

CITY OF BELLINGHAM, WASHINGTON

ORDINANCE NO. 2005-11-091

AN ORDINANCE of the City of Bellingham, Washington, relating to contracting indebtedness; providing for the issuance of \$8,695,000 par value of Limited Tax General Obligation Bonds, 2005, of the City, in two series, to provide funds with which to (1) finance or refinance the environmental clean up of the Holly Street landfill site, (2) finance the City's share of the environmental clean up by the Port of Bellingham, Washington, of the Cornwall Avenue and Central Waterfront landfill sites, and (3) finance the acquisition of the Colony Wharf property adjacent to the Roeder Avenue landfill site; fixing the date, form, maturities, interest rates, terms and covenants of the bonds; establishing a bond redemption fund and a project fund; providing for bond insurance; and approving the sale and providing for the delivery of the bonds to Banc of America Securities LLC of Seattle, Washington.

Passed November 21, 2005

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WHEREAS, the City of Bellingham, Washington (the "City"), is in need of (1) financing or refinancing the environmental clean up of the Holly Street landfill site, (2) financing the City's share of the environmental clean up by the Port of Bellingham, Washington, of the Cornwall Avenue and Central Waterfront landfill sites, and (3) financing the acquisition of the Colony Wharf property adjacent to the Roeder Avenue landfill site, the estimated cost of which is \$8,500,000, and the City does not have available sufficient funds to pay the cost; and

WHEREAS, bond counsel to the City has determined that the payment to the Port of Bellingham to finance the City's share of the environmental cleanup of the Cornwall Avenue and Central Waterfront landfill sites cannot be financed on a tax-exempt basis; and

WHEREAS, it is anticipated that the City will lease the Colony Wharf property to private businesses pending the clean up of the adjacent Roeder Avenue landfill site and subsequent sale of the Colony Wharf property, and the acquisition of the Colony Wharf property cannot be financed on a tax-exempt basis; and

WHEREAS, the City Council deems it to be in the best interests of the City and the public to issue and sell its limited tax general obligation bonds authorized by this ordinance (the "Bonds")

to (1) finance all or a portion of the City's share of the environmental clean up by the Port of Bellingham, Washington, of the Cornwall Avenue and Central Waterfront landfill sites, (2) finance or refinance all or a portion of the environmental clean up of the Holly Street landfill site, and (3) finance all or a portion of the cost of acquiring the Colony Wharf property adjacent to the Roeder Avenue landfill site, and to pay the costs of issuance and sale of the Bonds; and

WHEREAS, MBIA Insurance Corporation of Armonk, New York, has made a commitment to issue an insurance policy for each series of Bonds (collectively, the "Financial Guaranty Insurance Policies") insuring the payment when due of the principal of and interest on the Bonds as provided therein, and the City Council deems that the purchase of the Financial Guaranty Insurance Policies is in the best interest of the City; and

WHEREAS, Banc of America Securities LLC of Seattle, Washington, has offered to purchase the Bonds under the terms and conditions set forth herein and in a bond purchase contract;  
NOW, THEREFORE,

THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1.     Definitions. As used in this ordinance, the following words have the following meanings:

"Bond Insurer" means MBIA Insurance Corporation, a stock insurance company incorporated under the laws of the State of New York.

"Bond Fund" means, collectively, the 2005 Series A Bonds Principal and Interest Account and the 2005 Series B Bonds Principal and Interest Account within the City's Solid Waste Fund created herein for the purpose of paying principal of and interest on the Bonds.

"Bond Register" means the books or records maintained by the Bond Registrar on which are recorded the names and addresses of the owners of the Bonds.

“Bond Registrar” means the Fiscal Agent.

“Bonds” means, collectively, the Series A Bonds and the Series B Bonds.

“City” means the City of Bellingham, Washington.

“Code” means the Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

“DTC” means The Depository Trust Company, New York, New York.

“Finance Director” means the Finance Director of the City (or the successor officer to the Finance Director).

“Financial Guaranty Insurance Policy” or “Financial Guaranty Insurance Policies” means one or both of the financial guaranty insurance policies issued by the Bond Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

“Fiscal Agent” means the fiscal agent of the State of Washington, or any other paying agent/registrar of the City, as the same may be designated from time to time.

“Letter of Representations” means the Blanket Issuer Letter of Representations between the City and DTC dated April 26, 1999, as it may be amended from time to time.

“Registered Owner” means, as registered owner of the Bond, or any subsequent owner of the Bond.

“Series A Bonds” means the Limited Tax General Obligation Bonds, 2005, Series A (Tax-Exempt), of the City issued pursuant to, under the authority of and for the purposes provided in this ordinance.

“Series B Bonds” means the Limited Tax General Obligation Bonds, 2005, Series B (Taxable), of the City issued pursuant to, under the authority of and for the purposes provided in this ordinance.

