



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

File Number: AB2021-136

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TITLE FOR AGENDA ITEM:

Resolution supporting the formation of a Tourism Promotion Area (TPA) by agreement between Whatcom County and the City of Bellingham

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution supporting the formation of a Tourism Promotion Area.

HISTORY OF LEGISLATIVE FILE

| Date: | Acting Body: | Action: | Sent To: |
|------------|---|--|----------|
| 03/09/2021 | Council Finance and Administrative Services Committee | RECOMMENDED FOR APPROVAL | |
| | | Aye: 2 Browne, and Frazey | |
| | | Nay: 0 | |
| | | Absent: 1 Byrd | |
| 03/09/2021 | Council | APPROVED | |
| | | Aye: 5 Browne, Buchanan, Donovan, Frazey, and Kershner | |
| | | Nay: 1 Elenbaas | |
| | | Absent: 1 Byrd | |

Attachments: Proposed Resolution, TPA Documents Whatcom County January 21, 2021

RESOLUTION NO. 2021- 008

**SUPPORTING THE FORMATION OF A TOURISM PROMOTION AREA BY AGREEMENT
BETWEEN WHATCOM COUNTY AND THE CITY OF BELLINGHAM**

WHEREAS the tourism industry is a vital and substantial component of Whatcom County's (the "County") and the City of Bellingham's ("Bellingham's") economy and tourism promotion increases the number of visitors to the region which in turn increases regional sales supporting the local economy; and

WHEREAS the Legislature of the State of Washington has recognized the importance of tourism promotion in the State of Washington and in 2003 passed Engrossed Substitute Senate Bill No. 6026, codified as chapter 35.101 RCW, as amended (the "TPA Act"), authorizing counties, cities, and towns to establish tourism promotion areas and to levy a tourism promotion charge on the furnishing of lodging on certain lodging businesses (as defined in the TPA Act, "Lodging Businesses") to fund tourism promotion (as defined in the TPA Act); and

WHEREAS pursuant to RCW 35.101.040, a county, city or town may establish a tourism promotion area that includes within the boundaries of the area portions of its own jurisdiction and another jurisdiction, if the other jurisdiction is a party to an interlocal agreement formed pursuant to chapter 39.34 RCW (the "Interlocal Cooperation Act"); and

WHEREAS to establish a tourism promotion area, Lodging Businesses located in the proposed tourism promotion area must submit an initiation petition to the legislative authority or authorities of the proposed area containing the information provided in RCW 35.101.020, including (a) a description of the boundaries of the proposed area, (b) the proposed uses and projects to which the proposed revenue from the charge shall be put and the total estimated costs, (c) the estimated rate for the charge with a proposed breakdown by class of Lodging Business if such classification is to be used, and (d) the signatures of the persons who operate Lodging Businesses in the proposed area who would pay 60% or more of the proposed charges; and

WHEREAS operators of Lodging Businesses located in the proposed tourism promotion area formed in the jurisdictional boundaries of Bellingham and unincorporated Whatcom County (the "Bellingham Whatcom County Tourism Promotion Area") have presented a petition pursuant to the terms of the TPA Act to the Bellingham City Council and to the Whatcom County Council (the "Initiation Petition") to initiate the establishment of the Bellingham Whatcom County Tourism Promotion Area; and

WHEREAS the Initiation Petition contained all required elements pursuant to RCW 35.101.020; and

WHEREAS having received the Initiation Petition, the legislative authority or authorities of the proposed tourism promotion area are required pursuant to RCW 35.101.030 to adopt a resolution providing notice of the intention to establish the Bellingham Whatcom County Tourism Promotion Area, and setting the time and place of a public hearing to be conducted to hear protests and receive evidence for or against the proposed formation of the Bellingham Whatcom County Tourism Promotion Area; and

WHEREAS the Bellingham City Council has agreed or is expected to agree to serve as the legislative authority of the proposed Bellingham Whatcom County Tourism Promotion Area for purposes of the TPA Act; and

WHEREAS in order to facilitate the formation and management of the proposed Bellingham Whatcom County Tourism Promotion Area, the County now desires to enter into an interlocal agreement with Bellingham as provided herein;

NOW, THEREFORE, BE IT RESOLVED BY THE WHATCOM COUNTY COUNCIL:

Section 1. Defined Terms. Capitalized terms not otherwise defined herein shall have the meanings set forth below or in the TPA Act, as the context may require.

"Bellingham" or "City" means the City of Bellingham, a municipal corporation organized under the laws and statutes of the State.

"Bellingham City Council" or "City Council" means the City Council of the City of Bellingham, as the same shall be duly and regularly constituted from time to time.

