

**CHARTER OF THE
“BELLINGHAM-WHATCOM PUBLIC FACILITIES DISTRICT”
A PUBLIC CORPORATION**

ARTICLE I

Name: The name of the corporation shall be the Bellingham-Whatcom Public Facilities District, hereinafter called “District”.

ARTICLE II

Authority for Bellingham-Whatcom Public Facilities District: The District is a public corporation organized pursuant to RCW 35.57, as the same now exists or may hereafter be amended, or any successor act or acts and the formation ordinance as codified in Bellingham Municipal Code Chapter 2.94, and Whatcom County Code Chapter 1.17.

ARTICLE III

Duration of District: The duration of the District shall be as provided in Bellingham Municipal Code section 2.94.060, Dissolution of District.

ARTICLE IV

Purpose of District: The purpose of the District is to provide an independent legal entity under RCW 35.57, and the formation ordinances, City of Bellingham Ordinance #2002-07-051, and Whatcom County Ordinance #2002-041, codified under Bellingham Municipal Code 2.94 and Whatcom County Code 1.17, to impose and use state sales tax under RCW 82.14.390 to acquire, construct, remodel, maintain, equip, re-equip, repair, operate, and maintain a regional center, or any combination of facilities and related parking facilities as defined in RCW 35.57.020(1) as amended by Chapter 363, Laws of 2002. The District shall secure financing by the imposition of the sales and use tax of not more than 0.033 percent to be collected from those persons who are taxable by the State of Washington under RCW 82.08 and 82.12. The construction and/or remodel of the regional center before January 1, 2004, consistent with the District’s purpose, is an essential government function. The obligations and responsibilities of both the City and the District with respect to the Regional Center project shall be delineated in contractual agreements between the City and the District.

Development of the regional center project shall occur consistent with the governing principles provided in BMC 2.94.050 and the interlocal agreements between the City and County entered into the 31st day of July 2002.

The District does not have the authority to perform any functions other than those set forth in this Charter.

For the purpose of securing the exemption from federal income taxation for interest on obligations of the District, the District constitutes a District and instrumentality of each of the jurisdictions that created the District (within the meaning of those terms and regulations of the United States Treasury and rulings of the Internal Revenue Service prescribed pursuant to Section 103 and Section 145 of the Internal Revenue Code of 1986, as amended).

ARTICLE V

Powers of District: Except as may be otherwise provided in the Charter, the District and the District Board of Directors on its behalf shall have only the power to:

1. Consider, analyze, and identify a regional center project(s) that may be designed, constructed, or remodeled by the Public Facilities District in compliance with RCW 35.57.020. This power shall be exercised under the terms of the interlocal agreements with the City of Bellingham and Whatcom County. Construction of this project(s) shall commence before January 1, 2004, as provided in RCW 82.14.390.
2. Act as authorized under Chapter 35.57 RCW, as amended, limited by the interlocal agreements described above.
3. Secure services by means of an agreement with a service provider in accordance with RCW 35.57.070.
4. Contract for any District purpose with the United States, a state, and any political subdivision or agency of either, and with the individuals, associations and corporations and other entities (including public or private entities).
5. Sue and be sued in its corporate name.
6. Acquire and transfer real and personal property by lease, sublease, purchase, or sale.
7. Borrow, pledge, grant a security interest in or lend its funds, property, credit or services for corporate purposes, or act as a guarantor for corporate purposes; issue general obligation bonds in conformity with the debt limitations set forth in RCW

35.57.030, and revenue bonds in conformity with the requirements set forth in RCW 35.57.090, and any other applicable provisions of State law in such principal amounts as in the discretion of the District shall be necessary and appropriate to provide sufficient funds for achieving any corporate purposes; provided, however, that all bonds and notes or liabilities occurring thereunder shall be satisfied exclusively from the assets, properties, or credit of such District, and no creditor or other person shall have any recourse to the assets, credit, or services of the City or County thereby, unless the City or County by legislative enactment expressly guarantee or otherwise provide for the payment of such bonds or notes; provided further that these powers are subject to the limitations expressed in Article VI, Section 6 of this Charter.

8. Invest and reinvest its funds.
9. Accept and expend gifts, grants, and donations, including funds or property from the United States, the State, and any municipality or political subdivision or agency of either, property acquired by any such governmental unit through the exercise of its power of eminent domain, and funds or property from corporations, associations, individuals, or any other source, and comply with the terms and conditions therefor;
10. Impose charges, fees, and taxes as authorized in RCW 35.57.040 and RCW 82.14.390.
11. Use revenue and other receipts for its corporate purposes, including its public purpose of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining facilities of the District.
12. Conduct District affairs, carry on its operations, use its property as allowed by law, its charter and its by-laws.

