entertainment, and artistic events and performances. Tenant will continue to operate the Theatre in a manner consistent with this practice. Accordingly, Tenant shall continuously during the Lease Term maintain and conduct on the Leased Premises an open-to-the-public theater type business for the purpose of providing those community theater related activities as set forth herein, to include, by way of example: stage productions and events/performances; films; administrative offices; shops; ticket sales; commercial rentals for artistic, literary, entertainment, or musical performances; community events, meetings, receptions, or other gatherings; and such other similar uses deemed by the Tenant and Landlord as artistic, cultural, and of a community benefit. Tenant shall not use or permit the use of the Leased Premises for any other business or purpose, without the prior written consent of Landlord. Tenant shall make reasonable efforts to prohibit smoking on the Leased Premises or in any buildings thereon. Alcohol may be served provided that all required permits and licenses are obtained. Tenant shall be allowed to sell food and beverages, merchandise and equipment on the Leased Premises related to its proper activities and programs.

6.2 Operation of Business.

6.2.1 Tenant shall conduct its business (per Section 6.1) on the Leased Premises so as to maximize the public benefit which can be produced therefrom, consistent with good business practices of similarly situated non-profit entities, unless prevented from doing so by causes beyond Tenant's reasonable control (which causes shall not include purely monetary factors). Tenant shall continue to operate, manage, and administer the Theatre in a manner consistent with the Theatre's role in the community, as described in Section 6.1 above. Operation, management, and administration may include, by way of example, scheduling and booking performances, exhibitions, and events at the Theatre; negotiating, executing, and administering contracts therefor; collecting applicable fees and charges for the Theatre's use; selling concessions, souvenirs, and novelty items related to the Theatre or its events; following applicable operational safety related codes and laws such as occupancy limits and maintaining charged fire extinguishers; managing the Theatre's historic pipe organ; and, managing the capital improvement plan, regular maintenance and facility management, and minor repairs as further provided for herein.

6.2.2 As further consideration to Landlord for this Lease, Tenant agrees that Landlord and the City of Bellingham shall have the right to use and occupy the Theatre during the term of this Agreement for no more than three non-performance related uses each without cost, on an annual basis, provided that Landlord and/or the City of Bellingham shall provide reasonable advance notice of its desire to use the Theatre and further provided that these uses do not interfere with the Tenant's commitment to a third party for a scheduled event, performance, or other use. If, after the Landlord or the City schedule one of their uses without cost, Tenant receives a request from a full paying customer wanting to rent the same space as scheduled for the Landlord's or City's use, Landlord or the City shall

use their best efforts to reschedule their event. All Landlord or City use of the Theatre beyond the three non-performance related uses each referred to above shall be at Tenant's actual cost to rent the space requested by the Landlord or City and shall be rented on a not-to-interfere basis with Tenant's commitments to a third party for a scheduled event, performance, or other use.

6.3 Tax-Exempt Status of the Bonds. It is the parties' intention and agreement that, pursuant to Section 103 of the Internal Revenue Code (the "Code"), the interest paid on the Bonds shall be excluded from gross income of the recipients of such interest for federal income tax purposes. In order to confirm and carry out such intention, Tenant covenants and agrees (1) to provide such certificates, opinions of Bond Counsel and other evidence as may be necessary or requested by Landlord to establish the exemption of the Bonds under Section 103 of the Code and the absence of arbitrage expectation under Section 148 and related sections of the Code; and (2) acting alone or with Landlord, to file such information and statements with the Internal Revenue Service as may be required to establish or preserve such exemption or as may be required by Section 103 or related sections of the Code. Tenant further covenants and agrees that it will not (a) take any action, (b) fail to take any action or (c) make any use of the Leased Premises which would cause the interest on the Bonds to be or become includable in the gross income of the bondowners for federal income tax purposes. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will take such action or actions, including, without limitation, consenting and agreeing to amendments to this Lease or any other documents as may be necessary, in the opinion of Bond Counsel, so that Tenant and all subsequent occupants of the Leased Premises comply fully and continuously with the Code, as applicable to the Bonds, and all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service, including, without limitation, the Treasury Regulations.

6.4 Appearance of Leased Premises. Tenant shall maintain the Leased Premises in a clean, orderly and neat appearance, permitting no nuisance of any type to originate on, or come from the Leased Premises and neither committing waste nor permitting any waste to be committed thereon. All garbage and refuse shall be kept in sealed containers, which are removed at regular intervals.

6.5 Unlawful Use. Tenant shall not use or permit the Leased Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance, rule or regulation ("**Applicable Laws**") or in any manner that may create a nuisance. Tenant shall promptly comply, at its sole expense, with, and obtain all licenses and permits required by Applicable Laws and with the requirements of any board or similar body, relating to or affecting the condition, use or occupancy of the Leased Premises or the business conducted thereon.

6.6 Hazardous Materials. Tenant shall not store, use, sell, release, generate or dispose of any Hazardous Materials in, on or about the Leased Premises without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion, and the execution of a separate agreement allowing such acts. "**Hazardous Material**" shall mean any matter (whether gaseous, liquid or solid) which is or may be harmful to persons or property, and which may now or hereafter be regulated under any Applicable Laws pertaining to health, industrial hygiene or the environment, including, without limitation, any asbestos and/or asbestos containing materials. "Hazardous Material" shall not include ordinary cleaning and maintenance products which are used with due care and in strict compliance with Applicable Laws and the instructions of the manufacturer of such products in the reasonable and prudent conduct of Tenant's business on the Leased Premises. Notwithstanding anything else set forth herein, Tenant's obligations under this Section 6.6 shall survive the expiration of this Lease.

6.7 Liens and Encumbrances. Tenant shall keep the Leased Premises free and clear of all liens and encumbrances arising from or out of its use and occupancy of the Leased Premises. If any lien is filed against the Leased Premises or Landlord's underlying property as a result of the action or inaction of Tenant or its employees, agents or contractors, Tenant shall upon demand provide Landlord with a bond in the amount required by law to remove the lien of record.

6.8 Signs. Without Landlord's written consent, Tenant shall not erect or place, or permit to be erected or placed, or maintain any signs, lettering or other advertising matter of any nature or kind whatsoever on the exterior walls of the Leased Premises other than the marquee. Tenant agrees to abide by all sign criteria established by Landlord. Tenant shall remove all signs installed by Tenant at its expense, and it shall repair all damage resulting from such installation or removal, either by the end of the Lease term or the earlier termination of the Lease.

6.9 Parking. Parking on the Leased Premises shall be operated pursuant to the Parking Facility Management Agreement, attached hereto as Exhibit D. Said Parking Agreement provides for certain use of the parking lot by the Tenant for evening events and valet parking for these events. At any time Tenant uses or operates the parking lot for its special events and/or valet parking, Tenant shall indemnify, defend and save Landlord, its officers, agents, employees and contractors, harmless from all losses, claims, damages, fines, penalties, liabilities and expenses (including Landlord's personnel and overhead costs and attorneys' fees and other costs incurred in connection with such claims, regardless of whether claims involve litigation or bankruptcy) resulting from any actual or alleged injury to any person or from any actual or alleged loss of or damage to any property or any other damage or loss alleged to be attributable to Tenant's operation or occupation of the parking lot upon the Leased Premises or caused by or resulting from any act or omission or breach of Applicable Laws by Tenant or any licensee, assignee, or concessionaire, or of any officer, agent, employee, guest or invitee of any such person in, or about the parking lot located on the Leased Premises or Tenant's breach of its obligations hereunder. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification provided for in this Section with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease.

SECTION 7 - UTILITIES AND OTHER CHARGES

7.1 Utility Charges. Tenant shall be responsible for, and pay prior to delinquency, all charges for utilities or services used or consumed on, or supplied to, the Leased Premises, including the charges, if any, for installing meters for them and all utility charges accruing during Tenant's possession of the Leased Premises prior to the execution hereof. Meter locations and installation methods shall be subject to Landlord's prior written approval. If Landlord elects to furnish any of the utilities, Tenant shall pay Landlord all charges levied by Landlord in accordance with rates established from time to time for the same. Landlord shall not be liable for an interruption of the supply of any such utilities to the Leased Premises.

7.2 Licenses and Taxes. Tenant shall collect and pay when due all applicable license, admission, excise, business and occupation and other fees and taxes arising from Tenant's use of the Leased Premises and all personal property taxes levied with respect to all personal property located at the Leased Premises. If any governmental authority levies a tax or license fee against Landlord or Tenant because of this Lease, such tax or license fee shall be paid by Tenant, either directly, if required by law, or by reimbursing Landlord for the amount thereof upon demand. If Landlord pays any such amount directly to the taxing authority, Tenant shall reimburse Landlord no later than thirty (30) days after the receipt from Landlord of a written request for reimbursement.

7.3 **Assessments.** Tenant shall pay Landlord as Additional Rent, any surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Leased Premises and any taxes levied or assessed in lieu thereof, in whole or in part.

SECTION 8 – CONDITION OF PREMISES; ALTERATIONS

8.1 **Condition of Leased Premises.** Tenant acknowledges that it has examined the Leased Premises and is in all respects familiar with it and the improvements thereon. Tenant accepts the Leased Premises and the improvements thereon "AS IS". The parties recognize that there are punch-list items from the Phase I Theatre remodel that are still being rectified on the Commencement Date. Tenant further acknowledges that, except for those representations and warranties expressly set forth herein, Landlord has made no representations and warranties to Tenant with respect to the Leased Premises, and that Landlord has no obligation to perform any work in the Leased Premises or to install any Tenant improvements therein. Landlord shall not be liable for any latent defect in the Leased Premises.

8.2 **Alterations by Tenant.** Tenant shall not make any alterations, additions or improvements in or to the Leased Premises costing more than Ten Thousand Dollars (\$10,000) without Landlord's prior written approval, which may be denied in Landlord's sole discretion. Tenant acknowledges that the Theatre is a designated historical landmark and, as such, that Tenant agrees to comply with all applicable landmark preservation codes, rules, laws, and regulations, including but not limited to BMC Chapter 17.80 as it currently exists or may hereafter be amended. All such alterations, additions and improvements shall be performed at Tenant's sole cost and liability by a contractor approved in writing by Landlord and in a good and workmanlike manner, in accordance with all Applicable Laws, ordinances, rules and regulations, and in a manner (a) consistent with the plans and specifications submitted to and approved by Landlord in writing and any conditions imposed by Landlord, (b) which includes acceptable insurance/bond coverage for Landlord's benefit and (c) which does not affect the structural integrity of the building. All such alterations, additions and improvements, except trade fixtures and appliances and equipment not affixed to the Leased Premises, shall immediately become the property of Landlord without any obligation on its part to pay therefor, and shall not be removed by Tenant unless so directed by Landlord in connection with their installation or prior to the termination or expiration of this Lease.

SECTION 9 - MAINTENANCE OF PREMISES

9.1 **Maintenance and Repair Responsibilities.** Pursuant to the Transfer Agreement, dated July 31, 2005, between the Landlord and the City of Bellingham, the City of Bellingham shall be solely responsible for any and all maintenance and repair responsibilities that would otherwise be the responsibility of the Landlord. Landlord shall have no responsibility for any maintenance and repair of the Leased Premises. The maintenance and repair responsibilities of the Tenant and the City of Bellingham are set forth in Exhibit C, which is expressly incorporated herein by this reference. The City's point of contact for maintenance issues is its Facilities Manager, who is currently Myron Carlson.

SECTION 10 - INDEMNITY AND INSURANCE

10.1 **Indemnification.**

10.1.1 Landlord shall not be liable for any injury to any person, or for any loss of or damage to any property (including, without limitation, property of Tenant) occurring in or about the Leased Premises from any cause whatsoever. Tenant shall indemnify, defend and save Landlord, its officers, agents, employees and contractors, harmless from all losses, claims, damages, fines, penalties, liabilities and expenses (including Landlord's personnel and overhead costs and attorneys' fees and other costs incurred in

connection with such claims, regardless of whether claims involve litigation or bankruptcy) resulting from any actual or alleged injury to any person or from any actual or alleged loss of or damage to any property or any other damage or loss alleged to be attributable to Tenant's operation or occupation of the Leased Premises or caused by or resulting from any act or omission or breach of Applicable Laws by Tenant or any licensee, assignee, or concessionaire, or of any officer, agent, employee, guest or invitee of any such person in, or about the Leased Premises or Tenant's breach of its obligations hereunder. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification provided for in this Section with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease.

10.1.2 Tenant shall promptly notify Landlord of casualties or accidents occurring in or about the Leased Premises. Notwithstanding the foregoing, if losses, claims, liabilities, damages, liens, costs and expenses so arising are caused by the concurrent negligence of both Landlord and Tenant, their employees, agents, invitees and licensees, Tenant shall indemnify Landlord only to the extent of Tenant's own negligence or that of its officers, agents, employees, guests or invitees.

10.1.3 The foregoing indemnity is specifically and expressly intended to constitute a waiver of Tenant's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the full extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent of their negligence. LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

10.2 Insurance.

10.2.1 Tenant shall obtain and maintain in effect, at its own expense, throughout the Lease Term: (1) comprehensive or commercial general liability insurance for claims of personal injury, property damage, and general liability, including liquor legal liability, in the amount of not less than \$2,000,000 per occurrence to indemnify Landlord, City, and Tenant against such claims; and, (2) insurance, or sufficient and adequate self insurance, covering all of Tenant's personal property, equipment, inventory, revenues, improvements, and trade fixtures. Tenant shall submit to Landlord before the Commencement Date (and annually thereafter) an insurance certificate reflecting the required coverage, naming the Landlord and the City as co-insureds, and bearing an endorsement that the same shall not be canceled nor materially reduced in coverage or limits without thirty (30) days prior written notice to Landlord and the City. If Tenant fails to maintain such insurance, Landlord may immediately obtain such for Tenant's account as a non-exclusive remedy, and Tenant shall reimburse Landlord for the full expense thereof upon demand.

