



CITY OF SEATTLE

City Council

Agenda

Tuesday, May 28, 2024

2:00 PM

Council Chamber, City Hall
600 4th Avenue
Seattle, WA 98104

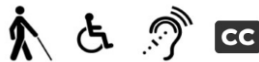
Sara Nelson, Council President
Joy Hollingsworth, Member
Robert Kettle, Member
Cathy Moore, Member
Tammy J. Morales, Member
Maritza Rivera, Member
Rob Saka, Member
Dan Strauss, Member
Tanya Woo, Member

Chair Info: 206-684-8809; Sara.Nelson@seattle.gov

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CITY OF SEATTLE

City Council Agenda

May 28, 2024 - 2:00 PM

Meeting Location:

Council Chamber, City Hall, 600 4th Avenue, Seattle, WA 98104

Committee Website:

<http://www.seattle.gov/council>

Members of the public may register for remote or in-person Public Comment to address the Council. Details on how to provide Public Comment are listed below:

Remote Public Comment - Register online to speak during the Public Comment period at

<https://www.seattle.gov/council/committees/public-comment>

Online registration to speak will begin one hour before the meeting start time, and registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

In-Person Public Comment - Register to speak on the Public Comment sign-up sheet located inside Council Chambers at least 15 minutes prior to the meeting start time. Registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

Submit written comments to all Councilmembers at Council@seattle.gov

A. CALL TO ORDER

B. ROLL CALL

C. PRESENTATIONS

D. PUBLIC COMMENT

Members of the public may sign up to address the Council for up to 2 minutes on matters on this agenda; total time allotted to public comment at this meeting is 20 minutes.

E. ADOPTION OF INTRODUCTION AND REFERRAL CALENDAR:

Introduction and referral to Council committees of Council Bills (CB), Resolutions (Res), Appointments (Appt), and Clerk Files (CF) for committee recommendation.

[IRC 438](#)

May 28, 2024

Attachments: [Introduction and Referral Calendar](#)

F. APPROVAL OF THE AGENDA**G. APPROVAL OF CONSENT CALENDAR**

The Consent Calendar consists of routine items. A Councilmember may request that an item be removed from the Consent Calendar and placed on the regular agenda.

Journal:

1. [Min 474](#) May 21, 2024

Attachments: [Minutes](#)

Bills:

2. [CB 120791](#) AN ORDINANCE appropriating money to pay certain claims for the week of May 13, 2024 through May 17, 2024 and ordering the payment thereof; and ratifying and confirming certain prior acts.

SELECT BUDGET COMMITTEE:

3. [CB 120773](#) AN ORDINANCE amending Ordinance 126725, which adopted the 2023 Budget, including the 2023-2028 Capital Improvement Program (CIP); changing appropriations to various departments and budget control levels, and from various funds in the Budget; lifting a budget proviso; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

The Committee recommends that City Council pass the Council Bill (CB).

In Favor: 9 - Strauss, Rivera, Hollingsworth, Kettle, Moore, Morales, Nelson, Saka, Woo

Opposed: None

Supporting

Documents:

[Summary and Fiscal Note](#)

[Summary Att A – 2023 Budget Exceptions Ordinar](#)

[Summary Detail Table](#)

4. [CB 120779](#) AN ORDINANCE relating to public art museum facilities; authorizing a restatement of a guarantee and reimbursement agreement with the Museum Development Authority of Seattle and other parties that amends the second amended and restated guarantee and reimbursement agreement, as originally authorized by Ordinance 121950, as amended by Ordinance 122458, and as further amended by Ordinance 124429; and ratifying and confirming certain prior acts.

The Committee recommends that City Council pass the Council Bill (CB).

In Favor: 9 - Strauss, Rivera, Hollingsworth, Kettle, Moore, Morales, Nelson, Saka, Woo

Opposed: None

Attachments:

[Ex A – Third Amended and Restated Guarantee a Reimbursement Agreement](#)

[Ex B – Form of Undertaking to Provide Continuing Disclosure](#)

Supporting

Documents:

[Summary and Fiscal Note](#)

H. COMMITTEE REPORTS

Discussion and vote on Council Bills (CB), Resolutions (Res), Appointments (Appt), and Clerk Files (CF).