Section 2.     Debt Capacity. The assessed valuation of the taxable property within the City as ascertained by the last preceding assessment for City purposes for the calendar year 2005 is \$5,348,485,165, and the City has outstanding general indebtedness evidenced by limited tax general obligation bonds, notes, leases and conditional sales contracts in the principal amount of \$2,794,181 incurred within the limit of up to 1-1/2% of the value of the taxable property within the City permitted for general municipal purposes without a vote of the qualified voters therein, unlimited tax general obligation bonds in the principal amount of \$2,245,000 incurred within the limit of up to 2 1/2% of the value of the taxable property within the City for capital purposes only, and no unlimited tax general obligation bonds incurred within the additional limit of up to 2-1/2% of the value of the taxable property within the City for utility purposes or within the additional limit of up to 2-1/2% of the value of the taxable property within the City for parks and open space purposes, issued pursuant to a vote of the qualified voters of the City. The amount of indebtedness for which the Bonds are authorized herein to be issued is \$8,695,000.

Section 3.     Authorization of Bonds. The City shall borrow money on the credit of the City and issue negotiable limited tax general obligation bonds evidencing that indebtedness in the amount of \$8,695,000, of which \$1,545,000 principal amount shall be Series A Bonds and \$7,150,000 principal amount shall be Series B Bonds, to provide the funds with which to (1) finance or refinance all or a portion of the environmental clean up of the Holly Street landfill site, (2) finance all or a portion of the City's share of the environmental clean up by the Port of Bellingham, Washington, of the Cornwall Avenue and Central Waterfront landfill sites, and (3) finance all or a portion of the cost of acquiring the Colony Wharf property adjacent to the Roeder Avenue landfill site, and (4) to pay the costs of issuance and sale of the Bonds (the "costs of issuance"). The general indebtedness to be incurred shall be within the limit of up to 1-1/2% of

the value of the taxable property within the City permitted for general municipal purposes without a vote of the qualified voters therein.

Section 4. Description of Series A Bonds. The Series A Bonds shall be called Limited Tax General Obligation Bonds, 2005, Series A (Tax-Exempt), of the City; shall be in the aggregate principal amount of \$1,545,000; shall be dated their date of issue; shall be in the denomination of \$5,000 or any integral multiple thereof within a single maturity; shall be numbered separately in the manner and with any additional designation as the Bond Registrar deems necessary for purposes of identification; shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) payable semiannually on each June 1 and December 1, commencing June 1, 2006, to the maturity or earlier redemption of the Bonds; and shall mature on December 1 in years and amounts and bear interest at the rates per annum as follows:

| <u>Maturity<br/>Years</u> | <u>Amounts</u> | <u>Interest<br/>Rates</u> |
|---------------------------|----------------|---------------------------|
| 2023                      | \$230,000      | 4.125%                    |
| 2024                      | 645,000        | 4.150                     |
| 2025                      | 670,000        | 4.200                     |

Proceeds of the Series A Bonds shall be used solely to finance or refinance all or a portion of the environmental clean up of the Holly Street landfill site and pay the costs of issuing the Series A Bonds. The life of the capital improvements to be made with the proceeds of the Series A Bonds exceeds the term of the Series A Bonds.

Section 5. Description of Series B Bonds. The Series B Bonds shall be called Limited Tax General Obligation Bonds, 2005, Series B (Taxable), of the City; shall be in the aggregate principal amount of \$7,150,000; shall be dated their date of issue; shall be in the denomination of \$5,000 or any integral multiple thereof within a single maturity; shall be numbered separately in the manner and with any additional designation as the Bond Registrar

deems necessary for purposes of identification; shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) payable semiannually on each June 1 and December 1, commencing June 1, 2006, to the maturity or earlier redemption of the Bonds; and shall mature on December 1 in years and amounts and bear interest at the rates per annum as follows:

| <u>Maturity<br/>Years</u> | <u>Amounts</u> | <u>Interest<br/>Rates</u> |
|---------------------------|----------------|---------------------------|
| 2006                      | \$265,000      | 4.80%                     |
| 2007                      | 275,000        | 4.82                      |
| 2008                      | 285,000        | 4.87                      |
| 2009                      | 300,000        | 4.93                      |
| 2010                      | 315,000        | 4.98                      |
| 2011                      | 330,000        | 5.01                      |
| 2012                      | 350,000        | 5.12                      |
| 2013                      | 365,000        | 5.18                      |
| 2014                      | 385,000        | 5.25                      |
| 2015                      | 405,000        | 5.27                      |
| **                        | **             | **                        |
| 2020                      | 2,365,000      | 5.31                      |
| **                        | **             | **                        |
| 2023                      | 1,510,000      | 5.40                      |

Proceeds of the Series B Bonds shall be used solely to (1) finance all or a portion of the City's share of the environmental clean up by the Port of Bellingham, Washington, of the Cornwall Avenue and Central Waterfront landfill sites; (2) finance all or a portion of the cost of acquiring the Colony Wharf property adjacent to the Roeder Avenue landfill site and (3) pay the costs of issuing the Bonds. The life of the capital improvements to be made with the proceeds of the Series B Bonds exceeds the term of the Series B Bonds.