10.2.2 Tenant shall require all persons or entities using the main stage of the Theatre to maintain and provide such insurance coverage to include comprehensive general liability in the minimum amount of \$2,000,000 per occurrence for personal injury and for property damage and to include the Tenant, Landlord, and the City of Bellingham as additional insureds thereunder. Governmental agencies, such as school districts and municipal entities, may be exempted from this requirement provided the governmental agency produces reliable evidence of equal or greater self-insurance.

10.2.3 Landlord and Tenant, for themselves and their respective insurers, agree to and hereby do, to the extent the damage or injury to their property or other liability is covered by insurance, release each other of and from any and all claims, demands, actions, and causes of action that each may have or claim to have against the other for loss or damage to the property of the other, both real and personal, notwithstanding that any such loss or damage may be due to or the result of the negligence of either party hereto or their respective employees or agents.

10.2.4 All insurance required under this Lease shall (a) be issued by insurance companies authorized to do business in the State of Washington and acceptable to Landlord; (b) be issued as a primary policy, or under the blanket policy, not contributing with and not in excess of coverage which Landlord may carry; and, (c) in the case of the liability policy, contain a contractual liability coverage endorsement covering Tenant's indemnification duty.

SECTION 11 – ASSIGNMENT, SUBLETTING AND DEED OF TRUST

11.1 Assignment or Sublease. Tenant shall not sublet, in whole or in any part, the Leased Premises, nor shall Tenant assign, transfer or otherwise encumber this Lease or any interest thereunder whether directly or by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of Landlord, which consent may be conditioned upon receipt of an opinion of bond counsel to Landlord to the effect that such subleasing or assignment will not have an adverse effect on the tax-exempt status of the Bonds. Given the unique character of the Leased Premises, and the value of the operations conducted thereon to the communities of Bellingham and Whatcom County, Landlord shall have sole discretion over the granting of such consent. Any assignment or sublease without Landlord's prior written consent shall, at Landlord's discretionary option, be voidable.

11.2 Assignment by Landlord. If Landlord transfers the Leased Premises to the City of Bellingham, the City of Bellingham shall assume Landlord's obligations arising thereafter and Landlord shall thereupon be relieved of all liabilities arising thereafter; however, this Lease shall otherwise remain in full force and effect.

SECTION 12 - DESTRUCTION OF PREMISES; CASUALTY

12.1 Partial Destruction. If the Leased Premises are rendered partially untenable by fire or other casualty, Tenant shall be required to continue to operate the unaffected portion of the Leased Premises in as full compliance with the terms and conditions of this Lease as is reasonably attainable. Tenant shall have no right to terminate this Lease as the result of any damage or destruction to the Leased Premises unless Landlord causes such damage or destruction.

12.2 Total Destruction. If the Leased Premises are completely destroyed by fire or other casualty or damaged to such an extent that the damage can not be repaired within six (6) weeks working time, the Landlord shall have the option to terminate this lease upon thirty (30) days written notice. In the event that this section shall become applicable, Landlord shall advise Tenant within thirty (30) days after receiving notice of the damage whether Landlord has elected to continue this Lease or terminate it. If Landlord elects to continue this Lease, it shall commence and prosecute with due diligence any work necessary to restore or repair the Leased Premises as soon as is commercially practicable. If Landlord shall fail to notify Tenant of its election within said thirty (30) day period, Landlord shall be deemed to have elected to terminate this Lease and this Lease shall automatically terminate after sixty (60) days after the occurrence of the fire or other casualty to the Leased Premises. Tenant shall have no right to terminate this Lease as the result of any damage or destruction to the Leased Premises unless Landlord causes such damage or destruction.

SECTION 13- EMINENT DOMAIN

13.1 Taking. In the event all or a substantial part of the Leased Premises is taken or damaged by the right of eminent domain, or purchased by the condemnor in lieu thereof ("Taking"), so as to render the remaining premises economically unusable for the purposes provided for in this Lease, then this Lease

shall be automatically terminated as of the time of the Taking. In the event of a partial Taking that does not render the Leased Premises economically unusable, this Lease shall continue in full force and effect.

13.2 Damages. Landlord reserves all right to the entire damage award or payment for any taking by eminent domain or a transfer in lieu thereof, and Tenant waives all claim(s) whatsoever against Landlord and/or the governmental authority exercising eminent domain for damages for termination of its leasehold interest in the Leased Premises or for interference with its business. Tenant shall, however, have the right to claim from the condemning authority all compensation that may be recoverable by Tenant on account of any moving costs or loss or damage to Tenant's merchandise, furniture, trade fixtures and equipment, provided, however, that Tenant may claim such damages only if they are awarded separately in the eminent domain proceeding and not as part, or in reduction, of Landlord's damages.

SECTION 14 - DEFAULT

14.1 Default by Tenant.

14.1.1 Time is of the essence of this Lease. If Tenant fails to comply with any covenant, term or condition of this Lease or if a trustee or receiver is appointed for Tenant's assets, or if Tenant makes an assignment for the benefit of creditors, or if Tenant vacates or abandons the Leased Premises, and if such failure continues for, or is not remedied within three (3) days (or, if no default in the payment of rent is involved, within twenty (20) days) after notice in writing thereof given by Landlord to Tenant specifying the failure, then Landlord may, in its sole discretion:

(a) Declare the term hereof ended and reenter the Leased Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or hereunder; or

(b) Without declaring this Lease terminated, reenter the Leased Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid rentals and other charges, which have become payable, or which may thereafter become payable; or

(c) Even though it may have reentered the Leased Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Leased Premises.

14.1.2 If Landlord reenters the Leased Premises under option 14.1.1(b) above, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rental or other charges thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions hereof unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease. If Landlord enters or takes possession of the Leased Premises, Landlord shall have the right, but not the obligation, to remove all or any of the personal property located therein and place the same in storage at a public warehouse at the expense and risk of Tenant.

14.1.3 If Landlord elects to terminate this Lease pursuant to the provisions of options 14.1.1(a) or 14.1.1(c) above, Landlord may recover from Tenant as damages, any amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by Landlord in (a) retaking possession of the Leased Premises, including reasonable attorneys' fees therefor, (b) maintaining or preserving the Leased Premises after such default, (c) preparing the Leased Premises for reletting to a new tenant, including repairs or alterations to the

Leased Premises for such reletting, (d) leasing commissions, and (e) any other costs necessary or appropriate to relet the Leased Premises; plus, at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted by the laws of the State of Washington.

14.1.4 This Lease may be terminated by either party upon thirty days written notice if Tenant no longer provides management services as outlined in Section 6.1, Subsection 6.2.1 and the Tenant's Management Services Agreement with the City of Bellingham. Notwithstanding notice of termination and while a termination notice is pending, the parties shall continue to perform their obligations hereunder in good faith. Further, the parties will work cooperatively and in good faith with each other and the City to honor any Theatre rentals that were entered into before the date the termination notice under this Subsection 14.1.4 was received.

14.2 Default by Landlord. In the event that Landlord breaches or fails to perform any term or condition of this Lease and, if such breach or failure shall continue or shall not be remedied within sixty (60) days after Tenant's written notice thereof (which shall specify the matter claimed to be breached or defaulted), the parties agree to resolve the dispute by binding arbitration. In the case of a failure which reasonably requires more than sixty (60) days to cure, Landlord shall commence to remedy the same within sixty (60) days following receipt of written notice thereof and shall diligently work to remedy the failure. Tenant agrees that, in that case, the matter will not be submitted to binding arbitration until the grace period has elapsed or until Landlord fails to diligently work to remedy the failure.

14.3 Legal Expenses. If either party to this Lease consults an attorney in order to enforce any of the terms of this Lease, the prevailing party in any action (to include alternative dispute resolution methods) shall be entitled to reimbursement by the non-prevailing party of the prevailing party's reasonable costs and attorneys' fees, whether such costs and attorneys' fees are incurred with or without litigation, in a bankruptcy court (i.e., in a motion for assumption or rejection of the Lease, etc.), or on appeal.

14.4 Remedies Cumulative; Waiver. Landlord's remedies hereunder are cumulative, and not exclusive, and Landlord's exercise of any right or remedy shall not be deemed to waive, or alter, affect or prejudice any other right or remedy which Landlord may have under this Lease or at law or in equity, including the right to cure Tenant's default on Tenant's behalf and recover from Tenant upon demand all costs and expenses incurred by Landlord in connection therewith, including interest thereon. Neither the acceptance of rent nor any other acts or omissions of Landlord at any time or times after the happening of any default or breach by Tenant shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel, terminate or forfeit this Lease, or estop Landlord from promptly exercising any other option, right or remedy that it may have under any term or provisions of this Lease, or at law or in equity.

SECTION 15 - ACCESS BY LANDLORD

15.1 Right of Entry. Landlord and its agents shall have the right to enter the Leased Premises at any time to examine the same, and to make such repairs, alterations, improvements or additions as Landlord may deem necessary or desirable. If Tenant is not personally present to permit entry and an entry is necessary or permissible, Landlord may enter the same by master key or may forcibly enter the same, without rendering Landlord liable therefor. Tenant shall not change the locks to the Leased Premises without first advising Landlord thereof and providing Landlord with a master key.

SECTION 16 - SURRENDER OF PREMISES

16.1 Surrender of Leased Premises. At the expiration or sooner termination of this Lease, Tenant shall return the Leased Premises to Landlord in the same condition in which received (or, if altered, then the Leased Premises shall be returned in such permitted altered condition, unless otherwise directed by Landlord), reasonable wear and tear excepted. Tenant shall remove any trade fixtures and appliances and equipment that do not become a part of the Leased Premises, and shall restore the Leased Premises to the condition they were in prior to the installation of said items. Tenant's obligation to perform this covenant shall survive the expiration or termination of this Lease.

16.2 Holding Over. If Tenant holds over after the expiration of the term hereof with Landlord's express prior written consent, such holding over shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein, which tenancy may be terminated by either party upon at least thirty (30) days' written notice to the other party, effective as of the last day of a calendar month. If Tenant holds over without Landlord's express prior written consent, such shall constitute a tenancy at will, terminable upon notice from Landlord and Tenant shall be liable for all damages suffered by Landlord as a consequence of such holding over.

SECTION 17 - MISCELLANEOUS

17.1 Notices. Any notices required in accordance with any of the provisions herein shall be delivered personally, sent by overnight courier or mailed by registered or certified mail to the addresses set forth in Section 1.5 or to such other address as a party shall from time to time advise in writing. If mailed, a notice shall be deemed received three (3) business days after the postmark affixed on the envelope by the United States Post Office.

17.2 Successors or Assigns. All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and their respective heirs, administrators, executors, successors and permitted assigns.

17.3 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

17.4 Recording. Tenant shall not record this Lease or a memorandum hereof without the prior written consent of Landlord.

17.5 Force Majeure. Neither party shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of terrorism, acts of civil or military authorities, fire, floods, windstorm, earthquake, strikes or other labor disturbances, civil commotion or disorder or war.

17.6 Tenant's Authority. Tenant warrants that its execution of this Lease has been duly authorized in accordance with its constituent documents.

17.7 No Partnership Between Landlord and Tenant. The provisions of this Lease are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture,

partnership, or any other similar relationship between the parties. Tenant maintains its own independent business, is eligible for and does file with the Internal Revenue Service, has an account with the State Department of Revenue along with a unified business identifier number, and maintains its own books and records for its business.

17.8 Headings. The headings in this Lease are for convenience only and do not in any way limit or affect the terms and provisions hereof.

17.9 Gender. Wherever appropriate in this Lease, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to include either or both of the other genders.

17.10 Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

17.11 Quiet Enjoyment. So long as Tenant pays the Rent and performs all of its obligations in this Lease, Landlord or anyone claiming by, through or under Landlord will not disturb Tenant's possession of the Leased Premises.

17.12 Tenant's Employees/Non-Discrimination. No personnel employed or utilized by the Tenant shall acquire any rights or status as an employee or agent of the Public Facilities District or the City of Bellingham for any purpose. The Tenant shall be responsible in full for any payment due its employees, including Workmen's Compensation, insurance, payroll deduction and all related costs. Upon Landlord's request, Tenant shall provide to Landlord a record of Workman's Compensation and all insurance maintained as reasonably required by Landlord. Tenant shall not discriminate, in employment, provision of services, or any other activity, against any person on the grounds of race, color, creed, disability, age or sex.

17.13 Execution by Landlord and Tenant. Landlord shall not be deemed to have made an offer to Tenant by furnishing Tenant with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between Landlord and Tenant until all parties hereto have executed this Lease and fully executed copies have been delivered to Landlord and Tenant.

17.14 Entire Agreement - Applicable Law. This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of Landlord and Tenant concerning the Leased Premises, and supersede any other agreements or understanding, oral or written, between Landlord and Tenant in this regard. The parties do not intend to modify any other agreement between them by this Lease unless specifically provided for herein. Any subsequent modification or amendment of this Lease shall be binding upon Landlord and Tenant only if in writing and signed by both. This Lease shall be governed by, and construed in accordance with the laws of the state of Washington without recourse to any principle of Conflicts of Laws. To the extent authorized by law, venue in any lawsuit brought under this Lease shall be in the Superior Court of Whatcom County, Washington.