ARTICLE VI

Limits on District Powers:

1. The District shall have no power of eminent domain.
2. No part of the activities of the District shall be the carrying on of propaganda, or otherwise attempt to influence legislation, and the District shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.
3. All revenue, receipts, assets, or credit of the District shall be applied toward or expended upon services, projects, or activities authorized by this Charter. No part of the net earnings shall inure to the benefit of, or be distributable to, the members of the

District Board of Directors or officers, except to reimburse District Board members for reasonable expenses actually incurred in performing their duties.

4. Except as authorized by terms of the interlocal agreements, the District may not incur or create any liability that permits recourse by any contracting party or members of the public to any assets, services, resources, or credit of the jurisdictions creating the District.
5. The District shall not amend this Charter without the approval of the City Council as provided by the terms of the interlocal agreements.
6. The District shall not issue any debt nor shall it submit to the voters of the District a ballot proposition for imposition of a sales or use tax without the prior approval of the City Council.
7. In the event of a conflict between the terms of this Charter and of the Interlocal Agreement between the City and the District, the terms of the Interlocal Agreement shall govern.

ARTICLE VII

Duties of the District: In addition to the other duties that may be provided herein, the District and the District Board of Directors shall undertake the following:

1. **Provide Financial Assistance.** The District, through the District Board of Directors during its first or subsequent meeting, shall, if authorized by the jurisdictions creating the District per the interlocal agreement, impose a sale and use tax of not more than .033 percent to be collected from those persons who are taxable by the State of Washington under RCW 82.08 and 82.12, upon any taxable event within the District in accordance with RCW 82.14.390.
2. **Enter Into Agreements.** The District shall enter into an agreement with the City of Bellingham to perform any administrative functions on behalf of the District as may be necessary to carry out the District's functions as prescribed under Article V of this Charter or the interlocal agreement.
3. **Revenues.** All revenues received by the District which are derived from the imposition of charges, fees, and taxes as authorized by RCW 35.57.040, shall be deposited in such a manner as described in the agreement with the City of Bellingham and the interlocal agreement creating the District, which funds may be expended only to satisfy the financial obligations of the District consistent with this Charter and the interlocal agreement. Any matching funds as required by RCW 82.14.390 shall be

provided by the City of Bellingham pursuant to the interlocal agreement, or by private or other public sources.

ARTICLE VIII

Organization of District:

- 1. District Board of Directors.** The management of District affairs shall reside with the Board of Directors. The Board shall be composed of seven (7) members appointed in accordance with RCW 35.57.010, the formation ordinances and the interlocal agreement of the creating jurisdictions.
- 2. Consecutive Absences.** Any Board member who is absent for three (3) consecutive regular meetings without excuse may, by resolution duly adopted by the majority vote of the whole Board, be deemed to have forfeited his or her position as a Board member.
- 3. Removal of Board Members.** Any Board member may be removed at will, with or without cause, by the joint action of the Mayor and County Executive. The unexpired term of the vacant position shall be filled in the same manner as the regular appointment of the Board Members as provided by ordinance and the interlocal agreement between the City and County.
- 4. Vacancy on District Board of Directors.** A vacancy or vacancies on the District Board of Directors shall be deemed to exist in case of the death, disability, resignation, removal, or forfeiture of membership as provided herein. Vacancies on the Board shall be filled by appointment in the same manner in which members of the Board are regularly appointed. Any person selected to fill a vacancy on the Board shall serve the balance of the term of the person being replaced.
- 5. Duties of the Board.** A general or particular authorization or concurrence of the Board by resolution shall be necessary for any of the following transactions:
 - a.** Adoption of an annual budget.
 - b.** Certification of annual audited financial statements and other reports and statements to be filed with the Administrator of the PFD Agreement as true and correct in the opinion of the District.
 - c.** Transference of tax proceeds authorized by the Charter and interlocal agreement to the City of Bellingham.

d. Performance of such other transactions, duties, and responsibilities as the Charter shall require of the members of the Board of the District.

e. Approval of a project for the regional center.

6. Voting Requirements/Quorum

a. Action which requires Board approval may only be authorized by a vote representing both a majority of the Board members voting and not less than four (4) members. Four (4) voting members must be present at any regular or special meeting to comprise a quorum, and for the Board to transact any business.

b. Proxy voting shall not be allowed.

c. The adoption and amendment of bylaws shall require an affirmative vote of a majority of the Board's voting membership and not less than four (4) members.

d. Board members will be allowed to participate in the conduct of Board business and vote on issues before the Board by video and/or telephonic conference call.

7. Indemnification. To the extent permitted by law, the District shall protect, defend, hold harmless and indemnify any director, officer, employee or agent of the District who is a party or threatened to be made a party to a proceeding by reason related to that person's conduct as a director, officer, employee or agent of the District, against judgments, fines, penalties, settlements and reasonable expenses (including attorneys' fees) incurred by him or her in connection with such proceeding, if such person acted in good faith and reasonably believed his or her conduct to be in the District's best interests and if, in the case of any criminal proceedings, he or she had no reasonable cause to believe that his or her conduct was unlawful. The indemnification and protection provided herein shall not be deemed exclusive of any other rights to which a person may be entitled as a matter of law or by contract or by vote of the Board of Directors. The District may purchase and maintain appropriate insurance covering such risks.