Section 6. Registration and Transfer of Bonds. The Bonds shall be issued only in registered form as to both principal and interest and shall be recorded on Bond Register. The Bond Register shall contain the name and mailing address of the owner of each Bond and the principal amount and number of each of the Bonds held by each owner.



Bonds surrendered to the Bond Registrar may be exchanged for Bonds in any authorized denomination of an equal aggregate principal amount and of the same series, interest rate and maturity. Bonds may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall be without cost to the owner or transferee. The Bond Registrar shall not be obligated to exchange or transfer any Bond during the 15 days preceding any principal payment or redemption date.

The Bonds initially shall be registered in the name of Cede & Co., as the nominee of DTC. The Bonds so registered shall be held in fully immobilized form by DTC as depository in accordance with the provisions of the Letter of Representations. Neither the City nor the Bond Registrar shall have any responsibility or obligation to DTC participants or the persons for whom they act as nominees with respect to the Bonds regarding accuracy of any records maintained by DTC or DTC participants of any amount in respect of principal of or interest on the Bonds, or any notice which is permitted or required to be given to registered owners hereunder (except such notice as is required to be given by the Bond Registrar to DTC).

For as long as any Bonds are held in fully immobilized form, DTC, its nominee or its successor depository shall be deemed to be the registered owner for all purposes hereunder and all references to registered owners, bondowners, bondholders or the like shall mean DTC or its nominee and shall not mean the owners of any beneficial interests in the Bonds. Registered ownership of such Bonds, or any portions thereof, may not thereafter be transferred except: (i) to any successor of DTC or its nominee, if that successor shall be qualified under any applicable laws to provide the services proposed to be provided by it; (ii) to any substitute depository appointed by the City or such substitute depository's successor; or (iii) to any person if the Bonds are no longer held in immobilized form.

Upon the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository, or a determination by the City that it no longer wishes to continue the system of book entry transfers through DTC or its successor (or any substitute depository or its successor), the City may appoint a substitute depository. Any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it.

If (i) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (ii) the City determines that the Bonds are to be in certificated form, the ownership of Bonds may be transferred to any person as provided herein and the Bonds no longer shall be held in fully immobilized form.

Section 7. Payment of Bonds. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be paid by checks or drafts of the Bond Registrar mailed on the interest payment date to the registered owners at the addresses appearing on the Bond Register on the 15<sup>th</sup> day of the month preceding the interest payment date or, if requested in writing by a registered owner of \$1,000,000 or more in principal amount of Bonds prior to the applicable record date, by wire transfer on the interest payment date. Principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the registered owners to the Bond Registrar. Notwithstanding the foregoing, for as long as the Bonds are registered in the name of DTC or its nominee, payment of principal of and interest on the Bonds shall be made in the manner set forth in the Letter of Representations.

Section 8. Redemption Provisions and Open Market Purchase of Bonds. Series B Bonds maturing in the years 2006 through 2015, inclusive, shall be issued without the right or option of the City to redeem those Bonds prior to their stated maturity dates. The City reserves

the right and option to redeem all of the Series A Bonds and the Series B Bonds maturing in 2020 and 2023, prior to their stated maturity dates at any time on or after December 1, 2015, as a whole or in part (within one or more series and maturities selected by the City and randomly within a series and maturity in such manner as the Bond Registrar shall determine), at par plus accrued interest to the date fixed for redemption.

Series B Bonds maturing in the years 2020 and 2023 are Term Bonds and, if not redeemed under the optional redemption provisions set forth above or purchased in the open market under the provisions set forth below, shall be called for redemption randomly (in such manner as the Bond Registrar shall determine) at par plus accrued interest on December 1 in years and amounts as follows:

Series B Term Bonds Maturing in 2020

| <u>Mandatory<br/>Redemption<br/>Years</u> | <u>Mandatory<br/>Redemption<br/>Amounts</u> |
|---|---|
| 2016                                      | \$425,000                                   |
| 2017                                      | 450,000                                     |
| 2018                                      | 470,000                                     |
| 2019                                      | 495,000                                     |
| 2020 (maturity)                           | 525,000                                     |

Series B Term Bonds Maturing in 2023

| <u>Mandatory<br/>Redemption<br/>Years</u> | <u>Mandatory<br/>Redemption<br/>Amounts</u> |
|---|---|
| 2021                                      | \$550,000                                   |
| 2022                                      | 580,000                                     |
| 2023 (maturity)                           | 380,000                                     |

If the City redeems Term Bonds under the optional redemption provisions set forth above or purchase Term Bonds in the open market as set forth below, the par amount of the Term Bonds so

redeemed or purchased (irrespective of their actual redemption or purchase prices) shall be credited against one or more scheduled mandatory redemption amounts for those Term Bonds (as allocated by the City) beginning not earlier than 60 days after the date of the optional redemption or purchase, and the City shall promptly notify the Bond Registrar in writing of the manner in which the credit for the Term Bonds so redeemed or purchased has been allocated.