TENANT

Dated June 17, 2005

Mount Baker Theater
By Brad Burdick
Its Executive Director

LANDLORD

Dated 13 July, 2005

BELLINGHAM-WHATCOM PUBLIC FACILITIES
DISTRICT
By DL S.
Its President

APPROVED AS TO FORM:

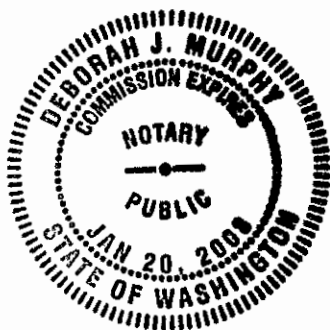
[Signature]
Bellingham-Whatcom Public Facilities District Counsel

STATE OF WASHINGTON)
COUNTY OF Whatcom) ss.

On this 17th day of June, 2005, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Brad Burdick, known to me to be the Executive Director of **THE MOUNT BAKER THEATRE**, the nonprofit corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said nonprofit corporation, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



Signature

Print Name

NOTARY PUBLIC in and for the State of
Washington, residing at Bellevue
My commission expires 01-20-08

STATE OF WASHINGTON)
) ss.
COUNTY OF Whatcom)

On this 13th day of July, 2005, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Dunham Gooding, known to me to be the President of **THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT**, the municipal corporation of the State of Washington that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation of the State of Washington, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



[Signature]
Signature

Melanie Kay Loughmiller
Print Name

NOTARY PUBLIC in and for the State of
Washington, residing at Bellingham.
My commission expires 2-9-08.

EXHIBIT A—Legal Description of the Leased Premises

The Mount Baker Theatre Building consisting of the Theatre itself located at 106 North Commercial Street, office spaces within the Mount Baker Theatre Building, and additional area on Champion Street consisting of the Apartments of the Mount Baker Condominiums, being a portion of Lot 15, except the North 1 foot thereof, and Lots 16 through 24, inclusive, Block 1, Plat of Central Whatcom, Whatcom County, Washington, filed August 31, 1883, in the official records of the Whatcom County Auditor, including "Declaration Establishing Plan for Condominium Ownership", filed on April 5, 1976, in Volume 284, page 826, File Number 1212835; except for those premises currently leased to Patisserie, Inc. to operate a restaurant known as the "Pacific Café", located at 100 North Commercial Street (Bay Number 1) of the Mount Baker Theatre Building and containing approximately 994 square feet of floor area and 112 Champion Street (Bay Number 7) of the Mount Baker Theatre Building containing approximately 900 square feet of floor area.

EXHIBIT B—Map/Plat of the Leased Premises

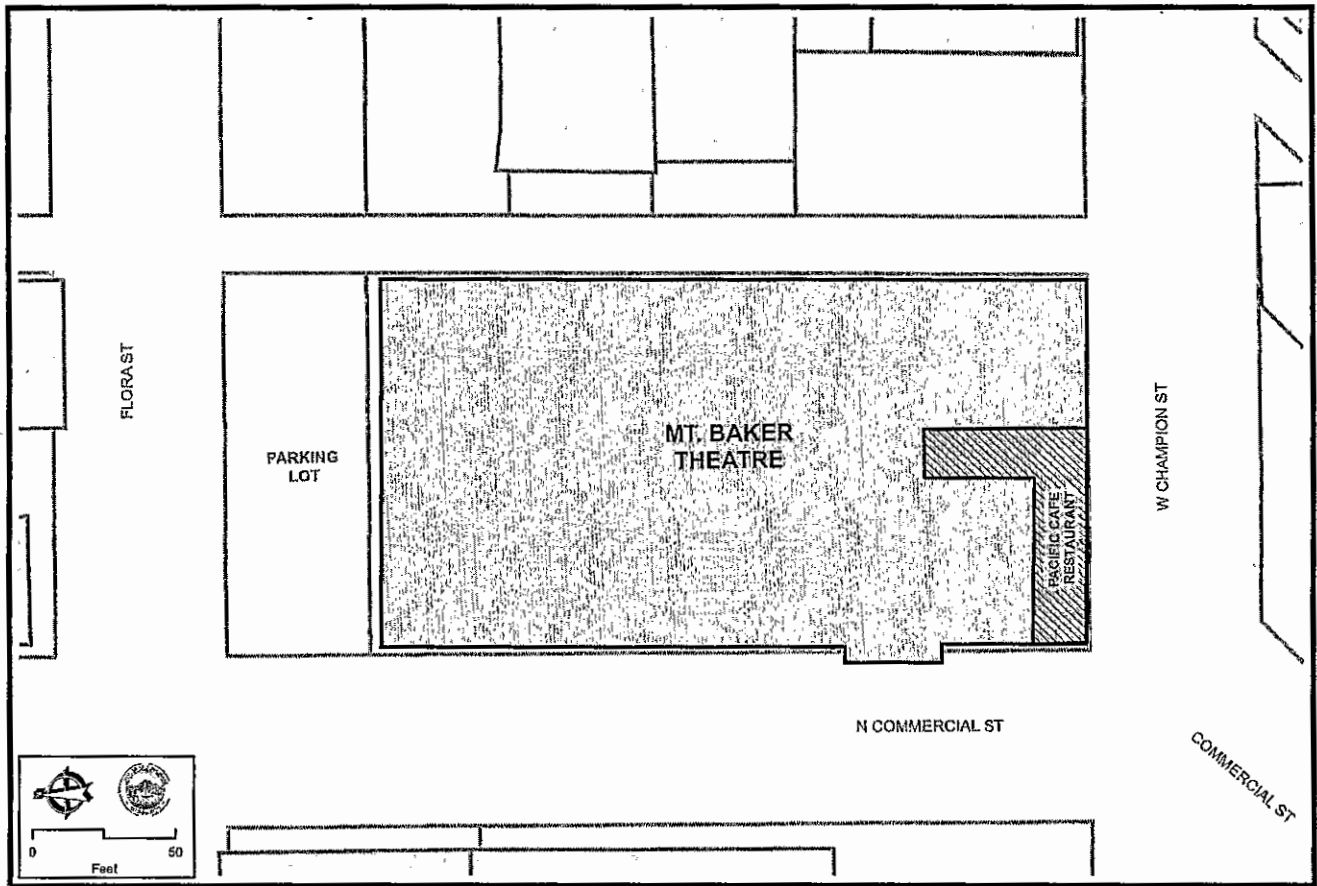


EXHIBIT C—MAINTENANCE AND REPAIR RESPONSIBILITIES

I. **Definitions.** As used in this Section, the following definitions shall apply:

1.1 “End of useful life as determined by City” shall mean the good faith and reasonable determination by City that equipment or component thereof no longer functions and cannot be economically repaired or (in the case of a component) replaced.

1.2 “Major maintenance” shall mean work required when equipment or a structural or non-structural building element has reached the end of its useful life and must be replaced.

1.3 “Preventive” shall mean work accomplished to avoid routine repair and/or extend the useful life of equipment or structural or non-structural building elements.

1.4 “Routine” shall mean all work required when equipment or a structural or non-structural building element is damaged or partially or fully inoperable.

1.5 “Theatre Equipment” shall include, by way of example and not limitation, curtains, orchestra shell, and equipment used for lighting and sound.

II. **Tenant’s Responsibilities.** As part of its operation and management responsibilities and duties, the Tenant agrees to manage the Theatre facility, including the personal property contained thereon, in good and presentable condition during the term of this Agreement. The Tenant agrees to undertake to ensure the following facility management tasks are accomplished and to coordinate with the City to determine if any public bidding, contracting, or contractor living wage requirements are applicable:

2.1 *Routine.*

2.1.1 Interior doors: Repair as needed.

2.1.2 Seats: Repair as needed.

2.1.3 Potable water system and waste water system: Repair or replace showers, sinks, water closets, urinals, sump pump, all dispensers and drinking fountains, as needed.

2.1.4 Electrical fixtures: Repair components, including fixtures and lamps.

2.1.5 Marquee and tower lights: Replace lights and repair marquee computer equipment as needed.

2.1.6 Theatre Equipment: All theatre operational equipment is to be maintained and repaired as needed.

2.2 *Preventive*

2.2.1 Fixed seats: Quarterly inspect and adjust.

2.2.2 Doors: Quarterly inspect, adjust and lubricate interior doors.

- 2.2.3 Interior surfaces (walls, ceilings, floors, etc.): Inspect and repair or paint quarterly except where scaffolding is required.
- 2.2.4 Windows: Inspect quarterly.
- 2.2.5 Plumbing: Quarterly inspect and repair showers, sinks, water closets, urinals, sump pump, all dispensers and drinking fountains.
- 2.2.6 Interior finishes: Maintain according to standards to prevent the necessity of any major maintenance.
- 2.2.7 Theatre Equipment: All theatre operational equipment shall receive a quarterly inspection and repair.
- 2.2.8 Heating System: Regularly back flush the system.
- 2.2.9 Interior: Normal janitorial cleaning, such as, by way of example and not limitation, cleaning walls, ceilings, floors, bathrooms, offices and all other interior finishes and accessories as needed.
- 2.2.10 Furnishings: Clean and repair all furnishings for useful life.

2.3 *Major Maintenance.*

- 2.3.1 Interior finishes: Repair flooring and paint surfaces except where scaffolding is required in lobby, theatre ceiling, upper walls and mezzanine ceilings as needed. Areas requiring scaffolding will be repaired by mutual agreement determined as a part of the annual inspections.
- 2.3.2 Seats: Reupholster/replace seats.
- 2.3.3 Electrical: Fixture modifications or repair/replacement.
- 2.3.4 Plumbing, heating, sewage systems, exterior walls and roof: No responsibility unless caused by the negligence of Manager's officers, directors, employees, agents, invitee, or user of the premises with Manager's permission.

III. City's Responsibilities. The City will retain the following facility related tasks that the parties agree are beyond the Tenant's professional service capability and expertise:

3.1 *Routine.*

- 3.1.1 Roof: Complete repairs.
- 3.1.2 Exterior: Complete repairs.
- 3.1.3 Doors: Repair exterior doors.
- 3.1.4 Exterior Walls: Remove graffiti as needed.

- 3.1.5 Windows: Repair as needed.
- 3.1.6 Potable water system: Repair the lines within the building to the fixtures.
- 3.17 Atmospheric systems (including boiler system, heating, ventilation, hot water tanks): Repair as needed.
- 3.2 *Preventive.*
 - 3.2.1 Roof: Inspect annually, clean gutters and drains, flood-coat every five (5) years or as needed.
 - 3.2.2 Exterior walls: Inspect, seal or paint every five years or as needed.
 - 3.2.3 Exterior doors wooden, metal and roll-up: Inspect, lubricate and adjust as needed.
 - 3.2.4 Marquee and tower: Perform annual checks for electrical systems and structural or other weaknesses.
 - 3.2.5 Sprinkler Systems: Inspect annually, repair and replace as needed, and ensure compliance to code, if required.
 - 3.2.6 Heating System: Regular maintenance other than back flushing the system.
- 3.3 *Major Maintenance.*
 - 3.3.1 Roof: Replace when existing roof at the end of useful life.
 - 3.3.2 Exterior doors: Replace at end of useful life.
 - 3.3.3 Atmospheric systems (including boiler system, heating, cooling, hot water tanks): Replace when components have reached the end of their useful life (estimated replacement times vary).
 - 3.3.4 Interior finishes: Replace any damaged or irreparably harmed part of the interior that the Manager does not maintain per the terms of this Agreement.
 - 3.3.5 Marquee and tower: When components have reached the end of their useful life.
 - 3.3.6 Plumbing, potable water and waste water system: Replace supply and waste lines up to the fixtures and the fixtures, component pipes (but not the plumbing or water fixtures to which they are attached which are maintained by Manager) when they have reached the end of their useful lives.
 - 3.3.7 Electrical: Replace components of the electrical service when they have reached the end of their useful lives.

3.3.8 Sewer: Replace the sewer and side sewer leading to the Theatre when they have reached the end of their useful lives.

3.3.9 Exterior walls: Repair or replace any damage to exterior walls.

3.3.10 Sump Pump: Replace components when they have reached the end of their useful lives.

IV Maintenance Inspections.

4.1 *Inspections.* Except as provided elsewhere in the Agreement, the parties agree to perform maintenance inspections annually in July, to notify each other in writing of any repairs determined to be reasonably necessary in their respective areas of responsibility, and to work cooperatively to set an appropriate timeline to complete the designated repairs, subject to budget and resource constraints. Upon receipt of such notice, each party shall have ten (10) calendar days to determine whether such repairs are reasonably necessary. Each party will notify the other party in writing if there are any repairs that they feel are unnecessary. The parties agree to use their best efforts to negotiate a reasonable settlement of the repair request at issue within fifteen (15) calendar days from the notification that one party feels a repair or repairs are unnecessary. If after a good faith effort, the parties do not reach a reasonable settlement, the parties shall timely submit the dispute to an agreed-upon arbitrator who has knowledge in the area of building maintenance, repair and engineering, and the decision rendered by such arbitrator shall be binding may be entered in a court having competent jurisdiction of the matter. The responsible party shall thereafter make such repairs as determined by the arbitrator and subject to funds available.

4.2 If the losing party fails to make such ordered repairs within a reasonable period of time, the prevailing party, after giving the losing party five (5) days written notice, may make such repairs and charge the losing party the cost thereof, which is subject to funds available. The losing party is not relieved of the responsibility to inspect and maintain the Premises and perform maintenance thereof.

V. Notification. Each party shall provide the other with prompt written notice of those items needing repair or maintenance upon becoming aware of the actual or approaching need for such repair or maintenance. Each party shall promptly commence work listed under its responsibilities, defined above, and shall pursue the completion of such work with due and reasonable diligence under the circumstances.