"Bellingham Whatcom County Tourism Promotion Area" means the proposed tourism promotion area described in the Initiation Petition.

"County" means Whatcom County, a municipal corporation organized under the laws and statutes of the State.

"County Council" means the Whatcom County Council, as the same shall be duly and regularly constituted from time to time.

"Initiation Petition" means the initiation petition delivered to the County Council and the Bellingham City Council pursuant to the TPA Act.

"Interlocal Agreement" means the Interlocal Agreement for the Joint Establishment of a Tourism Promotion Area by and between Bellingham and the County, substantially in the form attached hereto as Exhibit A (interlocal to be approved separately), as it may be amended from time to time.

"Interlocal Cooperation Act" means chapter 39.34 RCW, as the same may be amended from time to time.

"Legislative Authority" means the legislative authority of the Bellingham Whatcom County Tourism Promotion Area appointed pursuant to the Interlocal Agreement.

"Lodging Business" means a business located within the Bellingham Whatcom County Tourism Promotion Area that furnishes lodging taxable by the State under chapter 82.08 RCW that has 40 or more lodging units.

"Operator" or "Operator of a Lodging Business" means an operator of a Lodging Business, whether in the capacity of owner, general manager, lessee, sublessee, mortgagee in possession, license or any other similar capacity.

"State" means the State of Washington.

"TPA Act" means chapter 35.101 RCW, as the same may be amended from time to time.

“TPA Charge” means the levy (charge) imposed on the Operators of Lodging Businesses within the Bellingham Whatcom County Tourism Promotion Area and subsequently passed on to the guests of the Lodging Business, under the authority of the TPA Act, for the purpose of providing funding of Tourism Promotion.

“Tourism Promotion” has the meaning set forth in RCW 35.101.010, including but not limited to, actions and expenditures designed to increase domestic and international tourism, such as promotion, branding, advertising, publicizing, marketing, and the preparation and distribution of information for the purpose of encouraging and welcoming travelers, visitors, and tourists to the Bellingham Whatcom County Tourism Promotion Area. Such activities include, but are not limited to: strategic planning, market research, creative development, media placement, metrics, sales activities, and designing, hosting and communicating about events relating to promotion and marketing of the Bellingham Whatcom County Tourism Promotion Area, operating tourism destination marketing organizations, or contracting with such organizations or other similar organizations, to administer the operation of the Bellingham Whatcom County Tourism Promotion Area, and administration, operation, and management support for such services, including but not limited to, overhead costs, staff costs, professional costs, and auditing costs, and funding reserve funds to fund any such activities.

Section 2. Interlocal Agreement; Legislative Authority.

(a) *Interlocal Agreement.* The County Council hereby approves the Interlocal Agreement for the Joint Establishment of a Tourism Promotion Area, by and between the County and Bellingham, substantially in the form as attached hereto as Exhibit A and incorporated herein by this reference (the “Interlocal Agreement”). The County Executive, or such individual’s designee (the “Designated Representative”) is hereby authorized and directed to execute the Interlocal Agreement, substantially in the form attached hereto with only those modifications as shall have been approved by such individual and in the best interest of the County.

The Designated Representative, the County Treasurer and other appropriate officers of the County are authorized and directed to take any and all such additional actions as may be necessary or desirable to accomplish the terms of the Interlocal Agreement and the formation of the Bellingham Whatcom County Tourism Promotion Area.

(b) *Legislative Authority.* Pursuant to the terms of the Interlocal Agreement, the County hereby acknowledges and agrees that the Bellingham City Council hereby shall serve as the Legislative Authority of the Bellingham Whatcom County Tourism Promotion Area for purposes of the Interlocal Agreement and the TPA Act.

Section 3. Formation of Proposed Bellingham Whatcom County Tourism Promotion Area.

(a) *Notice of Intent; Public Hearing.* Having received an Initiation Petition to establish the Bellingham Whatcom County Tourism Promotion Area pursuant to the TPA Act, the County Council hereby acknowledges and agrees that the Bellingham City Council, as Legislative Authority, shall provide notice of intent to establish the Bellingham Whatcom County Tourism Promotion Area as required under the TPA Act, hold a public hearing pursuant to the TPA Act, and take such actions as are necessary to facilitate the formation of the Bellingham Whatcom County Tourism Promotion Area pursuant to the Initiation Petition and the Interlocal Agreement.

(b) *Boundaries of Proposed Bellingham Whatcom County Tourism Promotion Area.* The boundaries of the proposed Bellingham Whatcom County Tourism Promotion Area shall

include the incorporated areas of Bellingham and the unincorporated area of the County. The County hereby authorizes the formation of the proposed Bellingham Whatcom County Tourism Promotion Area in the unincorporated areas of the County.