Portions of the principal amount of any Bond, in installments of \$5,000 or any integral multiple thereof, may be redeemed. If less than all of the principal amount of any Bond is redeemed, upon surrender of that Bond to the Bond Registrar, there shall be issued to the registered owner, without charge therefor, a new Bond (or Bonds, at the option of the registered owner) of the same series, maturity and interest rate in any of the denominations authorized by this ordinance in the aggregate principal amount remaining unredeemed.

The City further reserves the right and option to purchase any or all of the Bonds in the open market at any time at any price acceptable to the City plus accrued interest to the date of purchase.

All Bonds purchased or redeemed under this section shall be canceled.

Notwithstanding the foregoing, for as long as the Bonds are registered in the name of DTC or its nominee, Bonds shall be selected for redemption in accordance with the Letter of Representations.

Section 9. Notice of Redemption. The City shall cause notice of any intended redemption of Bonds to be given not less than 30 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the registered owner of any Bond to be redeemed at the address appearing on the Bond Register at the time the Bond Registrar prepares the notice, and the requirements of this sentence shall be deemed to have been fulfilled when

notice has been mailed as so provided, whether or not it is actually received by the owner of any Bond. Interest on Bonds called for redemption shall cease to accrue on the date fixed for redemption unless the Bond or Bonds called are not redeemed when presented pursuant to the call. In addition, the redemption notice shall be mailed within the same period, postage prepaid, to Moody's Investors Service, Inc., and Standard & Poor's at their offices in New York, New York, or their successors, to the Bond Insurer at its principal office in Armonk, New York, or its successor, to each NRMSIR or the MSRB and to such other persons and with such additional information as the Finance Director shall determine, but these additional mailings shall not be a condition precedent to the redemption of Bonds. Notwithstanding the foregoing, for as long as the Bonds are registered in the name of DTC or its nominee, notice of redemption shall be given in accordance with the Letter of Representations.

Section 10. Failure To Redeem Bonds. If any Bond is not redeemed when properly presented at its maturity or call date, the City shall be obligated to pay interest on that Bond at the same rate provided in the Bond from and after its maturity or call date until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Bond Fund and the Bond has been called for payment by giving notice of that call to the registered owner of each of those unpaid Bonds.

Section 11. Pledge of Taxes. For as long as any of the Bonds are outstanding, the City irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of the electors of the City on all of the taxable property within the City in an amount sufficient, together with other money legally available and to be used therefor, to pay when due the principal of and interest on the Bonds, and

the full faith, credit and resources of the City are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

Section 12. Form and Execution of Bonds. The Bonds shall be in a form consistent with the provisions of this ordinance and state law and shall be signed by the Mayor and Finance Director, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon.

Only Bonds bearing a Certificate of Authentication in the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance:

CERTIFICATE OF AUTHENTICATION

This Bond is one of the fully registered City of Bellingham, Washington, Limited Tax General Obligation Bonds, 2005, Series [A/B] (Tax-Exempt/Taxable), described in the Bond Ordinance.

WASHINGTON STATE FISCAL AGENT  
Bond Registrar

By \_\_\_\_\_  
Authorized Signer

The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance.

If any officer whose facsimile signature appears on the Bonds ceases to be an officer of the City authorized to sign bonds before the Bonds bearing his or her facsimile signature are authenticated or delivered by the Bond Registrar or issued by the City, those Bonds nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall

be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. Any Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bonds.

Section 13. Bond Registrar. The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's paying agent for the Bonds and to carry out all of the Bond Registrar's powers and duties under this ordinance.

The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on the Bonds. The Bond Registrar may become the owner of Bonds with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Bond owners

Section 14. Preservation of Tax Exemption for Interest on Series A Bonds. The City covenants that it will take all actions necessary to prevent interest on the Series A Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the Series A Bonds or other funds of the City treated as proceeds of the Series A Bonds at any time during the term of the Series A Bonds which will cause interest on the Series A Bonds to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate

requirement of Section 148 of the Code is applicable to the Series A Bonds, take all actions necessary to comply (or to be treated as having complied) with that requirement in connection with the Series A Bonds, including the calculation and payment of any penalties that the City has elected to pay as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section 148 of the Code to prevent interest on the Series A Bonds from being included in gross income for federal income tax purposes.