VI. Damage or Injury to the Theatre. In the event the Theatre is damaged or injured in any manner or nature whatsoever, said damage or injury being caused by the carelessness, negligence or improper conduct on the part of either party, its agents, employees, guests, invitees or licensees (the "Injuring Party"), then in each such instance, the Injuring Party shall promptly cause the said damage or injury to be fully repaired at the Injuring Party's own cost and expense. If the Injuring Party fails to accomplish such repairs, the other, non-injuring party may accomplish the repairs and send the invoice to the Injuring Party for reimbursement. The Injuring Party shall pay the other, non-injuring party within thirty (30) calendar days.

VII. Emergency. In the event of any unanticipated emergency that will result in the Theatre being immediately shut down, the parties will work cooperatively to remedy the emergency and determine responsibility subsequently. "Emergency" shall include, without limitation, any interruption of electrical, heating, plumbing and cooling service that, given the Theatre's age and condition, cannot be predicted or prevented by routine maintenance.

VIII. Tenant's Responsibility to Maintain Records. The Tenant shall maintain and provide to the City, upon written request, complete and accurate records of all routine repairs, preventive maintenance, major maintenance, replacements and service contracts undertaken by or on behalf of the Tenant.

IX. Failure to Maintain. If Tenant fails to keep and maintain the Leased Premises in the condition as set forth herein, Landlord may, at its option and as a non-exclusive remedy, put or cause the same to be put in the condition required thereunder, and Tenant shall pay Landlord the entire cost thereof upon demand.

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DIAMOND PARKING SERVICES LLC

2600 Elliott Avenue, #A Phone: (206) 284-6303
Seattle, WA 98121 Fax: (206) 269-6390

CITY OF BELLINGHAM
CONTRACT#

REC-2005-0001

Bellingham-Whatcom.
Public Facilities District
Ms. Patricia Decker, Manager
104 W. Magnolia, Suite 308
Bellingham, WA 98225

CONFIDENTIAL, PLEASE

NOT FOR PUBLICATION

Parking No. WW13

Date 3/10/05

360-738-7451

Re: 104 N. Commercial, Bellingham, WA

1. The effective date of this agreement is March 15, 2005.
2. This letter agreement sets forth in writing our understanding that Diamond Parking Services LLC ("Diamond Parking") will operate a parking facility on the above referenced property 24 hours a day, 7 days a week as an independent contractor under the terms and conditions set forth below.
3. It is our understanding that the Undersigned is the Owner or authorized representative of the above referenced property, hereinafter referred to as "Owner", and that there are no zoning or other restrictions that would prohibit the use of the property as a public parking facility.
4. Diamond Parking will keep the parking facility in a neat and clean condition, and if available, will be allowed to enter 48 hours prior to the effective date for the purpose of installing signs and fixtures. Diamond Parking will have the right to make any operating improvements that are necessary to operate the parking facility. All improvements such as trade fixtures, signs, lights, bumpers, pay boxes and attendant's facilities that are installed by Diamond Parking at its own expense will remain the property of Diamond Parking. Upon removal of these improvements, Diamond Parking will restore the property to its original condition.
5. For Its management services, Diamond Parking will be paid an amount for each month equal to the sum of (i) \$125.00, plus (ii) an amount equal to forty percent (40%) of gross parking revenue generated by the parking facility less \$125.00. However in no event shall the total monthly compensation paid to Diamond Parking under this agreement exceed two times (i) above, or \$250.00. Percentage rent will be paid on or before the twenty-fifth (25th) day of the following month.
6. Diamond Parking will keep complete and accurate records of all income relating to this parking facility. Said records will be available for inspection by Owner or Owner's authorized representative at any reasonable time.

Diamond Parking Services LLC
Parking Facility Management Agreement

7. The initial term of this agreement shall commence on March 15, 2005, and expire on December 31, 2005. This agreement shall automatically renew for successive one-month terms, unless this agreement is terminated as provided in accordance with the following sentence. This agreement may be terminated at any time by either of the parties by giving thirty (30) days advance written notice to the other party.

Diamond Parking acknowledges that the parking facility was acquired with the proceeds of tax-exempt bonds and that the continuing tax-exemption of such bond depends, in part, on how the parking facility is used. In furtherance of the foregoing, Diamond Parking will cause parking stalls in the parking facility to be provided to the general public, on a first-come first-served basis (with no priority rights be afforded to any person or business), for periods of time no longer than one month, and for parking fees that represent the fair market value for the parking privileges being purchased. Any arrangement entered into by Diamond Parking with others for use of the parking facility shall be entered at arm's-length.

8. Upon termination of this agreement, Diamond Parking will vacate the parking facility leaving it in good condition, less damage by fire, the elements, or ordinary wear and tear.
9. All personal property of Diamond Parking or its effects of any kind or description whatsoever left on or about the Premises shall be at Diamond Parking's sole risk and Owner shall not be liable or responsible for any damage done to or loss of such personal property or effects. In addition, Owner shall not be liable or responsible for damage, loss or injury suffered by Diamond Parking, its employees, agents, or guests arising from any manner whatsoever.

Diamond Parking shall indemnify and hold the Bellingham-Whatcom Public Facilities District and its successors and assigns, and their respective officers, directors, employees, members, and agents harmless from and against any claim, demand, action, proceeding, loss, damage, suit, cost or expense, including but not limited to reasonable attorneys' fees and costs, arising exclusively from or related in any matter to the operation of the parking lot as well as to Diamond Parking's negligent acts or omissions in the performance of its duties and/or responsibilities under this Agreement, except to the extent caused by Owner's negligence or willful act.

Should any disputes arise with respect to the applicability and/or interpretation of the parties' respective rights to indemnification, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in addition to any other remedy. The parties' rights regarding indemnification shall survive the expiration or earlier termination of this Lease.

Diamond Parking shall purchase, and maintain at its sole cost and expense, comprehensive general liability and property damage insurance insuring the Premises and the parking

Diamond Parking Services LLC
Parking Facility Management Agreement

operations, placed with a reputable and financially strong insurance carrier. The minimum limits of insurance shall be:

- (a) General Liability - \$2,000,000 combined single limit per occurrence and for those policies with aggregate limits, a \$5,000,000 aggregate limit;
- (b) Automobile Liability - \$1,000,000 combined single limit per accident for bodily injury and property damage;
- (c) Workers' Compensation: Statutory requirements of the state of residence or \$1,000,000 per occurrence, whichever is greater;

Such policies shall name Owner as additional insured with a severability of interests endorsement and the carrier(s) shall be required to give Owner at least thirty (30) days advance written notice of non-renewal or cancellation. Upon ten (10) days of mutual execution of this Agreement, Diamond Parking shall give Owner or its representative a Certificate(s) of Insurance, together with an additional insured endorsement, reflecting the required coverages.

Both parties hereby waive all rights of recovery against the other on account of loss or damage to each party or its property or the property of others under its control to the extent that such loss or damage is insured under any insurance policies which either party is required to carry pursuant to the terms of this Agreement.

- 10. Coordination of snow removal on the parking facility will be the responsibility of Diamond Parking. The cost of snow removal will be deducted from the Owner's share of the parking facility revenues.
- 11. Structural, mechanical, or other installations and any alterations required by law or regulations pertaining to air quality, environmental protection, provisions required by the Americans with Disabilities Act, or other similar governmental rules or regulations will remain the responsibility of the Owner.
- 12. This agreement may be withdrawn by Diamond Parking if not executed by Owner within sixty (60) days.
- 13. Your signature on a copy of this cancelable letter agreement will constitute your acceptance of these terms and conditions. Thank you.

Diamond Parking Services LLC
Parking Facility Management Agreement

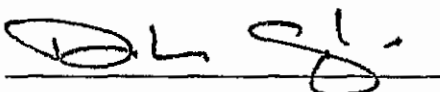
It is AGREED this 16th day of March, 2005.

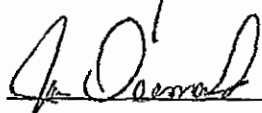
BELLINGHAM-WHATCOM
PUBLIC FACILITIES
DISTRICT

DIAMOND PARKING
SERVICES LLC

Print: Dunham Gooding

Print: Jon Diamond

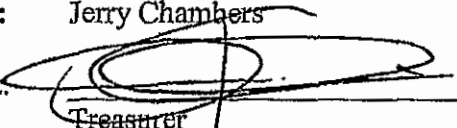
Signed
by: 

Signed
by: 

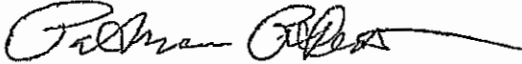
Title: President

Title: Its Member

Print: Jerry Chambers

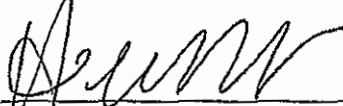
Attest.
Title: 
Treasurer

Print: Patricia R. Decker

Signed
by: 

Title: Manager

Print: Heather Wolf

Signed
by: 

Title: Counsel

Tax
ID: 26-0073333

Tax
ID: _____

Email: pdecker@cob.org

Email: Jon.diamond@diamondparking.c
om

Diamond Parking Services LLC
Parking Facility Management Agreement

APPROVED PER INTERLOCAL AGREEMENT WITH THE
BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT:

Print: Mark Asmundson

Signed
by:

Mark Asmundson MAR 22 2005

Title: Mayor, City of Bellingham

Print: Therese Holm

Attest:

Therese Holm

Title: Finance Director,
City of Bellingham

Print: Les Reardanz

Signed
by:

Les E. Reardanz

Title: Assistant City Attorney, City of
Bellingham

CITY OF BELLINGHAM
CONTRACT#

ENDORSEMENT No. 3

IT IS HEREBY UNDERSTOOD AND AGREED THAT the Named Insured as shown on the Declarations page of the Policy is AMENDED as follows:

City of Bellingham; Mt. Baker Condominium Association; **Bellingham Whatcom Public Facilities District**

Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.

Issued to: City of Bellingham et al

This endorsement becomes effective on the first day of January, 2005.

Attached to and forming part of Policy No. CICA 2145 of the Commonwealth Insurance Company of America.

COMMONWEALTH INSURANCE COMPANY OF AMERICA

Per

Rebecca Wallinder

PFD RESOLUTION NO. 2002-1

A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT AUTHORIZING THE CITY OF BELLINGHAM, WASHINGTON TO INCUR REASONABLE START UP EXPENSES ON THE DISTRICT'S BEHALF AND TO PROVIDE THE CITY OF BELLINGHAM WITH REIMBURSEMENT OF THOSE COSTS.

WHEREAS, the Bellingham City Council and the Whatcom County Council have created the Bellingham-Whatcom Public Facilities District ("District") pursuant to RCW Chapter 35.57; and,

WHEREAS, in order for the District to begin operating, the District will necessarily incur certain start up expenses; and,

WHEREAS, these start up expenses must be incurred before the District can begin receiving revenue; and,

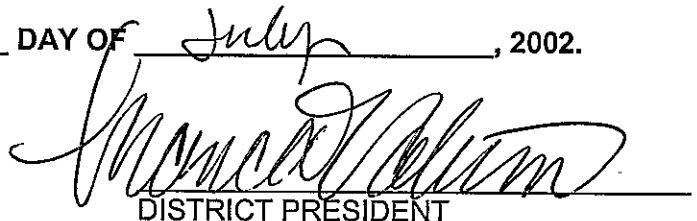
WHEREAS, the District has no funds to pay these start up expenses; and,

WHEREAS, the City of Bellingham has offered to pay for the District's reasonable start up expenses with the understanding that the District will reimburse the City for the actual costs incurred in starting up the District;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT:

The City of Bellingham is authorized to incur reasonable start up expenses on the District's behalf for such items as, by way of example and not limitation, accounting and legal expenses, staff support time and benefits, and operating supplies. The District will reimburse the City for those reasonable start up expenses at the City's actual cost.

PASSED BY DISTRICT THIS 31 DAY OF July, 2002.


DISTRICT PRESIDENT

ATTEST: 
District Treasurer

APPROVED AS TO FORM:


District Counsel

Published: _____

PFD RESOLUTION NO. 2002-2

A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT IMPLEMENTING THE TAX AUTHORIZED UNDER RCW 82.14.390 AND REQUESTING THAT THE WASHINGTON DEPARTMENT OF REVENUE COMPUTE AND BEGIN COLLECTING AND REMITTING THE TAX PURSUANT TO STATE LAW.

WHEREAS, in July 2002, the Bellingham City Council and the Whatcom County Council created the Bellingham-Whatcom Public Facilities District ("District") pursuant to RCW Chapter 35.57; and,

WHEREAS, the District was formed for the purpose of constructing and operating a regional center as defined in RCW 35.57.020; and,

WHEREAS, public facilities districts are independent taxing authorities and taxing districts within the meaning of the Article VII, Sections 1 and 2 of the Washington State Constitution; and,

WHEREAS, RCW Chapter 35.57 and RCW 82.14.390 authorizes the governing body of a public facilities district to impose a sales and use tax at a rate of 0.033 percent for the purposes authorized in RCW Chapter 35.57; and,

WHEREAS, RCW 82.14.390 requires that the Washington State Department of Revenue collect the tax at no cost to the public facilities district; and,

WHEREAS, collecting this tax is in the best interests of Whatcom County residents;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT:

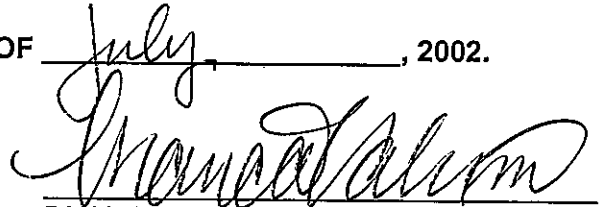
Section 1. Pursuant to statutory authorization, the Bellingham-Whatcom Public Facilities District hereby implements the tax authorized under RCW 82.14.390. This tax is in addition to any other statutorily authorized taxes the District may decide to implement in the future. The tax shall be collected from those persons who are taxable by the state under RCW Chapters 82.08 and 82.12 upon occurrence of any taxable event within the District. The rate of tax shall be 0.033 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

Section 2. The District hereby requests that the Washington State Department of Revenue compute the sales and use tax authorized by RCW Chapter 35.57 and RCW 82.14.390 from the taxable transactions within the District's boundaries of Whatcom County, Washington and the City of Bellingham, Whatcom County, Washington.