8. Conflict of Interest and Code of Ethics. No member of the Board shall have an ownership interest in real or personal property used for or in conjunction with any regional center site. Members of the District Board of Directors shall be subject to the provisions of RCW 42.52, Ethics in Public Service.

9. Attorney. The Board may be represented by the City Attorney's Office of the City of Bellingham, provided, however, that the Board may engage separate legal counsel of its choosing.

ARTICLE IX

Officers of the District.

1. Tenure of Officers. The members shall elect from among themselves the following District officers: President, Vice President, Treasurer, and Secretary. The President and the Treasurer may not be the same person. The term of any officer shall be for one (1) year or expire at such other time as the officer's membership on the Board ceases or terminates, whichever occurs first, or at such sooner time as the term of office expires and the office has been filled by appointment or reappointment.

2. Duties of Officers. The officers of the District shall have the following duties:

a. President. Subject to the control of the District Board of Directors, and as provided in the interlocal agreement with the City of Bellingham, the President shall have general supervision, direction, and control of the business affairs of the District.

b. Vice President. At the request of the President or in case of the President's absence, disability, or other incapacity, the Vice-President shall perform all duties of the President and, when so acting, shall have all the powers of, and be subject to all restrictions upon, the President. In addition, the Vice-President shall perform such other duties as may from time to time be assigned to that office by the Board or the President.

c. Treasurer. The Treasurer shall receive and faithfully keep all funds of the District and deposit the same in such accounts as may be designated by the District Board of Directors. The Treasurer shall discharge other duties as prescribed by the District Board of Directors.

d. Secretary. The Secretary shall keep or authorize others to keep a full and complete record of the meetings of the District Board of Directors, committees, when acting on behalf of the Board, and to the extent they are separate, the meetings of the officers with appropriate minutes; shall make service of such notices as may be necessary or proper, shall supervise the keeping of the books and other records and ledgers and other written documents comprising the business and purpose of the District, and shall discharge such other duties as pertain to the office as prescribed by the District Board of Directors.

3. Incapacity of Officers. In the event the Secretary is unable to perform the duties of the office due to illness, death or other incapacity, the President of the District is authorized to perform such duties without further authorization; but if the President is unavailable, the Vice-President is authorized to perform such duties of the Secretary

without further authorization. If the Treasurer is incapacitated, the Secretary shall be authorized to perform the Treasurer's duties without further authorization. The Treasurer is not authorized to perform the duties of the President, nor is the President authorized to perform the duties of the Treasurer.

4. Administration. The District shall contract with the City of Bellingham to provide the services necessary to assist the officers in carrying out their duties under this Article.

ARTICLE X

General Provisions:

1. Amendments to Charter and Bylaws. Any Board member may propose an amendment to the Charter and/or the Bylaws at any meeting (regular or special) of which ten (10) days advance notice has been given. Resolutions of the District approving amendments to the Bylaws by unanimous vote may be implemented at such time as selected by the District in the Resolution without further action. Resolutions approving amendments to the Bylaws with less than a unanimous vote cannot take effect until ten (10) days after filing with the Administrator of the PFD agreement. The President shall file such resolution within three (3) days of its adoption. Proposed charter amendments adopted by the Board shall be submitted to the City and shall not take effect until approved by the City.

2. Public Records. The public shall have the access to records and information of the District to the extent required by applicable laws.

3. Public Meetings. Meetings of the District shall be open to the public as required by state law. An opportunity for public comment shall be provided at any meeting of the District. Notice of meetings and proposed agendas shall be transmitted in the same manner as notice is provided for other public meetings; notice of meetings and proposed agendas shall also be transmitted to Whatcom County.

4. Audits, Dissolutions, etc. The District shall submit to the Administrator of the PFD Agreement on or before March 31 a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of such calendar year; as well as such other reports required by applicable state and federal laws, applicable ordinances, and by the Finance Director of the City of Bellingham.

5. Operations. The District shall establish by resolution approved by the Administrator of the PFD Agreement procedures for the receipt, payment, and investment

of District funds. Such procedures may be amended by District resolution, subject to the approval of the Administrator of the PFD Agreement.

6. Liberal Construction and Severability. This Charter shall be liberally construed in order to effect its purposes. If any section or part of this Charter is ultimately ruled invalid or illegal by a court of competent jurisdiction, such invalidity or illegality shall not affect the remaining sections or parts of this Charter.

This Charter is APPROVED and ISSUED on this ____ day of _____, 2002.

Approved this ____ day of _____, 2002.

District President

Attest:

District Treasurer