Section 15. Refunding or Defeasance of the Bonds. The City may issue refunding bonds pursuant to the laws of the State of Washington or use money available from any other lawful source to pay when due the principal of and interest on the Bonds, or any portion thereof included in a refunding or defeasance plan, and to redeem and retire, refund or defease all such then-outstanding Bonds (hereinafter collectively called the “defeased Bonds”) and to pay the costs of the refunding or defeasance. If money and/or direct obligations of the United States of America maturing at a time or times and bearing interest in amounts (together with money, if necessary) sufficient to redeem and retire, refund or defease the defeased Bonds in accordance with their terms are set aside in a special trust fund or escrow account irrevocably pledged to that redemption, retirement or defeasance of defeased Bonds (hereinafter called the “trust account”), then all right and interest of the owners of the defeased Bonds in the covenants of this ordinance and in the funds and accounts obligated to the payment of the defeased Bonds shall cease and become void. The owners of defeased Bonds shall have the right to receive payment of the principal of and interest on the defeased Bonds from the trust account. The City shall include in the refunding or defeasance plan such provisions as the City deems necessary for the random selection of any defeased Bonds that constitute less than all of a particular series and maturity of the Bonds, for notice of the defeasance to be given to the owners of the defeased Bonds and to



such other persons as the City shall determine, and for any required replacement of Bond certificates for defeased Bonds. The defeased Bonds shall be deemed no longer outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the defeased Bonds to any lawful purposes as it shall determine.

If the Bonds are registered in the name of DTC or its nominee, notice of any defeasance of Bonds shall be given to DTC in the manner prescribed in the Letter of Representations for notices of redemption of Bonds.

Notwithstanding anything in this section to the contrary, if the principal of and/or interest due on a series of Bonds is paid by the Bond Insurer pursuant to a Financial Guaranty Insurance Policy, those Bonds shall be treated as remaining outstanding for all purposes, not defeased or otherwise satisfied, and shall not be considered paid by the City, and all covenants, agreements and other obligations of the City to the registered owners of those Bonds shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of those registered owners.

Section 16. Bond Fund; Project Fund; and Deposit of Bond Proceeds. The Bond Fund is created and established in the office of the Finance Director as two special accounts within the City's Solid Waste Fund designated the 2005 Series A Bonds Principal and Interest Account for the purpose of paying principal of and interest on the Series A Bonds and the 2005 Series B Bonds Principal and Interest Account for the purpose of paying principal of and interest on the Series B Bonds. All taxes collected for and allocated to the payment of the principal of and interest on the Bonds shall be deposited in the accounts in the Bond Fund.

There also is created and established in the office of the Finance Director a special fund designated as the Solid Waste Cleanup Fund, 2005 (the "Project Fund"), which fund shall

contain a Series A Account and a Series B Account. The principal proceeds received from the sale and delivery of the Series A Bonds shall be paid into the Series A Account of the Project Fund and used to finance or refinance all or a portion of the environmental clean up of the Holly Street landfill site, and pay costs of issuance of the Series A Bonds, and the principal proceeds received from the sale and delivery of the Series B Bonds shall be paid into the Series B Account of the Project Fund and used to (1) finance all or a portion of the City's share of the environmental clean up by the Port of Bellingham, Washington, of the Cornwall Avenue and Central Waterfront landfill sites, (2) finance all or a portion of the cost of acquiring the Colony Wharf property adjacent to the Roeder Avenue landfill site, and (3) pay costs of issuance of the Bonds. Until needed to pay such costs, the City may invest principal proceeds temporarily in any legal investment, and the investment earnings may be retained in the accounts of the Project Fund and be spent for the purposes of those accounts, except that earnings subject to a federal tax or rebate requirement may be withdrawn from the Project Fund and used for those tax or rebate purposes.

Section 17. Approval of Bond Purchase Contract. Banc of America Securities LLC of Seattle, Washington, has presented a purchase contract (the "Bond Purchase Contract") to the City offering to purchase the Bonds under the terms and conditions provided in the Bond Purchase Contract, which written Bond Purchase Contract is on file with the Finance Director and is incorporated herein by this reference. The City Council finds that entering into the Bond Purchase Contract is in the City's best interest and therefore accepts the offer contained therein and authorizes its execution by City officials.

The Bonds will be printed at City expense and will be delivered to the purchaser in accordance with the Bond Purchase Contract, with the approving legal opinion of Foster

Pepper & Shefelman PLLC, municipal bond counsel of Seattle, Washington, regarding the Bonds.

The proper City officials are authorized and directed to do everything necessary for the prompt delivery of the Bonds to the purchaser and for the proper application and use of the proceeds of the sale thereof.

Section 18. Preliminary Official Statement Deemed Final. The City Council has been provided with copies of a preliminary official statement dated November 14, 2005 (the "Preliminary Official Statement"), prepared in connection with the sale of the Bonds. For the sole purpose of the Bond purchaser's compliance with Securities and Exchange Commission ("SEC") Rule 15c2-12(b)(1), the City "deems final" that Preliminary Official Statement as of its date, except for the omission of information as to offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, maturity dates, options of redemption, delivery dates, ratings and other terms of the Bonds dependent on such matters.