(c) *Use of TPA Charge.* The revenue from the TPA Charge collected within the Bellingham Whatcom County Tourism Promotion Area shall be used solely for Tourism Promotion as provided in the Interlocal Agreement.

(d) *Estimated Costs of Proposed Projects.* The total estimated annual costs of such uses and projects are at least \$1.5 million. Bellingham Whatcom County Tourism estimates that, on an annual basis, the revenue from the TPA Charges collected from the Operators of Lodging Businesses within the Bellingham Whatcom County Tourism Promotion Area shall be between \$1 million and \$1.5 million. This amount may vary from year to year depending upon fluctuating occupancy rates in the proposed area, and the rate of recovery from the economic impacts of the 2019 novel coronavirus pandemic.

APPROVED this 19th day of March, 2021.

ATTEST:



Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Barry Buchanan, Council Chair

APPROVED AS TO FORM:

Approved by Christopher Quinn via email / LB

Civil Deputy Prosecutor

Exhibit A

Form of Interlocal Agreement

**INTERLOCAL AGREEMENT
FOR THE JOINT ESTABLISHMENT OF A
TOURISM PROMOTION AREA**

THIS INTERLOCAL AGREEMENT FOR THE JOINT ESTABLISHMENT OF A TOURISM PROMOTION AREA (this “Agreement”) dated this ___ day of _____, 2021 (the “Effective Date”), is made and entered into between the CITY OF BELLINGHAM (“Bellingham”), and WHATCOM COUNTY (the “County”), each municipal corporations organized under the laws and statues of the State of Washington, for the purpose of establishing a joint tourism promotion area pursuant to chapter 35.101 of the Revised Code of Washington (“RCW”).

RECITALS:

WHEREAS, the tourism and recreation industry is a vital and substantial component of the region’s economy and tourism promotion increases the number of visitors to the region which in turn increases regional sales supporting the local economy; and

WHEREAS, the Legislature of the State of Washington has recognized the importance of tourism promotion in the State of Washington and in 2003 passed Engrossed Substitute Senate Bill No. 6026, codified as chapter 35.101 RCW, as amended (the “TPA Act”), authorizing counties, cities, and towns to establish tourism promotion areas and to levy a tourism promotion charge on the furnishing of lodging on certain lodging businesses (as defined in the TPA Act, “Lodging Businesses”) to fund tourism promotion (as defined in the TPA Act); and

WHEREAS, other Washington counties and cities, including Pierce County, Skagit County, the Tri-Cities, Spokane County, and Clark County, have established tourism promotion areas and have dedicated such funds for tourism promotion; and

WHEREAS, the Operators of Lodging Businesses (as defined herein) who would pay sixty percent (60%) or more of the proposed TPA Charges (as defined herein) throughout the proposed tourism promotion area have submitted an initiation petition to the Bellingham City Council and the Whatcom County Council to initiate the formation of a tourism promotion area in the jurisdictional boundaries of Bellingham and unincorporated areas of Whatcom County (the “Bellingham Whatcom County Tourism Promotion Area”); and

WHEREAS, depending on occupancy rates and rate of recovery from the 2019 coronavirus pandemic and subsequent recession, the proposed Bellingham Whatcom County Tourism Promotion Area is projected to provide approximately \$1.0 to \$1.5 million of additional revenue for tourism promotion each year; and

WHEREAS, the revenue stream from the TPA Charges will establish and promote a tourism promotion program to bring more visitors to the area, bolster occupancy at Lodging Businesses, retain current jobs and create new jobs, increase business at restaurants and retail stores, and increase patronage in the arts, cultural, recreational, entertainment, and sporting venues in an increasingly competitive marketplace; and

WHEREAS, the parties now desire to enter into this Agreement for the purpose of appointing a legislative authority to carry out the terms of the TPA Act in order to help facilitate the formation and operation of the Bellingham Whatcom County Tourism Promotion Area; and

WHEREAS, Bellingham, as the legislative authority, will facilitate the formation of the Bellingham Whatcom County Tourism Promotion Area, impose the TPA Charges, and contract with the State of Washington, Department of Revenue for the administration and collection of the TPA Charges;

NOW THEREFORE, it is hereby agreed and covenanted among the undersigned as follows:

Section 1. Definitions. In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below. References to agreements, State and local laws, code provisions, and other statutes shall be interpreted to include all amendments thereto.