Section 3. The District also requests that the Department of Revenue, at the earliest date allowed by law, begin collecting such taxes at no cost to the District in accordance with RCW 82.14.390 and transmit such collected taxes to the District's fiscal agent, the City of Bellingham.

Section 4. The City of Bellingham, as the District's fiscal agent, is hereby authorized to notify the Department of Revenue of this Resolution and act on the District's behalf in regards to the requests contained herein.

PASSED BY DISTRICT THIS 30 DAY OF July, 2002.


DISTRICT PRESIDENT

ATTEST:


District Treasurer

APPROVED AS TO FORM:


District Counsel

Published: _____

RESOLUTION NO. 2002-6

**A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
APPROVING A PURCHASING AGREEMENT WITH THE CITY OF BELLINGHAM AND
AUTHORIZING THE DISTRICT PRESIDENT TO EXECUTE THE AGREEMENT.**

Whereas, the Bellingham-Whatcom Public Facilities District ("District") is authorized to enter into contracts and agreements; and,

Whereas, the District anticipates needing to contract for services, supplies, material, or equipment; and,

Whereas, entering into a purchasing agreement with the City of Bellingham ("City") is in the District's best interests;

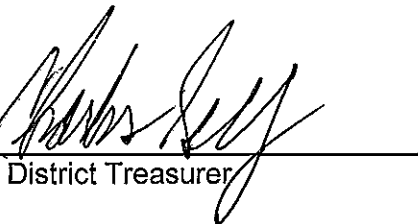
**NOW, THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM
PUBLIC FACILITIES DISTRICT:**

The District hereby approves the Purchasing Agreement ("Agreement") that is attached hereto as Exhibit A and incorporated herein by this reference. The District President is hereby authorized to execute the attached Agreement on the District's behalf.

PASSED BY DISTRICT THIS 18th DAY OF December, 2002.


DISTRICT PRESIDENT

ATTEST:


District Treasurer

APPROVED AS TO FORM:


District Counsel

Resolution Approving A Purchasing Agreement
with the City of Bellingham - 1

PURCHASING AGREEMENT**CITY OF BELLINGHAM - BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT**

WHEREAS, the City of Bellingham ("City") and the Bellingham-Whatcom Public Facilities District ("District") each desire to make purchases, from time to time, from contracts the other has secured as a result of competitive bidding; and,

WHEREAS, RCW 39.34 permits governmental agencies to contract with one another for purposes of their mutual benefit;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS UNDERSTOOD AND MUTUALLY AGREED AS FOLLOWS:

1. The City and the District each agree to extend to the other the benefits of contracts entered into for the purchase of services, supplies, material, and equipment, on the terms and conditions set forth herein.
2. Notwithstanding the date of execution of this Agreement, it shall be effective beginning December 1, 2002 and shall continue in effect until terminated by written notice from one party to the other. The termination shall become effective no earlier than five (5) days after receipt of such notice.
3. Purchases may be made in the following manner: (a) from one party acting as agent for the other or (b) by one party directly from the vendor. In the latter event, the purchasing (not the "bidding") party takes sole responsibility for administering the purchasing contract, including, by way of example, determining the quality and delivery of goods, payment, disputes, etc.
4. Each party shall comply in all respects with local and State laws and regulations regarding public bidding applicable to it, and further shall indicate on notices to bidders that bid policies shall be made available to the other party or parties, as the case may be. Each party agrees to defend, indemnify

and hold harmless the other party from any suits, claims, or actions arising from allegations that such party has not complied with such public bidding laws and regulations.

5. Contacts:

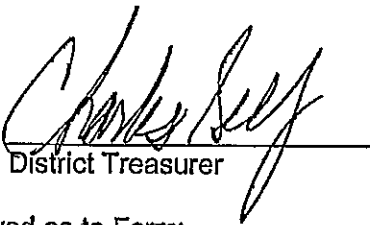
City of Bellingham
Purchasing Division
2221 Pacific Street
Bellingham, Washington 98225
(360) 676-6870
(360) 676-6995 (Fax)

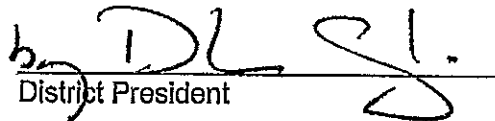
Bellingham-Whatcom Public
Facilities District
210 Lottie Street
Bellingham, Washington 98225
(360) 676-6900
(360) 738-7409 (Fax)

IN WITNESS WHEREOF, this Agreement is duly executed as follows:

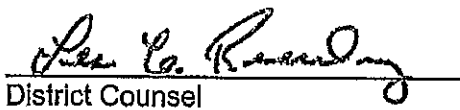
DATED this 18th day of December, 2002 for the District:

Attest:


District Treasurer

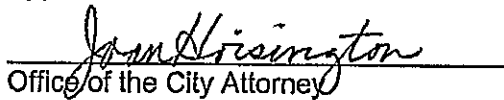

District President

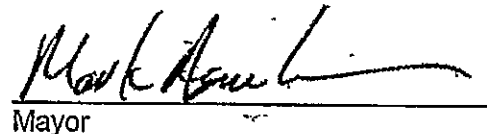
Approved as to Form:


District Counsel

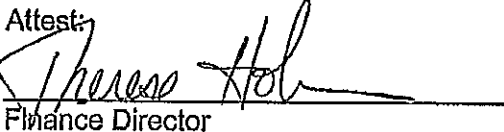
DATED this 7th day of January, 2002 for the ^{City} District:

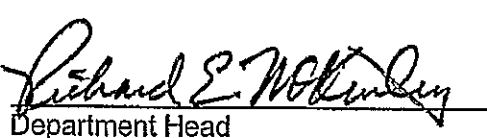
Approved as to Form:


Office of the City Attorney


Mayor

Attest:


Finance Director


Department Head

RESOLUTION NO. 2002-7

**A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
SETTING FORTH THE CONCEPT OF THE DISTRICT'S REGIONAL CENTER PROJECT.**

Whereas, the Bellingham-Whatcom Public Facilities District ("District") is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more regional centers; and,

Whereas, a regional center means a convention, conference, or special events center, or any combination of facilities, and related parking; and,

Whereas, a special events center is a public facility used for community events, sporting events, trade shows, and artistic, musical, theatrical, or other cultural exhibitions, presentations or performances; and,

Whereas, the District's Board of Directors ("Board") wishes to provide a concept of the District's regional center project;

**NOW, THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM
PUBLIC FACILITIES DISTRICT:**

1. The District's regional center project may include, but not be limited to any or all of the following elements:

1.1 The partial renovation of the Mount Baker Theatre ("Theatre");

1.2 The partial property acquisition of land adjacent to the Theatre to allow for the Theatre's expansion;

1.3 The purchase of several properties in the City Center area for future regional center construction;

1.4 The partial renovation of the Whatcom Museum, including, by way of example, seismic renovation;

1.5 The future conversion of the existing Bellingham Library building for Museum uses, such as for the Children's Museum and exhibit space; provided, that the Bellingham Library vacates the building;

1.6 The land acquisition and development of related parking facilities.

2. As required by RCW 35.57.020, the Board estimates that the foregoing shall cost at least ten million dollars, including debt service.

Resolution Setting Forth the
Concept of the Regional Center
Project - 1

3. The Board intends the foregoing to be a conceptual listing of the regional center project elements and is not intended to be binding upon the District or to provide any rights or create any liability on the District's part.

PASSED BY DISTRICT THIS 18th DAY OF December, 2002.

h. J. D. L. S. I.
DISTRICT PRESIDENT

ATTEST: Charles S. S.
District Treasurer

APPROVED AS TO FORM:

Les E. Reardon
District Counsel

Resolution Setting Forth the
Concept of the Regional Center
Project - 2

PFD RESOLUTION NO. 2003-1

**A RESOLUTION OF THE BELLINGHAM WHATCOM PUBLIC FACILITIES DISTRICT
ADOPTING A DISTRICT POLICY ON SELECTION OF SERVICE PROVIDERS.**

WHEREAS, Public Facilities District ("District") are generally authorized to enter into contracts and agreements for services under RCW 35.57.010; and

WHEREAS, although it is the City's responsibility, under the governing documents establishing the Bellingham-Whatcom Public Facilities District, to enter into most types of service agreements for the proposed regional center, there will be some limited services the District will need to secure directly; and

WHEREAS, RCW 35.57.070 requires the District to meet certain general procedural requirements as part of the selection of service providers for the District; and

WHEREAS, the District in any event desires to ensure an open and competitive process when it undertakes selection of services providers,

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE
BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT:**

The District hereby adopts the Policy for Selection of Service Providers that is attached hereto as Exhibit A and incorporated herein by this reference.

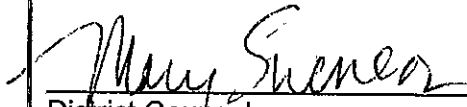
PASSED BY DISTRICT THIS 31ST DAY OF January, 2003.


DISTRICT PRESIDENT

ATTEST:


District Treasurer

APPROVED AS TO FORM:


District Counsel

Published: _____

BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT

POLICY NO. 1

Title: SELECTION OF SERVICE PROVIDERS

1. Purpose

The purpose of this Policy is to establish standards and procedures for selection of Public Facilities District (hereinafter "District") service providers in compliance with RCW 35.57.070 and other applicable law.

2. Scope

Under the governing documents, the City of Bellingham (hereinafter "the City") has the responsibility to enter into most types of service agreements in connection with developing and operating the proposed regional center. However, there are some circumstances in which the District will need to secure services directly. This policy shall apply to each occasion when the District seeks to secure services directly.

3. Policy Statement

It is the policy of the District to use a competitive process when securing services which provide an equal and open opportunity for qualified applicants to be considered.

4. Procedures and Standards

The selection of service providers shall be made by the District using the following procedures:

a. Advisory Committee. The District Board of Directors shall form or authorize City staff to form a selection advisory committee of no less than two members and made up of board members and/or City staff and optionally other persons at the Board's discretion.

b. Request for Proposal. The District through City staff in consultation with the selection advisory committee shall prepare a Request for Proposal (RFP) outlining the services to be provided, the requirements of the task, the criteria for selection, the minimum contract period, and other selection information.

c. Notice. The District through City staff shall take reasonable steps to identify firms or individuals who are potential candidates and shall notify them of the RFP and invite them to apply. Notification shall include at least one notice in the Bellingham Herald published a minimum of ten calendar days in advance of the deadline for submission of the RFP.

d. Criteria. The following criteria shall be used in the selection process in addition to other relevant criteria appropriate to the particular service:

- 1) Ability and Capacity to perform the service;
- 2) Experience and reputation of the firm and/or the assigned individual(s);
- 3) Quality of previous performance with other clients;
- 4) Proposed fees and costs;
- 5) Responsiveness to solicitation requirements and time limitations;
- 6) Compliance with statutes and requirements relating to contracts and services; and
- 7) Ability of the firm to begin the work and to complete the work on time within the budget and contracted amount.

e. Evaluation of Proposals. The selection advisory committee shall review and evaluate the proposals in accordance with the established criteria. The process may include interviews with finalists and site visits. The committee shall report its recommendations to the District Board.

f. Final Selection. The District Board itself shall carefully consider the recommendations of the Advisory Committee and shall make the final selection.

5. Negotiation of Contract Terms

The contract to be negotiated with the selected firm or individual shall include, among other things, the following:

- a. A written description of the purposes of the contract and the services to be provided, the payment terms, the responsible person for each party, and the contract period.
- b. A provision specifying that all applicable federal, state, and local laws and regulations shall be observed.

6. Use of City Purchasing Agreement As Alternative

Pursuant to District Resolution No. 2000-6 the District may, as an alternative to the procedures outlined above, make use of existing City "on call" agreements to retain service providers for the District.

7. Emergency

In the event of an emergency reasonably requiring immediate action, the District Board through its President, or if unavailable its Vice President, may authorize departure from these requirements, as is consistent with applicable law.

**BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
RESOLUTION NO. 2003-3**

A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT DECLARING ITS OFFICIAL INTENT TO REIMBURSE CAPITAL EXPENDITURES IN CONNECTION WITH THE DEVELOPMENT OF A REGIONAL CENTER WITHIN THE CITY OF BELLINGHAM FROM PROCEEDS OF A FUTURE BORROWING.