Section 19. Undertaking to Provide Continuing Disclosure. To meet the requirements of Rule 15c2-12(b)(5) (the "Rule"), as applicable to a participating underwriter for the Bonds, the City makes the following written undertaking (the "Undertaking") for the benefit of holders of the Bonds:

(a) Undertaking to Provide Annual Financial Information and Notice of Material Events. The City undertakes to provide or cause to be provided, either directly or through a designated agent:

(i) To each nationally recognized municipal securities information repository designated by the SEC in accordance with the Rule ("NRMSIR") and to a state information depository, if any, established in the State of Washington (the "SID") annual financial information and operating data of the type included in the final official statement for the Bonds and described in subsection (b) of this section ("annual financial information");

(ii) To each NRMSIR or the Municipal Securities Rulemaking Board (“MSRB”), and to the SID, timely notice of the occurrence of any of the following events with respect to the Bonds, if material: (1) principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the Series A Bonds; (7) modifications to rights of holders of the Bonds; (8) Bond calls (other than scheduled mandatory redemptions of Term Bonds); (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Bonds; and (11) rating changes; and

(iii) To each NRMSIR or to the MSRB, and to the SID, timely notice of a failure by the City to provide required annual financial information on or before the date specified in subsection (b) of this section.

(b) Type of Annual Financial Information Undertaken to be Provided.  
The annual financial information that the City undertakes to provide in subsection (a) of this section:

(i) Shall consist of (1) annual financial statements prepared (except as noted in the financial statements) in accordance with generally accepted accounting principles applicable to governmental units, as such principles may be changed from time to time, which statements need not be audited, except, however, that if and when audited financial statements are otherwise prepared and available to the City they will be provided; (2) statements of authorized, issued and outstanding general obligation debt of the City; (3) statements of assessed valuation of property within the City subject to *ad valorem* taxation for the fiscal year; and (4) the *ad valorem* regular property tax levy rate and regular property tax levy rate limit for the fiscal year;

(ii) Shall be provided to each NRMSIR and the SID, not later than the last day of the ninth month after the end of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the City’s fiscal year ending December 31, 2005; and

(iii) May be provided in a single or multiple documents, and may be incorporated by reference to other documents that have been filed with each NRMSIR and the SID, or, if the document incorporated by reference is a “final official statement” with respect to other obligations of the City, that has been filed with the MSRB.

(c) Amendment of Undertaking. The Undertaking is subject to amendment after the primary offering of the Bonds without the consent of any holder of any Bond, or of any broker, dealer, municipal securities dealer, participating underwriter, rating agency, NRMSIR, the SID or the MSRB, under the circumstances and in the manner permitted by the Rule.

The City will give notice to each NRMSIR or the MSRB, and the SID, of the substance (or provide a copy) of any amendment to the Undertaking and a brief statement of the reasons for the amendment. If the amendment changes the type of annual financial information to be provided, the annual financial information containing the amended financial information will include a narrative explanation of the effect of that change on the type of information to be provided.

(d) Beneficiaries. The Undertaking evidenced by this section shall inure to the benefit of the City and any holder of Bonds, and shall not inure to the benefit of or create any rights in any other person.

(e) Termination of Undertaking. The City's obligations under this Undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the City's obligations under this Undertaking shall terminate if those provisions of the Rule which require the City to comply with this Undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of nationally recognized bond counsel or other counsel familiar with federal securities laws delivered to the City, and the City provides timely notice of such termination to each NRMSIR or the MSRB and the SID.

(f) Remedy for Failure to Comply with Undertaking. As soon as practicable after the City learns of any failure to comply with the Undertaking, the City will proceed with due diligence to cause such noncompliance to be corrected. No failure by the City or other obligated person to comply with the Undertaking shall constitute a default in respect of the Bonds. The sole remedy of any holder of a Bond shall be to take such actions as that holder deems necessary, including seeking an order of specific performance from an appropriate court, to compel the City or other obligated person to comply with the Undertaking.

(g) Designation of Official Responsible to Administer Undertaking. The Finance Director of the City (or such other officer of the City who may in the future perform the duties of that office) or his or her designee is authorized and directed in his or her discretion to take such further actions as may be necessary, appropriate or convenient to carry out the Undertaking of the City in respect of the Bonds set forth in this section and in accordance with the Rule, including, without limitation, the following actions:

(i) Preparing and filing the annual financial information undertaken to be provided;

(ii) Determining whether any event specified in subsection (a) has occurred, assessing its materiality with respect to the Bonds, and, if material, preparing and disseminating notice of its occurrence;

(iii) Determining whether any person other than the City is an “obligated person” within the meaning of the Rule with respect to the Bonds, and obtaining from such person an undertaking to provide any annual financial information and notice of material events for that person in accordance with the Rule;

(iv) Selecting, engaging and compensating designated agents and consultants, including but not limited to financial advisors and legal counsel, to assist and advise the City in carrying out the Undertaking; and

(v) Effecting any necessary amendment of the Undertaking.

(h) Centralized Dissemination Agent. To the extent authorized by the SEC, the City may satisfy the Undertaking by transmitting the required filings using <http://www.disclosureusa.org> (or such other centralized dissemination agent as may be approved by the SEC).