“Agreement” means this Interlocal Agreement for the Joint Establishment of a Tourism Promotion Area by and between Bellingham and Whatcom County, entered into pursuant to the TPA Act and the Interlocal Cooperation Act, as it may be amended from time to time.

“Annual Budget” means the budget prepared by the TPA Administrator, and approved by the Legislative Authority pursuant to Section 6 of this Agreement.

“Bellingham” means the City of Bellingham, Washington.

“Bellingham Whatcom County Tourism Promotion Area” means the geographic area identified in the Initiation Petition.

“DOR” means the Washington State Department of Revenue.

“Interlocal Cooperation Act” means chapter 39.34 RCW as the same may be amended from time to time.

“Legislative Authority” means the legislative authority of the Bellingham Whatcom County Tourism Promotion Area appointed pursuant to Section 2 of this Agreement, as the same shall be duly and regularly constituted from time to time.

“Lodging Business” means a business located within the Bellingham Whatcom County Tourism Promotion Area that furnishes lodging taxable by the State under chapter 82.08 RCW that has 40 or more lodging units. Lodging facilities with fewer than 40 rooms are not considered

“Lodging Businesses” for the purpose of this Agreement and are exempt from any fees imposed under chapter 35.101 RCW.

“Operator” or “Operator of a Lodging Business” means an operator of a Lodging Business, whether in the capacity of owner, general manager, lessee, sublessee, mortgagee in possession, license or any other similar capacity.

“Initiation Petition” means the initiation petition delivered to the Whatcom County Council and the Bellingham City Council pursuant to the TPA Act.

“RCW” means the Revised Code of Washington, as such referenced may be amended from time to time.

“State” means the State of Washington.

“TPA Act” means chapter 35.101 RCW, as it may be amended from time to time.

“TPA Administrator” means (a) initially, Bellingham Whatcom County Tourism, a tourism destination marketing organization, and its corporate successors, and (b) any other successor tourism destination marketing organization or other consultant appointed in accordance with Section 6(a) of this Agreement.

“TPA Charge” means the levy (charge) imposed on the Operators of Lodging Businesses within the Bellingham Whatcom County Tourism Promotion Area and subsequently passed on to the guests of the Lodging Business, under the authority of the TPA Act, for the purpose of providing funding of Tourism Promotion.

“Tourism Promotion” has the meaning set forth in RCW 35.101.010, including but not limited to, actions and expenditures designed to increase domestic and international tourism, such as promotion, branding, advertising, publicizing, marketing, and the preparation and distribution of information for the purpose of encouraging and welcoming travelers, visitors, and tourists to the Bellingham Whatcom County Tourism Promotion Area. Such activities include, but are not limited to: strategic planning, market research, creative development, media placement, metrics, sales activities, and designing, hosting and communicating about events relating to promotion and marketing of the Bellingham Whatcom County Tourism Promotion Area, operating tourism destination marketing organizations, or contracting with such organizations or other similar organizations, to administer the operation of the Bellingham Whatcom County Tourism Promotion Area, and administration, operation, and management support for such services, including but not limited to, overhead costs, staff costs, professional costs, and auditing costs, and funding reserve funds to fund any such activities.

“Whatcom County” means Whatcom County, Washington.

Section 2. Purpose of this Agreement; Appointment of Legislative Authority.

(a) *Purpose of this Agreement.* The purpose of this Agreement is (1) to promote tourism in the boundaries of the Bellingham Whatcom County Tourism Promotion Area by appointing a Legislative Authority for purposes of the TPA Act in the incorporated areas of

Bellingham and the unincorporated area of Whatcom County, which when and if created, will permit collection of TPA Charges from Lodging Businesses to fund Tourism Promotion, and (2) to memorialize the agreement among the parties hereto relating to the Bellingham Whatcom County Tourism Promotion Area.

(b) *Appointment of Legislative Authority.* The Bellingham City Council is hereby appointed as the Legislative Authority of the Bellingham Whatcom County Tourism Promotion Area for purposes of this Agreement and the TPA Act.

(c) *Understanding of the Parties.* It is hereby understood and agreed by the parties that the Bellingham City Council, serving in its capacity as the Legislative Authority, shall hold a public hearing after providing proper notice under the terms of the TPA Act and, unless such proceedings terminate, consider an ordinance forming the proposed Bellingham Whatcom County Tourism Promotion Area under the terms of the TPA Act. The parties hereto agree that Resolution No. ___ adopted by the Bellingham City Council on _____, 2021 shall serve as the “resolution of intent” to form the proposed Bellingham Whatcom County Tourism Promotion Area for purposes of the TPA Act.