Whereas, the Bellingham-Whatcom Public Facilities District (the "District"), intends to make expenditures for the Project (identified below) from funds that are available but that are not (and are not reasonably expected to be) reserved, allocated on a long-term basis or otherwise set aside for those expenditures, and reasonably expects to be reimbursed for those expenditures from proceeds of bonds or other obligations ("bonds") issued to finance those expenditures; and

Whereas, certain federal regulations (the "federal reimbursement regulations") relating to the use of proceeds of tax exempt bonds to reimburse the issuer of the bonds for expenditures made before the issue date of the bonds require, among other things, that not later than 60 days after payment of the original expenditure the District (or any person designated by the District to do so on its behalf) declare a reasonable official intent to reimburse those expenditures from proceeds of bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT:

Section 1. Description of Project for Which Expenditures are to be Made. The District intends to make (and/or, not more than 60 days before the date of this declaration, has made) expenditures, and reasonably expects to reimburse itself for those expenditures from proceeds of bonds, for the following project, property or program (the "Project"):

Development of a regional center within the City of Bellingham (the "City"), which is anticipated to include, but not be limited to, the following elements:

- The partial renovation of the Mount Baker Theatre (the "Theatre");
- The acquisition of land adjacent to the Theatre to allow for the Theatre's expansion;
- The purchase of several properties in the City Center area for future regional center construction;
- The renovation of the Whatcom Museum, including, by way of example, seismic renovation;

- The conversion of the existing Bellingham Library building for Museum uses, such as for the Children's Museum and exhibit space; but only if the Bellingham Library vacates the building;
- The acquisition of land for and development of related parking facilities.

Section 2. Maximum Principal Amount of Obligations Expected to be Issued for the Project. The District expects that the maximum principal amount of bonds that will be issued to finance the Project will be \$15,000,000.

Section 3. Declaration Reasonable. The District has reviewed its existing and reasonably foreseeable budgetary and financial circumstances and has determined that the District reasonably expects to reimburse itself for expenditures for the Project from proceeds of bonds because the District has no funds available that already are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside by the District for those expenditures on the Project.

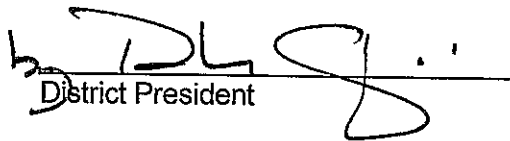
Section 4. Limitations on Uses of Reimbursement Amounts. The District will not, within one year after the expected reimbursement, use amounts corresponding to proceeds received from bonds issued in the future to reimburse the District for previously paid expenditures for the Project in any manner that results in those amounts being treated as replacement proceeds of any tax exempt bonds, i.e., as a result of being deposited in a reserve fund, pledged fund, sinking fund or similar fund (other than a bona fide debt service fund) that is expected to be used to pay principal of or interest on tax exempt bonds. Nor will the District use those amounts in any manner that employs an abusive arbitrage device to avoid arbitrage restrictions.

Section 5. Date of Declaration. This declaration of official intent shall be dated as of the date of adoption of this resolution.

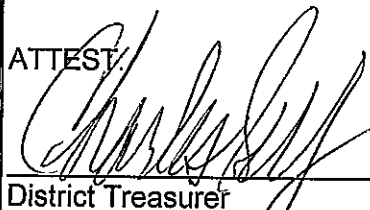
Section 6. Ratification and Confirmation. Any actions of the District or its officers prior to the date thereof and consistent with the terms of this resolution are ratified and confirmed.

Section 7. Effective Date. This resolution shall be in full force and effect from and after its adoption and approval.

PASSED BY THE DISTRICT THIS 26th DAY OF March, 2003.

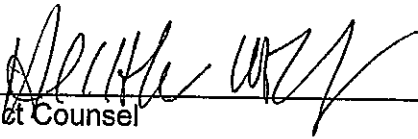

District President

ATTEST:


District Treasurer

Resolution regarding reimbursement - 2

APPROVED AS TO FORM:



District Counsel



COB's Document eRouter

PPD
2003-R#

Tracking Number AMHW-5U4SDA
Type Resolution 2003-4
Dept mayor
Title: A Resolution of the Bellingham-Whatcom Public Facilities District Describing the Initial Components of the Regional Center

Comments / Special Instructions:

Please scan and e-mail to Alison Henshaw

Routing List

You are an Administrator of the approval process

Document eRouter: In Process

Approvers	Title	Assigned	Notified	Received	Status Changed	Status
Marc L Hagen	Office Assistant I/PT	12/10/2003	12/10/2003	-	-	-

Approval Cycle Settings

most

② Approval conditions:	100 % approval
② Routing method	Serial (one at a time)
② Approvers	Marc L Hagen/finance/cob
② Allow Approver comments	Yes
② Automatically Delegate to Assistant...	Yes
② Automatically Skip Approvers...	Yes
Days until skipped/delegated	30 Days
	30 Days

Notification
Access

12/12/03 Rec'd in fin.

12/17/03 Notes/jockey/ST-Sean

**BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
RESOLUTION NO. 2003-4**

**A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
DESCRIBING THE INITIAL COMPONENTS OF THE REGIONAL CENTER.**

Whereas, the Bellingham-Whatcom Public Facilities District ("District") is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more regional centers; and

Whereas, a regional center means a convention, conference, or special events center, or any combination of facilities, and related parking; serving a regional population; and

Whereas, a special events center is a public facility used for community events, sporting events, trade shows, and artistic, musical, theatrical, or other cultural exhibitions, presentations, or performances; and

Whereas, the District has previously determined that the District's regional center project may include, but not be limited to any or all of the following elements: the partial renovation of the Mount Baker Theatre ("Theatre"); the partial property acquisition of land adjacent to the Theatre to allow for the Theatre's expansion; the purchase of several properties in the City Center area for future regional center construction; the partial renovation of the Whatcom Museum, including, by way of example, seismic renovation; the future conversion of the existing Bellingham Library building for Museum uses, such as for the Children's Museum and exhibit space, provided that the Bellingham Library vacates the building; and the land acquisition and development of related parking facilities; and

Whereas, the purpose of the regional center is to provide a cultural and educational center for the regional community;

Whereas, the total cost of the regional center, including debt service, is estimated to be in excess of ten million dollars; and

Whereas, each of the possible elements of the regional center, including the Theatre and the Whatcom Museum, serve a regional population; and

Whereas, the District has undertaken a fundraising feasibility study to determine the availability of funding sources for projects that may be included in the regional center; and

Whereas, the District has acquired properties adjacent to the Theatre for the purpose of expanding the Theatre and/or for related parking facilities; and

Whereas, the District has obtained construction cost estimates for the renovation of the Theatre; and

Whereas, the renovation of the Theatre consists of three phases; and

Whereas, the total project cost of the renovation of the Theatre is estimated to be in excess of ten million dollars; and

Whereas, the District has committed to completion of Phase I of the renovation of the Theatre; and

Whereas, the District has determined that a streetscape should be designed to create a sense of place, enhance the pedestrian experience, and establish a unifying image for the regional center; and

Whereas, the District desires to describe the initial components of the regional center project;

NOW, THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT:

1. The initial component of the regional center project shall be Phase I of the renovation of the Theatre and shall also include the design of a streetscape to create a sense of place, enhance the pedestrian experience, and establish a unifying image for the regional center.

2. The District will commence construction on the regional center with Phase I of the renovation of the Theatre; and construction on Phase I of the renovation of the Theatre will commence prior to January 1, 2004.

3. Upon completion of Phase I of the renovation of the Theatre, the District will pursue one or more of the following components of the Regional Center:

- a) Construction of all or a portion of the streetscape;
- b) Design and renovation of existing space for Museum purposes;
- c) Design and construction of new Museum facilities;
- d) Acquisition of additional property for other components of the Regional Center;
- e) Construction of Phases II and/or III of the Theatre; and
- f) Design and construction of one or more performing arts facilities.

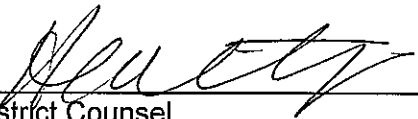
PASSED BY THE DISTRICT THIS 10th DAY OF DECEMBER, 2003.

by DL
District President

ATTEST

[Signature]
District Treasurer

APPROVED AS TO FORM:


District Counsel



COB's Document eRouter

PFD
2003-R6

Tracking Number AMHW-5UJQXK
Type Resolution 2003-6
Dept: mayor
Title: A Resolution of the Bellingham-Whatcom Public Facilities District Amending Resolution 2003-4

Comments / Special Instructions:

Please scan and e-mail to Alison Henshaw. Thank you.

Routing List:

You are an Administrator of the approval process

Document eRouter: In Process

Approvers	Title	Assigned	Notified	Received	Status Changed	Status
Marc L Hagen	Office Assistant I/PT	12/24/2003	12/24/2003	-	-	-

Approval Cycle Settings

math

☐	Approval conditions:	100 % approval
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☐	Allow Approver comments	Yes
☐	Automatically Delegate to Assistant...	Yes
☐	Automatically Skip Approvers...	Yes
	Days until skipped/delegated	30 Days
		30 Days

Notification
Access

12/30/03 Rec'd in Ltr.
12/30/03 Notes/Jackie/ST-Dean

**BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
RESOLUTION NO. 2003-6**

**A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
AMENDING RESOLUTION NO. 2003-4.**

Whereas, the Bellingham-Whatcom Public Facilities District ("District") passed Resolution 2003-4 on December 10, 2003; and

Whereas, the District wishes to amend said resolution;

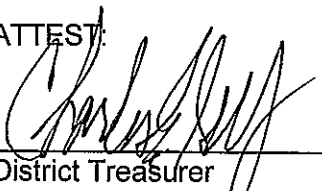
**NOW, THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM
PUBLIC FACILITIES DISTRICT:**

Resolution 2003-4, a copy of which is attached hereto, is amended in the following respects:

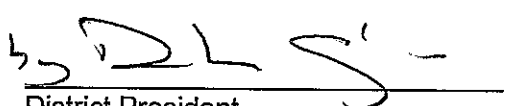
1. The word "initial" shall be removed from the heading, footer, and the final "whereas" paragraph;
2. Paragraph 3 shall be amended as follows: The word "and" shall be removed from the end of subparagraph e); the period should be removed from the end of subparagraph f) and replaced with a semicolon and the word "and"; and a subparagraph g) will be added, to-wit: "Related Parking Facilities".
3. The remainder of Resolution 2003-4 shall be unchanged and remain in full force and effect.

PASSED BY THE DISTRICT THIS th24 DAY OF DECEMBER, 2003.

ATTEST:



District Treasurer



District President

APPROVED AS TO FORM:



District Counsel

**BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
RESOLUTION NO. 2003-4**

**A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
DESCRIBING THE INITIAL COMPONENTS OF THE REGIONAL CENTER.**

Whereas, the Bellingham-Whatcom Public Facilities District ("District") is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more regional centers; and

Whereas, a regional center means a convention, conference, or special events center, or any combination of facilities, and related parking; serving a regional population; and

Whereas, a special events center is a public facility used for community events, sporting events, trade shows, and artistic, musical, theatrical, or other cultural exhibitions, presentations, or performances; and

Whereas, the District has previously determined that the District's regional center project may include, but not be limited to any or all of the following elements: the partial renovation of the Mount Baker Theatre ("Theatre"); the partial property acquisition of land adjacent to the Theatre to allow for the Theatre's expansion; the purchase of several properties in the City Center area for future regional center construction; the partial renovation of the Whatcom Museum, including, by way of example, seismic renovation; the future conversion of the existing Bellingham Library building for Museum uses, such as for the Children's Museum and exhibit space, provided that the Bellingham Library vacates the building; and the land acquisition and development of related parking facilities; and

Whereas, the purpose of the regional center is to provide a cultural and educational center for the regional community;

Whereas, the total cost of the regional center, including debt service, is estimated to be in excess of ten million dollars; and

Whereas, each of the possible elements of the regional center, including the Theatre and the Whatcom Museum, serve a regional population; and

Whereas, the District has undertaken a fundraising feasibility study to determine the availability of funding sources for projects that may be included in the regional center; and

Whereas, the District has acquired properties adjacent to the Theatre for the purpose of expanding the Theatre and/or for related parking facilities; and

Whereas, the District has obtained construction cost estimates for the renovation of the Theatre; and

Whereas, the renovation of the Theatre consists of three phases; and

Whereas, the total project cost of the renovation of the Theatre is estimated to be in excess of ten million dollars; and

Whereas, the District has committed to completion of Phase I of the renovation of the Theatre; and

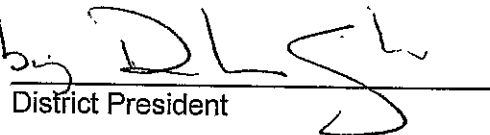
Whereas, the District has determined that a streetscape should be designed to create a sense of place, enhance the pedestrian experience, and establish a unifying image for the regional center; and

Whereas, the District desires to describe the initial components of the regional center project;

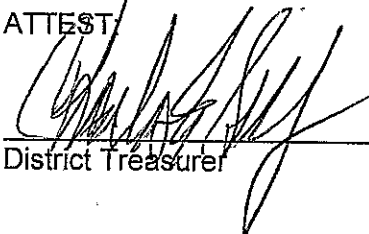
NOW, THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT:

1. The initial component of the regional center project shall be Phase I of the renovation of the Theatre and shall also include the design of a streetscape to create a sense of place, enhance the pedestrian experience, and establish a unifying image for the regional center.
2. The District will commence construction on the regional center with Phase I of the renovation of the Theatre; and construction on Phase I of the renovation of the Theatre will commence prior to January 1, 2004.
3. Upon completion of Phase I of the renovation of the Theatre, the District will pursue one or more of the following components of the Regional Center:
 - a) Construction of all or a portion of the streetscape;
 - b) Design and renovation of existing space for Museum purposes;
 - c) Design and construction of new Museum facilities;
 - d) Acquisition of additional property for other components of the Regional Center;
 - e) Construction of Phases II and/or III of the Theatre; and
 - f) Design and construction of one or more performing arts facilities.