Section 20. Small Governmental Issuer Arbitrage Rebate Exception and Designation of Series A Bonds as “Qualified Tax-Exempt Obligations.” The City finds and declares that (a) it is a duly organized and existing governmental unit of the State of Washington and has general taxing power; (b) no Series A Bond which is part of this issue of Series A Bonds is a “private activity bond” within the meaning of Section 141 of the Code; (c) at least 95% of the net proceeds of the Series A Bonds will be used for local governmental activities of the City (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City); (d) the aggregate face amount of all tax-exempt obligations (other than private activity bonds and other obligations not required to be included in such calculation) issued by the City and all entities subordinate to the City (including any entity that the City controls, that derives its authority to issue tax-exempt obligations from the City, or that issues tax-exempt obligations on behalf of the City) during the calendar year in which the Series A Bonds are issued is not reasonably expected to exceed \$5,000,000; and (e) the amount of tax-exempt obligations, including the Series A

Bonds, designated by the City as “qualified tax-exempt obligations” for the purposes of Section 265(b)(3) of the Code during the calendar year in which the Series A Bonds are issued does not exceed \$10,000,000. The City therefore certifies that the Series A Bonds are eligible for the arbitrage rebate exception under Section 148(f)(4)(D) of the Code and designates the Series A Bonds as “qualified tax-exempt obligations” for the purposes of Section 265(b)(3) of the Code.

Section 21. Bond Insurance. The City is authorized to purchase from the Bond Insurer the Financial Guaranty Insurance Policies insuring the prompt payment of the principal of and interest on the Bonds and agrees to and covenants that it will comply with the conditions for obtaining that policy, including the payment of the premium therefor. The provisions of this Section 21 shall apply as long as the Financial Guaranty Insurance Policies are in full force and effect.

“A. In the event that, on the second Business Day, and again on the Business Day, prior to the payment date on the Obligations, the Paying Agent [the Bond Registrar] has not received sufficient moneys to pay all principal of and interest on the Obligations due on the second following or following, as the case may be, Business Day, the Paying Agent shall immediately notify the Insurer or its designee on the same Business Day by telephone or telegraph, confirmed in writing by registered or certified mail, of the amount of the deficiency.

“B. If the deficiency is made up in whole or in part prior to or on the payment date, the Paying Agent shall so notify the Insurer or its designee.

“C. In addition, if the Paying Agent has notice that any Bondholder has been required to disgorge payments of principal or interest on the Obligations to a trustee in bankruptcy or creditors or others pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such Bondholder within the meaning of any applicable bankruptcy laws, then the Paying Agent shall notify the Insurer or its designee of such fact by telephone or telegraphic notice, confirmed in writing by registered or certified mail.

“D. The Paying Agent is hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for Holders of the Obligations as follows:

“1. If and to the extent there is a deficiency in amounts required to pay interest on the Obligations, the Paying Agent shall (a) execute and deliver to U.S. Bank Trust National Association, or its successors under the Policy (the “Insurance Paying Agent”), in form satisfactory to the Insurance Paying Agent, an instrument appointing the Insurer as agent for such Holders in any legal proceeding related to the payment of such interest and an assignment to the Insurer of the claims for interest to which such deficiency relates and which are paid by the Insurer, (b) receive as designee of the respective Holders (and not as Paying Agent) in accordance with the tenor of the Policy payment from the Insurance Paying Agent with respect to the claims for interest so assigned, and (c) disburse the same to such respective Holders; and

“2. If and to the extent of a deficiency in amounts required to pay principal of the Obligations, the Paying Agent shall (a) execute and deliver to the Insurance Paying Agent in form satisfactory to the Insurance Paying Agent an instrument appointing the Insurer as agent for such Holder in any legal proceeding relating to the payment of such principal and an assignment to the Insurer of any of the Obligation surrendered to the Insurance Paying Agent of so much of the principal amount thereof as has not previously been paid or for which moneys are not held by the Paying Agent and available for such payment (but such assignment shall be delivered only if payment from the Insurance Paying Agent is received), (b) receive as designee of the respective Holders (and not as Paying Agent) in accordance with the tenor of the Policy payment therefor from the Insurance Paying Agent, and (c) disburse the same to such Holders.

“E. Payments with respect to claims for interest on and principal of Obligations disbursed by the Paying Agent from proceeds of the Policy shall not be considered to discharge the obligation of the Issuer with respect to such Obligations, and the Insurer shall become the owner of such unpaid Obligations and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of this subsection or otherwise.

“F. Irrespective of whether any such assignment is executed and delivered, the Issuer and the Paying Agent hereby agree for the benefit of the Insurer that:

“1. They recognize that to the extent the Insurer makes payments, directly or indirectly (as by paying through the Paying Agent), on account of principal of or interest on the Obligations, the Insurer will be subrogated to the rights of such Holders to receive the amount of such principal and interest from the Issuer, with interest thereon as provided



and solely from the sources stated in this Indenture and the Obligations;  
and

“2. They will accordingly pay to the Insurer the amount of such principal and interest (including principal and interest recovered under subparagraph (ii) of the first paragraph of the Policy, which principal and interest shall be deemed past due and not to have been paid), with interest thereon as provided in this Indenture and the Obligations, but only from the sources and in the manner provided herein for the payment of principal of and interest on the Obligations to Holders, and will otherwise treat the Insurer as the owner of such rights to the amount of such principal and interest.