It is understood and agreed to by the parties hereto that the purpose of forming the Bellingham Whatcom County Tourism Promotion Area is to provide an additional source of revenue to be used exclusively to fund Tourism Promotion within the boundaries of the Bellingham Whatcom County Tourism Promotion Area.

(d) *Termination of Proceedings.* Notwithstanding anything herein to the contrary, if the Bellingham Whatcom County Tourism Promotion Area is not formed by December 31, 2021, this Agreement shall terminate and shall be of no further force or effect. Provided the Bellingham Whatcom County Tourism Promotion Area is formed by December 31, 2021, Bellingham shall proceed in the manner described in this Agreement and as provided for in the TPA Act, acting as the Legislative Authority of the Bellingham Whatcom County Tourism Promotion Area.

Section 3. Legislative Authority. The parties hereto acknowledge and agree that the Bellingham City Council is being appointed solely to serve as the “legislative authority” for purposes of the TPA Act. The day to day operations of the Bellingham Whatcom County Tourism Promotion Area, including but not limited to the management and expenditure of TPA Charges, is expected to be managed by the TPA Administrator as manager and operator of the Bellingham Whatcom County Tourism Promotion Area. The Bellingham City Council, when acting in its capacity as Legislative Authority, shall have the authority to:

(a) Hold a public hearing as required by the TPA Act and otherwise carry out the terms of the TPA Act;

(b) Form the Bellingham Whatcom County Tourism Promotion Area, establish rates of TPA Charges and levy TPA Charges pursuant to the terms of this Agreement, the Initiation Petition, and the TPA Act;

(c) Adopt an Annual Budget for the Bellingham Whatcom County Tourism Promotion Area;

(d) As provided for in RCW 35.101.130(2), enter into agreements with third parties, including the TPA Administrator and other consultants and entities, as necessary or appropriate to fully implement the purposes of this Agreement and the Bellingham Whatcom County Tourism Promotion Area, including but not limited to, agreements with tourism destination marketing organizations, or other similar organizations, to administer the operation of the Bellingham Whatcom County Tourism Promotion Area;

(e) Enter into agreements with DOR, as provided for in RCW 35.101.090, and receive funds from federal, state or local agencies and distribute such funds to parties and organizations administering the operation of the Bellingham Whatcom County Tourism Promotion Area;

(f) Receive and account for all funds allocated to the Bellingham Whatcom County Tourism Promotion Area; and

(g) Engage in any and all other acts necessary to further the goals of this Agreement.

Section 4. Levy of TPA Charges on Lodging Businesses within the Bellingham Whatcom County Tourism Promotion Area.

(a) If and when the Bellingham Whatcom County Tourism Promotion Area is formed, Bellingham City Council, as Legislative Authority, will levy TPA Charges on the Operators of Lodging Businesses within the Bellingham Whatcom County Tourism Promotion Area in accordance with the zones and levels of TPA Charges as set forth in the Initiation Petition.

The parties acknowledge that, unless otherwise provided for in the Initiation Petition, TPA Charges shall not be imposed on rooms (1) in which the occupant has stayed 30 or more continuous days as provided for in WAC 58-20-166, as may be amended; (2) in which the United States government is directly paying for the rooms as provided for in WAC 458-20-166(5)(h), as may be amended; and (3) as provided for in RCW 35.101.055, consisting of temporary medical housing exempt under RCW 82.08.997, as may be amended.

(b) Bellingham, as the Legislative Authority, shall contract with DOR for the administration and collection of the TPA Charges pursuant to RCW 35.101.090. TPA Charges shall be deposited into the local tourism promotion account created in the custody of the State Treasurer under RCW 35.101.100. It is understood and agreed that in accordance with RCW 35.101.100, the State Treasurer has the authority to distribute or cause to be distributed the revenue from the tourism promotion account allocable to the Bellingham Whatcom County Tourism Promotion Area to the Legislative Authority or its designee, on a monthly basis. Bellingham shall act as fiscal agent to the Bellingham Whatcom County Tourism Promotion Area and shall be responsible for receiving TPA Charges from the State Treasurer and holding such funds in a segregated account(s) until remitted to the Bellingham Whatcom County Tourism Promotion Area pursuant to Section 6 of this Agreement.

(c) Any change in the TPA Charges rates, or classification as set in the resolution of the Legislative Authority, shall be made only by amendment of the ordinance by the Legislative Authority, and only upon written request by the Operators of Lodging Businesses in the proposed area who would pay sixty percent or more of the proposed charges.