GOVERNANCE, ACCOUNTABILITY, AND ECONOMIC DEVELOPMENT COMMITTEE:

1. [CB 120775](#) AN ORDINANCE relating to app-based worker labor standards; establishing a new compensation scheme for app-based workers with minimum pay requirements and related standards for transparency and flexibility; and amending Sections 8.37.020, 8.37.050, 8.37.060, 8.37.070, 8.37.080, 8.37.100, 8.37.120, 8.37.125, 8.37.165, and 8.37.170 of the Seattle Municipal Code.

The Committee recommends that City Council pass as amended the Council Bill (CB).

In Favor: 4 - Nelson, Kettle, Rivera, Saka

Opposed: None

Abstain: 1 - Hollingsworth

Supporting Documents:

[Summary and Fiscal Note v2](#)

[Summary - Att 1 – Ordinance 126595 – App-Based Worker Minimum Payment Ordinance Amendment A](#)

SELECT BUDGET COMMITTEE:

2. [CB 120774](#) AN ORDINANCE amending Ordinance 126955, which adopted the 2024 Budget, including the 2024-2029 Capital Improvement Program (CIP); changing appropriations to various departments and budget control levels, and from various funds in the Budget; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

The Committee recommends that City Council pass the Council Bill (CB).

In Favor: 7 - Strauss, Hollingsworth, Kettle, Morales, Nelson, Saka, Woo

Opposed: None

Abstain: 2 - Rivera, Moore

Supporting Documents:

[Summary and Fiscal Note](#)

[Summary Att A – 2023 Budget Carry Forward](#)

[Ordinance Summary Detail Table](#)

[Amendment A](#)

PARKS, PUBLIC UTILITIES, AND TECHNOLOGY COMMITTEE:

3. [CB 120790](#) AN ORDINANCE relating to Seattle Public Utilities; authorizing the General Manager and Chief Executive Officer of Seattle Public Utilities, or designee, to execute an interlocal agreement with King County to receive payments for the disposal of residual waste from material recovery facilities in the City of Seattle; amending Ordinance 126955, which adopted the 2024 Budget; changing appropriations to various departments and budget control levels, and from various funds in the Budget; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

The Committee recommends that City Council pass the Council Bill (CB).

In Favor: 4 - Hollingsworth, Nelson, Kettle, Rivera

Opposed: None

Attachments: [Att 1 - Interlocal Agreement Disposal of Solid Waste](#)

Supporting

Documents: [Summary and Fiscal Note](#)

SUSTAINABILITY, CITY LIGHT, ARTS AND CULTURE COMMITTEE:

4. [CB 120786](#) AN ORDINANCE relating to the City Light Department; accepting the following easements for electrical distribution rights in King County, Washington; placing said easements under the jurisdiction of the City Light Department; and ratifying and confirming certain prior acts.

The Committee recommends that City Council pass the Council Bill (CB).

In Favor: 4 - Woo, Moore, Morales, Saka

Opposed: None

Supporting Documents: [Summary and Fiscal Note](#)

5. [CB 120787](#) AN ORDINANCE relating to the City Light Department; accepting the following easements for electrical distribution in King County, Washington; placing said easements under the jurisdiction of the City Light Department; and ratifying and confirming certain prior acts.

The Committee recommends that City Council pass the Council Bill (CB).

In Favor: 4 - Woo, Moore, Morales, Saka

Opposed: None

Supporting Documents: [Summary and Fiscal Note](#)

TRANSPORTATION COMMITTEE:

6. [CB 120768](#) AN ORDINANCE granting permission to the Board of Regents of the University of Washington to continue to operate and maintain an existing pedestrian skybridge over 12th Avenue Northeast, between Northeast 43rd Street and Northeast 45th Street; repealing Section 7 of Ordinance 119532; and providing for acceptance of the permit and conditions.

The Committee recommends that City Council pass the Council Bill (CB).

In Favor: 3 - Saka, Hollingsworth, Kettle

Opposed: None

Supporting Documents:

[Summary and Fiscal Note](#)

[Summary Att A - 12th Ave NE Skybridge Area Map](#)

[Summary Att B - 12th Ave NE Skybridge Photos](#)

[Summary Att C - Annual Fee Assessment Summary](#)

7. [CB 120769](#) AN ORDINANCE granting the Board of Regents of the University of Washington permission to continue maintaining and operating an existing vehicular and pedestrian skybridge over and across the alley between 11th Avenue Northeast and 12th Avenue Northeast, north of Northeast 43rd Street; repealing Section 7 of Ordinance 119161; and providing for the acceptance of the permit and conditions.

The Committee recommends that City Council pass the Council Bill (CB).