“G. In connection with the issuance of additional Obligations, the Issuer shall deliver to the Insurer a copy of the disclosure document, if any, circulated with respect to such additional Obligations.

“H. Copies of any amendments made to the documents executed in connection with the issuance of the Obligations which are consented to by the Insurer shall be sent to Standard & Poor’s Corporation.

“I. The Insurer shall receive notice of the resignation or removal of the Paying Agent and the appointment of a successor thereto.

“J. The Insurer shall receive copies of all notices required to be delivered to Bondholders and, on an annual basis, copies of the Issuer’s audited financial statements and Annual Budget.

“Notices: Any notice that is required to be given to a holder of the Obligation or to the Paying Agent pursuant to the Ordinance shall also be provided to the Insurer. All notices required to be given to the Insurer under the Ordinance shall be in writing and shall be sent by registered or certified mail addressed to MBIA Insurance Corporation, 113 King Street, Armonk, New York 10504 Attention: Surveillance.”

“K. The Issuer/Obligor agrees to reimburse the Insurer immediately and unconditionally upon demand, to the extent permitted by law, for all reasonable expenses, including attorneys’ fees and expenses, incurred by the Insurer in connection with (i) the enforcement by the Insurer of the Issuer’s/Obligor’s obligations, or the preservation or defense of any rights of the Insurer, under this Ordinance and any other document executed in connection with the issuance of the Obligations, and (ii) any consent, amendment, waiver or other action with respect to the Ordinance or any related document, whether or not granted or approved, together with interest on all such expenses from and including the date incurred to the date of payment at Citibank’s Prime Rate plus 3% or the maximum interest rate permitted by law, whichever is less. In addition,

the Insurer reserves the right to charge a fee in connection with its review of any such consent, amendment or waiver, whether or not granted or approved.

“L. The Issuer/Obligor agrees not to use the Insurer’s name in any public document including, without limitation, a press release or presentation, announcement or forum without the Insurer’s prior consent; provided, however, such prohibition on the use of the Insurer’s name shall not relate to the use of the Insurer’s standard approved form of disclosure in public documents issued in connection with the current Obligations to be issued in accordance with the terms of the Commitment; and provided further such prohibition shall not apply to the use of the Insurer’s name in order to comply with public notice, public meeting or public reporting requirements.

“M. The Issuer/Obligor shall not enter into any agreement nor shall it consent to or participate in any arrangement pursuant to which Bonds are tendered or purchased for any purpose other than the redemption and cancellation or legal defeasance of such Bonds without the prior written consent of MBIA.”

Section 22. Cover Page and Table of Contents. The cover page and table of contents of this ordinance are for convenience of reference only, and shall not be used to resolve any question of interpretation of this ordinance.

Section 23. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of any Bonds.

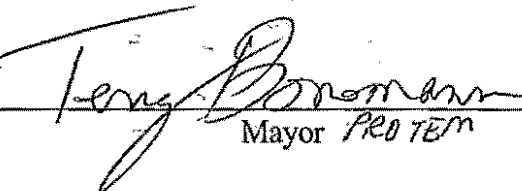
Section 24. Ratification of Prior Acts. acts taken pursuant to the authority of this ordinance but prior to its effective date are ratified and confirmed.

Section 25. Effective Date of Ordinance. This ordinance shall be effective 15 days after its final passage.

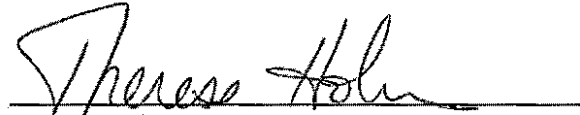
PASSED by the City Council of the City of Bellingham, Washington, at a regular open public meeting thereof, this 21st day of November, 2005.

By   
Council President


APPROVED by me this 31 day of November, 2005.

By   
Mayor PRO TEM

ATTEST:

  
Finance Director

APPROVED AS TO FORM:

  
City Attorney

PUBLISHED: November 25, 2005

CERTIFICATION

I, the undersigned, Finance Director of the City of Bellingham, Washington (the "City"), hereby certify as follows:

1. The attached copy of Ordinance No. 2005-11-091 (the "Ordinance") is a full, true and correct copy of an ordinance duly passed at a regular meeting of the City Council of the City held at the regular meeting place thereof on November 21, 2005, as that ordinance appears on the minute book of the City; and the Ordinance will be in full force and effect 15 days after its passage; and

2. A quorum of the members of the City Council was present throughout the meeting and a majority of those members present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand this 21 day of November 2005.

CITY OF BELLINGHAM, WASHINGTON

  
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Therese Holm, Finance Director