(d) It is understood and agreed by the parties that the TPA Charges imposed in the Bellingham Whatcom County Tourism Promotion Area are not a tax on the “sale of lodging” for the purposes of chapter 82.14 RCW. It is further understood and agreed by the parties the TPA Charges imposed under this Agreement are in addition to the assessments that may be levied under chapter 35.87A RCW.

Section 5. Use of TPA Charge Revenue. All of the revenue from the TPA Charge collected by DOR from Lodging Businesses within the Bellingham Whatcom County Tourism Promotion Area shall be used exclusively for Tourism Promotion as defined herein, and for no other purpose, in accordance with the Annual Budget. The revenue derived from the TPA Charges shall be used only for the following purposes:

(a) Tourism Promotion within the Bellingham Whatcom County Tourism Promotion Area as defined herein and as specified in the Bellingham Whatcom County Tourism Promotion Area business plan to be adopted annually;

(b) Preparing and implementing a comprehensive plan for tourism recovery from the economic impact of the 2019 novel coronavirus pandemic and subsequent recession, rebuilding the greater Bellingham-Whatcom County area as a tourist destination, encouraging tourism innovation and investment in the area, and working with local business, local governments and Lodging Businesses to build a stronger tourist economy;

(c) Marketing convention, conferences and trade shows that benefit local tourism and Lodging Business in the Bellingham Whatcom County Tourism Promotion Area;

(d) Marketing of the greater Bellingham-Whatcom County area to the travel industry in order to benefit local tourism and Lodging Businesses in the Bellingham Whatcom County Tourism Promotion Area;

(e) Marketing of the greater Bellingham-Whatcom County area to recruit sporting, athletic, recreational, entertainment, performing arts and cultural events in order to benefit tourism and Lodging Businesses in the Bellingham Whatcom County Tourism Promotion Area, and for the purpose of increasing overnight visitor stays within the greater Bellingham-Whatcom County region;

(f) Providing marketing and event assistance for qualifying events that represent a substantial likelihood of benefiting tourism and Lodging Businesses in the Bellingham Whatcom County Tourism Promotion Area, and for the purpose of increasing overnight visitor stays within the greater Bellingham-Whatcom County area; and

(g) For any other purpose consistent the TPA Act and approved in the Annual Budget.

Included within the scope of Tourism Promotion is the administration, operation, formation, and start-up costs associated with the Bellingham Whatcom County Tourism Promotion Area and the ongoing management and maintenance of the Bellingham Whatcom County Tourism Promotion Area.

Section 6. Management of Bellingham Whatcom County Tourism Promotion Area; Annual Budget; Reporting Requirements.

(a) The parties hereto agree that Bellingham Whatcom County Tourism shall serve as the initial TPA Administrator. Bellingham, as the Legislative Authority, has contracted or will contract with Bellingham Whatcom County Tourism pursuant to one or more agreements for the management and operation of the Bellingham Whatcom County Tourism Promotion Area.

The Legislative Authority may, from time to time, contract with a tourism destination marketing organization or other similar organization other than the Bellingham Whatcom County Tourism (or its corporate successors) to serve as the TPA Administrator and administer the operation of the Bellingham Whatcom County Tourism Promotion Area. Prior to appointing and contracting with such new TPA Administrator, the Legislative Authority shall seek recommendations from Lodging Businesses, and shall appoint the organization or entity that is approved by the Operators of Lodging Businesses who pay a majority or more of the total TPA Charges in the area.

The parties acknowledge and agree that the TPA Administrator will advise and make recommendations to the Bellingham City Council, as the Legislative Authority, on all matters related to the Bellingham Whatcom County Tourism Promotion Area and to carry out its purposes as set forth in this Agreement. Services to be provided by the TPA Administrator shall include administering the activities and programs of the Bellingham Whatcom County Tourism Promotion Area, assisting with program review under RCW 35.101.058 and preparing a proposed Annual Budget for the Bellingham Whatcom County Tourism Promotion Area, as provided for in more detail below.

(b) The TPA Administrator shall prepare an Annual Budget for the use of TPA Charges and shall provide a copy of the Annual Budget to the Legislative Authority for approval. A copy of the Annual Budget shall also be provided to Whatcom County. The Annual Budget shall consist of:

(1) A list of the Lodging Businesses subject to TPA Charges and an estimate of the revenue to be received from all such Lodging Businesses; and

(2) A statement of the proposed budget for all Bellingham Whatcom County Tourism Promotion Area activities and programs to be funded from TPA Charges during the ensuing fiscal year.

(c) The TPA Administrator shall agree to comply with all applicable provisions of State and federal law, including but not limited to, the TPA Act, and with all applicable county or city resolutions and ordinances, and with all regulations lawfully imposed by the State Auditor or other State agencies, and the applicable provisions of this Agreement.