In Favor: 3 - Saka, Hollingsworth, Kettle

Opposed: None

Supporting Documents:

[Summary and Fiscal Note](#)

[Summary Att A - UW 12th Ave NE Alley Skybridge Area Map](#)

[Summary Att B - UW 12th Ave NE Alley Skybridge Photos](#)

[Summary Att C - UW 12th Ave NE Alley Skybridge Annual Fee Assessment](#)

I. ITEMS REMOVED FROM CONSENT CALENDAR

J. ADOPTION OF OTHER RESOLUTIONS

K. OTHER BUSINESS

L. ADJOURNMENT



Legislation Text

File #: IRC 438, Version: 1

May 28, 2024



Introduction and Referral Calendar

List of proposed Council Bills (CB), Resolutions (Res), Appointments (Appt) and Clerk Files (CF) to be introduced and referred to a City Council committee

Record No.	Title	Committee Referral
<u>By: Strauss</u>		
1. CB 120791	AN ORDINANCE appropriating money to pay certain claims for the week of May 13, 2024 through May 17, 2024 and ordering the payment thereof; and ratifying and confirming certain prior acts.	City Council
<u>By: Strauss</u>		
2. CB 120792	AN ORDINANCE relating to the Department of Finance and Administrative Services; authorizing the Director of Finance and Administrative Services to negotiate and execute a real property lease with Neptune III TT, LLC, on behalf of the Human Services Department for its Aging and Disability Services Division; and ratifying and confirming certain prior acts.	Finance, Native Communities, and Tribal Governments Committee



Legislation Text

File #: Min 474, **Version:** 1

May 21, 2024

SEATTLE CITY COUNCIL

600 Fourth Ave. 2nd Floor
Seattle, WA 98104



Journal of the Proceedings of the Seattle City Council

Tuesday, May 21, 2024

2:00 PM

Council Chamber, City Hall

600 4th Avenue

Seattle, WA 98104

City Council

Sara Nelson, Council President

Joy Hollingsworth, Member

Robert Kettle, Member

Cathy Moore, Member

Tammy J. Morales, Member

Maritza Rivera, Member

Rob Saka, Member

Dan Strauss, Member

Tanya Woo, Member

Chair Info: 206-684-8809; Sara.Nelson@seattle.gov

A. CALL TO ORDER

The City Council of the City of Seattle met in the Council Chamber in Seattle, Washington, on May 21, 2024, pursuant to the provisions of the City Charter. The meeting was called to order at 2:05 p.m., with Council President Nelson presiding.

B. ROLL CALL

Present: 7 - Hollingsworth, Kettle, Moore, Morales, Nelson, Rivera, Saka

Excused: 2 - Strauss, Woo

C. PRESENTATIONS

Councilmember Kettle presented a Proclamation recognizing Monday, May 27, 2024, as Memorial Day in Seattle.

By unanimous consent, the Council Rules were suspended to allow Councilmembers Kettle and Saka to present the Proclamation, and to allow Alyson Teeter, Ballard Veterans of Foreign Wars Post 306 Commander, and Dale Watanabe, Past NVC Commander, Nisei Veterans Committee (NVC), to address the Council.

D. PUBLIC COMMENT

The following individuals addressed the Council:

- Jason Ogulnik
- John Stamstad
- Hao Shen
- Peter Manning
- Justin Taylor
- David Toledo
- Michael Wolfe
- Arianna Riley
- Josue Jorama
- Alex Tsimmerman
- Shaun Iccayan
- Lynn Reed
- Emma H
- Krishar Williams
- Alberto Alvarez
- David McCrae
- Gary Lardizabal

E. ADOPTION OF INTRODUCTION AND REFERRAL CALENDAR:

[IRC 437](#) **May 21, 2024**

By unanimous consent, the Introduction & Referral Calendar (IRC) was adopted.

In Favor: 7 - Hollingsworth, Kettle, Moore, Morales, Nelson, Rivera, Saka

Opposed: None

F. APPROVAL OF THE AGENDA

By unanimous consent, the City Council Agenda was adopted.

G. APPROVAL OF CONSENT CALENDAR

Motion was made by Council President Nelson, duly seconded and carried, to adopt the Consent Calendar.