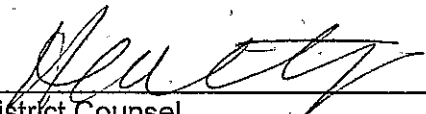
PASSED BY THE DISTRICT THIS 10th DAY OF DECEMBER, 2003.


District President

ATTEST


District Treasurer

APPROVED AS TO FORM:


District Counsel

RESOLUTION NO. 2004-1

**A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
AUTHORIZING THE DISTRICT'S STAFF AND ATTORNEYS TO TAKE CERTAIN
PRELIMINARY ACTION TO STRUCTURE THE FINANCING OF THE DISTRICT'S
REGIONAL CENTER.**

Whereas, the Bellingham-Whatcom Public Facilities District (the "District") is a body corporate and a municipal corporation created and existing pursuant to chapter 35.57 RCW, with the power to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more "regional centers"; and

Whereas, RCW 35.57.020 defines "regional center" to include convention centers and facilities available to the public and used for community events, trade shows, and artistic, musical, theatrical, or other cultural exhibitions, presentations, or performances, together with related parking facilities, so long as such facilities serve a regional population and is constructed, improved or rehabilitated after July 25, 1999, at a cost of at least \$10,000,000; and

Whereas, the District is authorized by RCW 82.14.390 to collect, and currently does collect, a retail sales and use tax (the "Sales Tax") within the District's boundaries at a rate not exceeding 0.033% of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax), the revenue derived from which must be used for the purposes set forth in RCW 35.57.020; and

Whereas, RCW 82.14.390 provides that revenue derived by the District from the Sales Tax must be matched with an amount from other public or private sources equal to 33% of the amount collected by the District pursuant to the Sales Tax; and

Whereas, the District previously determined, and hereby affirms, that it will acquire, construct, finance and operate a Regional Center ("Regional Center") comprised of one or more of the following facilities located in downtown Bellingham: a) the Mount Baker Theatre ("Theatre"), which the District intends to renovate and improve in three phases; b) streetscapes; c) the Whatcom Museum ("Museum"), which the District intends to construct at a new location and/or renovate and improve at its existing location; d) one or more new performing arts facilities; and e) related parking facilities; and

Whereas, the District and the City of Bellingham, Washington (the "City"), commenced the construction of its Regional Center in downtown Bellingham with Phase I of the renovation of the Theatre in December of 2003; and

Whereas, the District has acquired properties adjacent to the Theatre for the purpose of expanding the Theatre and/or related parking facilities; and

Whereas, the District has acquired property to construct a new Museum, including a art gallery and children's museum; and

Whereas, the District expects to spend at least \$10 million on costs related to the Regional Center (including debt service costs); and

Resolution Authorizing the District's staff
and attorneys to take certain preliminary action to
structure the financing of the District's Regional Center - 1

Whereas, RCW 67.28.130 authorizes the City and the District to participate in the financing of all or any part of the Regional Center on such terms as may be fixed by agreement between the respective legislative bodies without submitting the matter to a vote of the electors thereof, unless the provisions of the general laws of this state applicable to the incurring of indebtedness require such submission; and

Whereas, the District's Board of Directors (the "Board") finds and determines that it will be necessary for the City to issue bonds to finance the costs of the District's Regional Center, and for the City and the District to enter into agreements providing for the design, financing, development and operation of its Regional Center; and

Whereas, before the issuance of any such bonds or the entering of any such agreements, the Board further finds and determines that the District's staff and attorneys be authorized to take certain preliminary action to negotiate necessary agreements and to structure the financing of the District's Regional Center;

NOW THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT:

Section 1. The Board hereby authorizes and directs the District's staff, together with the District's general legal counsel and the City and District's bond counsel, to take all necessary and appropriate action in connection with the structuring of financing for the District's Regional Center and the design, development and operation of such Regional Center, including, but not limited to: (i) preparing all appropriate resolutions for Board review and approval; (ii) preparing all documents required so that the District complies with state and federal securities laws; (iii) assisting, if necessary, in the preparation of any official statement to be used in connection with the offering of any bonds by the City; (iv) applying and/or arranging for other funding for the Regional Center, including without limitations, private sector financing, grants, and federal, state and local funds; (v) negotiating contracts relating to the use, management and naming of the Regional Center, including leases of all or any portion of the Regional Center. Any such agreement may contain a pledge of the District's Sales Tax revenue to meet the District's obligations thereunder. Notwithstanding the foregoing, no final contract or agreement negotiated pursuant to the authority granted by this section shall be executed and delivered without further Board approval.

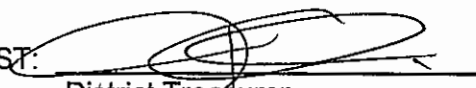
Section 2. The Board expects that the City will issue tax-exempt bonds in an estimated principal amount of \$9,650,000 to finance the District's Regional Center. To the extent money in the District's general fund (or other fund into which Sales Tax receipts are deposited) is used to pay certain project costs before the bonds are issued, the District hereby declares its intent to reimburse such fund or funds with bond proceeds to the extent allowed under Treasury Regulation Section 1.150-2.

Section 3. Any actions of the District or its staff and attorneys prior to the date hereof and consistent with the terms of this resolution are ratified and confirmed.

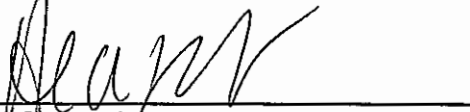
Section 4. This resolution shall take effect immediately upon its adoption.

PASSED BY DISTRICT THIS 22nd DAY OF September, 2004.


DISTRICT PRESIDENT

ATTEST: 
District Treasurer

APPROVED AS TO FORM:


District Counsel

RESOLUTION NO. 2004-2

**A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
COMMENDING BOARD MEMBERS PHILIP SHARPE AND MANCA VALUM FOR THEIR
SERVICE.**

Whereas, the Bellingham-Whatcom Public Facilities District Board ("Board")
comprises seven volunteer members; and,

Whereas, Board members Philip Sharpe and Manca Valum served on the Board
from July 2002 to August 2004; and

Whereas, the commitment and enthusiasm of Board members Philip Sharpe and
Manca Valum for the Public Facilities District's goals, the overall regional center project, and
their positive impact on the community have been a driving force behind the Board's work;
and

Whereas, the Board wishes to recognize board members Philip Sharpe and Manca
Valum for their service on the Board;

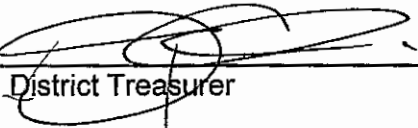
**NOW, THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM
PUBLIC FACILITIES DISTRICT:**

Board members Philip Sharpe and Manca Valum are hereby commended for their
valuable service on the Board.

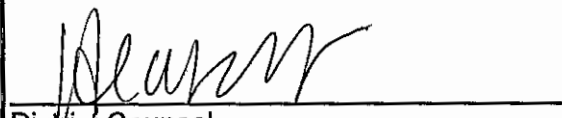
PASSED BY DISTRICT THIS 22nd DAY OF September, 2004.


DISTRICT PRESIDENT

ATTEST:


District Treasurer

APPROVED AS TO FORM:


District Counsel

Resolution Commending Board Members
Philip Sharpe and Manca Valum - 1

RESOLUTION NO. 2005-1

**A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
COMMENDING DUNHAM GOODING FOR HIS SERVICE AS PRESIDENT OF THE
BOARD.**

Whereas, the Bellingham-Whatcom Public Facilities District Board ("Board")
comprises seven volunteer members; and,

Whereas, Dunham Gooding served as President of the Board from its inception in
July 2002 through August 2005; and

Whereas, the passion, determination and enthusiasm shown by Dunham Gooding
during his tenure as President of the Board has been clearly exhibited in countless
presentations, impassioned speeches, brilliant wordplay (and occasional swordplay); and

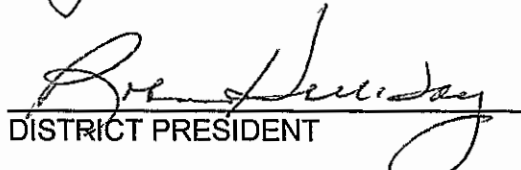
Whereas, his participation in crafting and articulating the district's goals, in
championing regional center projects, and contributing to the successful implementation of
the regional center vision has made a positive and lasting impact on the Bellingham-
Whatcom community; and

Whereas, the Board wishes to recognize Dunham Gooding for his stellar services as
President of the Board;

**NOW, THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM
PUBLIC FACILITIES DISTRICT:**

Dunham Gooding is hereby commended for his valuable service on the Board.

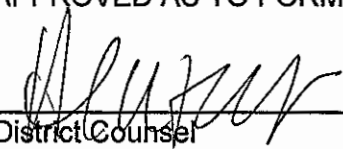
PASSED BY DISTRICT THIS 24th DAY OF August, 2005.


DISTRICT PRESIDENT

ATTEST:


District Treasurer

APPROVED AS TO FORM:


District Counsel

Resolution Commending Dunham Gooding

RESOLUTION NO. 2003-2

**A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
APPROVING A TRAVEL AND BUSINESS EXPENSE REIMBURSEMENT POLICY.**

Whereas, RCW 35.57.050 requires that the Bellingham-Whatcom Public Facilities District ("District") adopt a resolution establishing the basic requirements governing travel and business expense reimbursement; and,

Whereas, the District is receiving administrative support for accounting from the City of Bellingham ("City"); and,

Whereas, the City has established requirements governing reimbursement for travel and business expenses; and,

Whereas, the City's travel and business expense reimbursement policy ("Travel Policy") is attached hereto as Exhibit A; and,

Whereas, the District's best interests are served by adopting the City's Travel Policy;

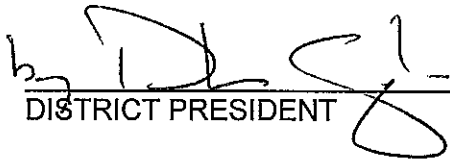
**NOW, THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM
PUBLIC FACILITIES DISTRICT:**

The District hereby approves and adopts the attached City of Bellingham ("City") travel and business expense reimbursement policy ("Travel Policy") as the District's basic requirements governing travel and business expense reimbursement which shall apply to District Board Members. Moreover, the Board approves and adopts the specific applications of the policy as follows: The District Board President will authorize Board member travel in advance; the Vice President will authorize the President's travel in advance; and the City Finance Director will approve expense reports for payment. The attached City Travel Policy is attached hereto as Exhibit A and incorporated herein by this reference.

PASSED BY DISTRICT THIS 26th DAY OF February, 2003.

ATTEST:


District Treasurer


DISTRICT PRESIDENT

Approved as to form:


District Legal Counsel

City of Bellingham Policy

Title: PAYING TRAVEL EXPENSES
Code: FIN 18.00.01
Chapter: Financial Management
Level of Policy: Administrative
Date Issued: November 20, 1979
Date Revised: January 1, 2003
Revised by: Therese Holm, Finance Director
Christine Weinberg, Finance Officer
Developed by: Lynn Carpenter, Finance Director
Approved By: Mark Asmundson, Mayor

Cancels:

See Also: RCW 42.24, PAYMENT OF CLAIMS FOR EXPENSES, MATERIALS, PURCHASES – ADVANCEMENTS
BELLINGHAM CITY COUNCIL RESOLUTION 2001-27 
ADM 10.03.06, ROUTINE PERSONAL REIMBURSEMENT - TAKE HOME VEHICLE OPTION 
ADM 10.04.01, MOTOR POOL VEHICLES AND RENTAL VEHICLES 
FIN 08.00.04, PURCHASING CARD 
PRO 001, REQUESTING AND APPROVING OVERNIGHT TRAVEL EXPENSES WITH AIR TRAVEL 
PRO 002, REQUESTING AND APPROVING OVERNIGHT TRAVEL EXPENSES WITHOUT AIR TRAVEL

PRO 003, COMPLETING TRAVEL EXPENSE REPORT 
TRAVEL AUTHORIZATION, ADVANCE AND EXPENSE REIMBURSEMENT FORM:
• PART I. APPROVAL FOR OVERNIGHT TRAVEL AND ADVANCE 
• PART II. EXPENSE REPORT 

Purpose

Scope

All employees and elected officials of the City of Bellingham, including members of City Boards and Commissions. As used below, "employee" means all persons included in "Scope".

Policy/Conditions

1. City Pays Reasonable & Necessary Business Travel Expenses

We, the City, pay for allowable business travel expenses when reasonable, necessary, and directly related to conducting business for the City of Bellingham.

The City pays the following employee travel expenses:

- Transportation by airplane, train, ship, bus, auto rental
- Meals
- Lodging
- Personal vehicle mileage when directly related to City business
- Parking expenses
- Registration fees for conventions, conferences, training and tuition
- Expenses for required educational materials which remain the property of the City
- Other incidental business expenses (copies, faxes, telephone)

2. City Does Not Reimburse Certain Expenses

We will not pay or reimburse costs for:

- Liquor
- Theft, loss, or damage to personal property

- Expenses of spouse, family, or other persons not authorized to receive reimbursement under this policy
- Airline and other trip insurance
- Medical or hospital expenses not covered by medical benefits or workers compensation
- Fines for parking violations or traffic violations
- Personal telephone calls
- Personal entertainment and transportation
- Personal care services

3. Finance Director Administers Policy

The Finance Director develops and implements procedures for administering this policy. The Finance Director ensures compliance with policy and state law.

4. Finance Director Authorizes Exceptions

The Finance Director authorizes exceptions to the policy, such as emergency travel and any other exceptions not addressed in this policy.

Unless authorized as an exception, employees are responsible for payment of any incurred expense not in accordance with this policy.