(d) All TPA Charges received by Bellingham, as fiscal agent for the Bellingham Whatcom County Tourism Promotion Area, from DOR and any interest thereon shall be deposited by Bellingham in a special account and for the benefit of the Bellingham Whatcom County Tourism Promotion Area. Payments to the TPA Administrator will be made as provided for in

contracts executed by Bellingham and such TPA Administrator. Provided, however, no revenue from the TPA Charges shall be transferred in any fiscal year until after the adoption of that year's fiscal Annual Budget.

Section 7. Initial Duration. The initial duration of this Agreement shall be for a period of ten years from its Effective Date ("Initial Term"), subject to amendment as provided herein. This Agreement shall automatically renew on each one-year anniversary thereafter, subject to amendment or termination as provided herein.

Section 8. Modification or Disestablishment of the Bellingham Whatcom County Tourism Promotion Area.

(a) *Modification of Boundaries.* Upon receipt of a petition expressing the desire to revise the boundaries of some or part of the Bellingham Whatcom County Tourism Promotion Area, bearing the signatures of the Operators of Lodging Businesses in the Bellingham Whatcom County Tourism Promotion Area who pay 60% or more of the total TPA Charges in the area proposed to be disestablished, the Legislative Authority may disestablish the requested area by ordinance following a hearing before the Legislative Authority, as provided for in RCW 35.101.140. In doing so, as provided for in RCW 35.101.140, the Legislative Authority shall adopt a resolution of intention to revise the boundaries the Bellingham Whatcom County Tourism Promotion Area, and shall state the time and place of a public hearing to be held by the Legislative Authority to consider the proposed action, provided, the public hearing shall be at least 15 days prior to consideration of the proposed action.

After conducting a public hearing to take public comment on the proposed action as required above, the Legislative Authority may, by ordinance, revise the boundaries of the Bellingham Whatcom County Tourism Promotion Area. Notwithstanding the foregoing, if at a hearing held pursuant to this Agreement a petition objecting to the boundary revision is presented, with the signatures of Operators of Lodging Businesses in the Bellingham Whatcom County Tourism Promotion Area who pay 60% or more of the TPA Charges within the area proposed to be removed from the Bellingham Whatcom County Tourism Promotion Area, the Bellingham Whatcom County Tourism Promotion Area shall not be revised. If such a petition objecting to the proposed boundary revision is not presented at the hearing, and provided the statutory requirements of the TPA Act, as may be amended, are met, the Legislative Authority shall proceed by ordinance to disestablish an area of the Bellingham Whatcom County Tourism Promotion Area.

(b) *Removal of TPA Charge; Disestablishment of Area.* If, pursuant to RCW 35.101.130(3), a majority of those Lodging Businesses assessed the TPA Charges imposed under RCW 35.101.050 or 35.101.057 petition in writing to the Legislative Authority that the TPA Charge be removed, the Legislative Authority shall remove the TPA Charge. The Legislative Authority may determine the timing of when to remove the TPA Charge so that the effective date of the expiration of the TPA Charge will not adversely impact existing contractual obligations not to exceed twelve months. After the TPA Charge is removed, the Legislative Authority shall disestablish the Bellingham Whatcom County Tourism Promotion Area by ordinance after holding a public hearing as provided in RCW 35.101.140.

(c) Notwithstanding anything to the contrary in this Agreement, in no case shall any of the parties be obligated to satisfy the outstanding obligations of the Bellingham Whatcom County Tourism Promotion Area from such party's money, funds, or other sources of revenue unless it otherwise agrees to in writing. Furthermore, the Legislative Authority may not be held liable for any financial obligations, contractual obligations, or damages for removing the TPA Charge in accordance with this Agreement and the TPA Act.

Section 9. Miscellaneous Provisions.

(a) *Interlocal Agreement.* The parties agree:

(1) This Agreement is not intended to create a separate entity within the meaning of RCW 39.34.030(3) or a "joint board" within the meaning of RCW 39.34.030(4)(a);

(2) The Mayor of Bellingham, or such person's designee, and the Whatcom County Executive, or such person's designee, are appointed as the "administrator" within the meaning of RCW 39.34.030(4)(a) responsible for administering the such party's rights and duties set forth in this Agreement; and

(3) The parties shall file or post this Agreement as required by RCW 39.34.040.

(b) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State. If any dispute arises between the parties hereto under any of the provisions of this Agreement, resolution of that dispute shall be available only through the jurisdiction, venue and rules of the Whatcom County Superior Court, Whatcom County, Washington.