5. Department Heads Authorize Travel In Advance

The Department Head must authorize certain travel expenses in advance:

- Overnight travel
- Less costly alternative to the state-contracted airfare (Section 8)
- Lodging when destination is less than 75 miles of the workplace (Section 10)
- Use of rental vehicle (Section 12)

6. Mayor Authorizes Out-Of-State and Travel Exceeding Three Days

We require Mayor approval in advance for out-of-state travel and travel exceeding three workdays.

7. City Authorizes Use of Advance Travel Funds

Employees may receive a travel advance when

- Travel expenses will be paid out of pocket
- Approved by Department Head

Employees must submit travel expense documentation, including repayment of excess travel advance, on or before the 15th day following the close of the authorized period, or

- City shall charge interest at a rate of 10% per annum on the advance from the date of default until settled or paid, and
- City has right to withhold unsettled advance plus interest from employee's pay.

8. City Limits Business Air Travel Arrangements

The City participates in the State of Washington's Air Travel Program. Participation allows the City to obtain discounted, unrestricted and refundable airfare to many cities.

Except as allowed below, we require employees to make air travel arrangements through the City's selected air travel agency, and use

- State contracted airfare, or

- Lowest published fare when state rate is not available.

We allow less costly alternative to state contracted airfare when

- Employee obtains and documents quotes for state-contracted airfare and lowest published fare
- Department Head approves in advance

In the event of unused tickets, we require the Department to

- Notify Finance Department
- Absorb cost of any unused tickets or ticket changes as a result of ticket restrictions
- Use reissued tickets for City business purposes only.

We pay fares directly to the City's selected air travel agency through a travel card program; the employee is not reimbursed.

We authorize "business class" travel when

- Any single leg of the flight is longer than eight hours, and
- Mayor approves in advance.

We allow employees to make air travel arrangements outside of the selected air travel agency when

- There is a greater cost savings to the City than available through the selected air travel agency, and
- Employee obtains and documents quotes for state contracted airfare and lowest published fare, and
- Department Head approves in advance.

When the employee makes reservations outside the selected travel agency, we require

- Advance purchase of air travel by the employee and reimbursement after the completion of travel, and
- Employee to absorb the cost of any unused tickets or ticket changes as a result of ticket restrictions.

When personal air travel is combined with a City business trip, we require

- Employee to make air travel arrangements apart from the State of Washington's Air Travel Program,
- Advance purchase of air travel by the employee,
- Reimbursement for business travel portion only of the air travel at the lowest published fare after the completion of travel, and
- Employee to absorb the cost of any unused tickets or ticket changes as a result of ticket restrictions.

9. City Pays Per Diem for Meals

The City pays a per diem rate of \$45 for meal expenses.

- Adjusted for partial day travel
- Includes taxes and tips
- No receipts required

For partial day travel, we pay a portion of per diem for meals eaten while on travel status at

- \$8 for breakfast
- \$14 for lunch
- \$23 for dinner

The City will not pay a portion of per diem for meals included in the conference registration.

City pays the actual cost of a meal, plus reasonable tip, when

- Documented by an itemized receipt and/or meeting itinerary, and
- Meal is scheduled as part of a meeting and has a fixed price, or
- Travel is outside the continental U.S.
 - Except lower mainland B.C. which is reimbursed at per diem rate

10. City Pays Costs For Lodging

We pay lodging expenses when:

- Travel destination is in excess of 75 miles, or,
- Less than 75 miles with Department Head approval.

Employees must reserve lodging at the government rate or at the least costly room rate.

When attending a conference, employee may elect to stay at the conference hotel at the lowest available room rate. We encourage use of the City's selected travel agency to obtain the lowest rate.

We allow the option of a daily commute for out of town business. We pay, however, the lesser of

- The travel expense incurred in repeated commutes, or,
- The amount that would have been allowable if employee stayed overnight.

11. City Pays For Travel Mileage

City pays for mileage when personal auto is used:

- At the IRS "standard mileage rate" in effect at the time of travel
- For round trip mileage from the workplace to the business destination
- To only one of two or more employees traveling in the same automobile
- Within a 300-mile radius of the City. Beyond this limit, we reimburse at the lesser of:
 - The lowest round trip airfare, or
 - Standard mileage rate

The City does not pay mileage when personal auto is used if the employee receives a flat rate reimbursement except as allowed under Policy ADM 10.03.06, ROUTINE PERSONAL REIMBURSEMENT.

12. City Pays for Cost of Rental Vehicles

City pays for mid-size vehicle rental when:

- Used for business purposes only
- No less costly transportation alternative exists
- Department Head approves in advance

We encourage the use of the City's travel agency to obtain the lowest rate available including state contracted or government rates.

The City does not pay for supplemental car rental insurance.

13. Employees Conserve Travel Funds

When feasible, employees conserve City travel funds by:

- Sharing rides
- Sharing rooms
- Using state-contracted airfare
- Using government discount rates
- Using cost saving alternatives

14. City Does Not Pay for Personal Travel Expenses

We do not pay any personal travel expenses that may be associated with business travel.

When personal travel is scheduled in connection with a business trip, the City pays only those expenses directly related to official City business. Any expenses related to personal travel must be clearly distinguishable and paid directly by the employee.

15. City Requires Itemized Expense Report

Employees must complete and certify an itemized travel expense report upon return from travel.

We require documentation supporting travel expenses including:

- Travel itinerary
- Conference registration
- Conference or meeting agenda
- Original itemized receipts
- Mileage logs

We do not require documentation for:

- Travel expenses under \$10.00 when no receipt is obtainable
- Meals paid on a per diem basis

16. City Requires Approval of Expense Report

We require approval of itemized expense report by:

- Department Head for department staff travel
- Mayor for Department Head travel
- Council President for Council members and Council staff travel
- Finance Director reviews Mayor's travel
- Mayor reviews Finance Director's travel
- Mayor reviews Council President's travel

RESOLUTION NO. 2006-1

**A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
COMMENDING BOARD MEMBER JERRY CHAMBERS FOR HIS SERVICE.**

Whereas, the Bellingham-Whatcom Public Facilities District Board ("Board")
comprises seven volunteer members; and,

Whereas, Board member Jerry Chambers served on the Board from July 2002 to
July 2006; and

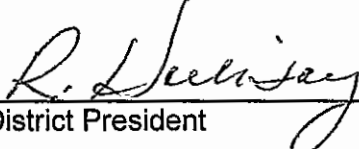
Whereas, the commitment and enthusiasm of Board member Jerry Chambers for the
Public Facilities District's goals, the overall regional center project, and their positive impact
on the community have been a driving force behind the Board's work; and

Whereas, the Board wishes to recognize Board member Jerry Chambers for his
service on the Board;

**NOW, THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM
PUBLIC FACILITIES DISTRICT:**

Board member Jerry Chambers is hereby commended for his valuable service on the
Board.

PASSED BY DISTRICT THIS 26TH DAY OF JULY, 2006.


District President

ATTEST: 
District Treasurer

APPROVED AS TO FORM:


District Counsel

RESOLUTION NO. 2006-2

**A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT
COMMENDING THE BELLINGHAM LIBRARY BOARD OF TRUSTEES.**

Whereas, the Bellingham Public Library Board of Trustees is the governing body of the Library; and,

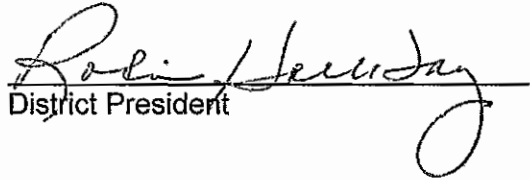
Whereas, since its inception in 2002, the Bellingham-Whatcom Public Facilities District ("District") has always supported the new central library remaining within the Cultural District; and

Whereas, at a special meeting on December 5, 2006 the Bellingham Public Library Board of Trustees recommended unanimously that the new central library be built on its current site;

**NOW, THEREFORE, BE IT RESOLVED BY THE BELLINGHAM-WHATCOM
PUBLIC FACILITIES DISTRICT:**

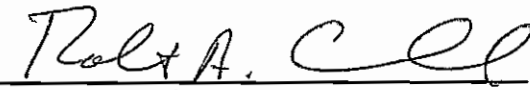
The District congratulates the members of the Bellingham Public Library Board of Trustees for their hard work and dedication in deciding the location of the new library, and welcomes them into the community of civic groups dedicated to revitalizing the civic core.

PASSED BY DISTRICT THIS 20TH DAY OF DECEMBER, 2006.


District President

ATTEST: 
District Treasurer

APPROVED AS TO FORM:


District Counsel

2. Section 3.8.11 of the Interlocal Agreement is amended to read as follows:

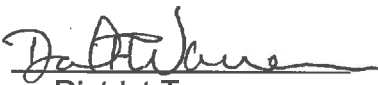
3.8.11 The Board of Directors shall establish an annual budget for the Association. The Administrator shall submit a proposed budget for the following fiscal year 60 days prior to the end of each fiscal year to the Board of Directors. Fiscal years for the Association shall be from ~~September 1st through August 31st~~ **December 1st through November 30th** of the next calendar year. The Board of Directors shall determine the estimated expenses and cost to be incurred by the Association for the next fiscal year and shall adopt a budget derived from the Administrator's proposed budget. The budget shall be in a form to provide the following information for the Association as a whole: (1) beginning and ending unreserved fund balance, (2) anticipated revenues in detail, and (3) appropriations in detail. The Board of Directors shall apportion that budget cost among the Members and Associates. All payments due the Association from Members or Associates upon the basis of each budgeted assessment shall be paid as invoiced for the fiscal year for which the assessment is made.

3. Section 3.13 Withdrawal. A Member may withdraw only at the end of the Associations fiscal year (~~August 31st~~) **(November 30th)** and only after it has given the Association written notice prior to ~~September~~ **December 1** of the preceding calendar year of its decision to withdraw from this Agreement.

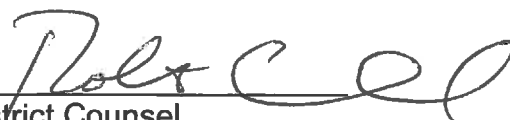
BE IT FURTHER RESOLVED THAT THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT hereby acknowledges the appropriate changes to the By-Laws and Interlocal Agreement to accomplish said change.

PASSED BY DISTRICT THIS 22nd DAY OF OCTOBER, 2014.


District President

ATTEST: 
District Treasurer

APPROVED AS TO FORM:


District Counsel

RESOLUTION REGARDING CHANGES TO THE
BY-LAWS AND INTERLOCAL AGREEMENT WITH
THE CIAW - 2

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270
Fax (360) 778-8271

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BE IT RESOLVED BY THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT that the times for holding regular meetings of the Board of Directors of the District be as follows, and the same are hereby fixed at 11 a.m. on each of the following days in the Law Library, City Attorney's office, 210 Lottie Street, Bellingham, to-wit:

BE IT FURTHER RESOLVED that nothing in this resolution shall be construed as preventing the calling of a special meeting of the Board of Directors at any time as provided by the Bylaws of the District and the laws of the State of Washington.


District President

Dalt Cef
District Counsel

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RESOLUTION NO. 2017-1

A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT FIXING THE TIMES AND DATES OF THE 2018 REGULAR MEETINGS OF THE BOARD OF DIRECTORS

BE IT RESOLVED BY THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT that the times for holding regular meetings of the Board of Directors of the District be as follows, and the same are hereby fixed at 11 a.m. on each of the following days in the Law Library, City Attorney's office, 210 Lottie Street, Bellingham, to-wit:

Wednesday, April 25, 2018
Wednesday, October 24, 2018

BE IT FURTHER RESOLVED that nothing in this resolution shall be construed as preventing the calling of a special meeting of the Board of Directors at any time as provided by the Bylaws of the District and the laws of the State of Washington.

PASSED BY DISTRICT THIS 15th DAY OF NOVEMBER, 2017.


Daniel Larner, District President

ATTEST: 
David Warren, District Treasurer

RESOLUTION FIXING THE TIMES AND DATES
OF THE 2018 REGULAR MEETINGS OF THE
BOARD OF DIRECTORS

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270
Fax (360) 778-8271

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RESOLUTION NO. 2018-1

A RESOLUTION OF THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT FIXING THE TIMES AND DATES OF THE 2019 REGULAR MEETINGS OF THE BOARD OF DIRECTORS

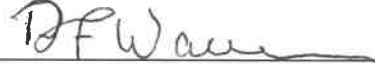
BE IT RESOLVED BY THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT that the times for holding regular meetings of the Board of Directors of the District be as follows, and the same are hereby fixed at 1 p.m. on each of the following days in the City Council Board Room, 210 Lottie Street, Bellingham, to-wit:

Wednesday, April 24, 2019
Wednesday, October 23, 2019

BE IT FURTHER RESOLVED that nothing in this resolution shall be construed as preventing the calling of a special meeting of the Board of Directors at any time as provided by the Bylaws of the District and the laws of the State of Washington.

PASSED BY DISTRICT THIS 24th DAY OF OCTOBER, 2018.


Daniel Larner, District President

ATTEST: 
David Warren, District Treasurer

RESOLUTION FIXING THE TIMES AND DATES
OF THE 2019 REGULAR MEETINGS OF THE
BOARD OF DIRECTORS

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270
Fax (360) 778-8271

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BE IT RESOLVED BY THE BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT that the times for holding regular meetings of the Board of Directors of the District be as follows, and the same are hereby fixed at 12 p.m. on each of the following days in the Legal Conference Room, 210 Lottie Street, Bellingham, to-wit:

These meeting dates may be changed at the Board's discretion.

PASSED BY DISTRICT THIS 28th DAY OF OCTOBER, 2021.

ATTEST: Dunham Gooding, District Treasurer