(c) *Non-Waiver of Breach.* The failure of any party to insist upon strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.

(d) *Compliance with all Laws.* The parties shall comply with all federal, state and local laws, rules, regulations, resolutions and ordinances applicable to the performance of this Agreement.

(e) *Continuation of Performance.* In the event that any dispute or conflict arises between the parties while this Agreement is in effect, the parties hereto agree that, notwithstanding such dispute or conflict, they shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities.

(f) *Funds and Audit.* As provided for in RCW 35.101.090, the TPA Charges shall be administered by DOR and shall be collected by Lodging Businesses from those persons who are taxable by the State under chapter 82.08 RCW. As provided for in RCW 35.101.09(3) the TPA Charges authorized by chapter 82.08 RCW, as amended, and this Agreement that are collected by DOR, shall be deposited by the DOR into a separate Bellingham Whatcom County Tourism Promotion Area tourism promotion account, as provided for in RCW 35.101.090 and .100. These

funds shall be subject to the same audit and fiscal controls as other funds held by Bellingham and in full compliance with record-keeping and accounting methods required by State law and/or the Washington State Auditor and Washington State Treasurer in compliance with the requirements of any applicable State program. Interest on investment of the Bellingham Whatcom County Tourism Promotion Area funds shall accrue to the benefit of the Bellingham Whatcom County Tourism Promotion Area.

(g) *Records, Audits and Reports: Public Records Requests.* At the expense of the Bellingham Whatcom County Tourism Promotion Area, the Legislative Authority shall maintain records and accounts of all operations and expenditures of the Bellingham Whatcom County Tourism Promotion Area. All records shall be maintained and be available for inspection and photocopying under the provisions of the Washington Public Records Act, chapter 42.56 RCW, subject to any exemptions or limitations on disclosure.

(h) *Property and Equipment.* Except as otherwise agreed to by Bellingham, Bellingham shall be the owner of all property and equipment purchased in furtherance of this Agreement from the revenue generated by the TPA Charges.

(i) *Integration.* This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes, repeals, and replaces in whole any understanding, agreement, or negotiation whether oral or written not set forth herein including but not limited to any previous agreement adopted by a party concerning the establishment of the Bellingham Whatcom County Tourism Promotion Area. All the terms and conditions agreed upon by the parties concerning the establishment of the Bellingham Whatcom County Tourism Promotion Area and the collection of TPA Charges from Operators of Lodging Businesses. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. The parties have read and understand each of the terms of this Agreement, and affirm that no representation, promise, or agreement not expressed in this Agreement has been made to induce the officials of Bellingham or Whatcom County to execute this Agreement.

(j) *Severability.* In the event any provision of this Agreement shall be declared by a Court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not, in any way, be effected or impaired thereby.

(k) *Liability.* Each party to this Agreement will be responsible for the acts and omissions of its own elected officials, officers, employees, and agents in the performance of this Agreement. None of the parties will be considered the agent of the other and none of the parties will assume any responsibility to the other parties for the consequences of any act or omission of any person, firm, governmental authority or agency or entity not a party to this Agreement. The parties shall each indemnify and hold harmless one another, and their respective elected officials, officers, employees, and agents, from any and all liabilities, damages, fees, costs, and expenses, including but not limited to, claims, judgments, or awards of damages arising out of the acts or omissions of any of them or of their respective elected officials, officers, employees, and agents, and shall process and defend at their own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against

any of them, arising out of, in connection with, or incident to this Agreement and/or any of their performance, or failure to perform, any aspect of this Agreement.

(l) *Notice.* Any formal notice or communication to be given among the parties to this Agreement shall be deemed properly given, if delivered either in physical or electronic means, or if mailed postage prepaid and addressed to:

City of Bellingham
210 Lottie Street
Bellingham, WA 98225
Attn: Tara Sundin

Whatcom County
311 Grand Avenue
Bellingham, WA 98225
Attn: Tyler Schroeder

(m) *Amendment.* This Agreement may be amended by the mutual consent of the parties hereto. No additions to or alterations of the terms of this Agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of all parties.

(n) *Counterparts.* This Agreement may be executed in any number of counterparts, each of whom shall be an original, but those counterparts will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date written above.

[signature pages to follow]

Executed, this ____ day of _____, 20__ for the **CITY OF BELLINGHAM:**

Department Approval:

Mayor

Department Head

Attest:

Approved as to Form:

Finance Director

Office of the City Attorney

Executed, this ____ day of _____, 20__ for **WHATCOM COUNTY**:

County Executive

Approved as to Form:

Civil Deputy Prosecuting Attorney