Journal:

1. [Min 473](#) **May 14, 2024**

The item was adopted on the Consent Calendar by the following vote, and the President signed the Minutes (Min):

In Favor: 7 - Hollingsworth, Kettle, Moore, Morales, Nelson, Rivera, Saka

Opposed: None

Bills:

2. [CB 120789](#) **AN ORDINANCE appropriating money to pay certain claims for the week of May 6, 2024 through May 10, 2024 and ordering the payment thereof; and ratifying and confirming certain prior acts.**

The item was passed on the Consent Calendar by the following vote, and the President signed the Council Bill:

In Favor: 7 - Hollingsworth, Kettle, Moore, Morales, Nelson, Rivera, Saka

Opposed: None

Appointments:

PUBLIC SAFETY COMMITTEE:

3. [Appt 02845](#) **Appointment of Loren Brandford as member, Seattle Fire Code Advisory Board, for a term to 3 years from Council confirmation.**

The Committee recommends that City Council confirm the Appointment (Appt).

In Favor: 5 - Kettle, Saka, Hollingsworth, Moore, Nelson

Opposed: None

The Appointment (Appt) was confirmed on the Consent Calendar by the following vote:

In Favor: 7 - Hollingsworth, Kettle, Moore, Morales, Nelson, Rivera, Saka

Opposed: None

4. [Appt 02846](#) Reappointment of Carlene M. Comrie as member, Seattle Fire Code Advisory Board, for a term to May 14, 2026.

The Committee recommends that City Council confirm the Appointment (Appt).

In Favor: 5 - Kettle, Saka, Hollingsworth, Moore, Nelson

Opposed: None

The Appointment (Appt) was confirmed on the Consent Calendar by the following vote:

In Favor: 7 - Hollingsworth, Kettle, Moore, Morales, Nelson, Rivera, Saka

Opposed: None

5. [Appt 02847](#) Reappointment of Kevin Marr as member, Seattle Fire Code Advisory Board, for a term to August 14, 2026.

The Committee recommends that City Council confirm the Appointment (Appt).

In Favor: 5 - Kettle, Saka, Hollingsworth, Moore, Nelson

Opposed: None

The Appointment (Appt) was confirmed on the Consent Calendar by the following vote:

In Favor: 7 - Hollingsworth, Kettle, Moore, Morales, Nelson, Rivera, Saka

Opposed: None

6. [Appt 02848](#) Reappointment of Chris Todd as member, Seattle Fire Code Advisory Board, for a term to August 14, 2026.

The Committee recommends that City Council confirm the Appointment (Appt).

In Favor: 5 - Kettle, Saka, Hollingsworth, Moore, Nelson

Opposed: None

The Appointment (Appt) was confirmed on the Consent Calendar by the following vote:

In Favor: 7 - Hollingsworth, Kettle, Moore, Morales, Nelson, Rivera, Saka

Opposed: None

7. [Appt 02849](#) **Appointment of Matt Trueblood as member, Seattle Fire Code Advisory Board, for a term to 3 years from Council confirmation.**

The Committee recommends that City Council confirm the Appointment (Appt).

In Favor: 5 - Kettle, Saka, Hollingsworth, Moore, Nelson

Opposed: None

The Appointment (Appt) was confirmed on the Consent Calendar by the following vote:

In Favor: 7 - Hollingsworth, Kettle, Moore, Morales, Nelson, Rivera, Saka

Opposed: None

H. COMMITTEE REPORTS

GOVERNANCE, ACCOUNTABILITY, AND ECONOMIC DEVELOPMENT COMMITTEE:

- 1. [CB 120766](#) **AN ORDINANCE relating to recruitment and retention of police officers in the Seattle Police Department (SPD); transferring positions from Seattle Department of Human Resources (SDHR) to SPD; creating in SPD a recruitment and retention program; amending Ordinance 126955, which adopted the 2024 Budget; changing appropriations to various departments and budget control levels, and from various funds in the Budget; amending Section 4.08.070 of the Seattle Municipal Code; and ratifying and confirming certain prior acts.**

The Committee recommends that City Council pass as amended the Council Bill (CB).

In Favor: 5 - Nelson, Kettle, Hollingsworth, Rivera, Saka

Opposed: None

ACTION 1:

Motion was made by Councilmember Moore to amend Council Bill 120766, as shown in Attachment 1 to the Minutes.

The Motion passed by the following vote:

In Favor: 7 - Hollingsworth, Kettle, Moore, Morales, Rivera, Saka, Nelson

Opposed: None

The Council Bill (CB) was passed as amended by the following vote, and the President signed the Council Bill (CB):

In Favor: 7 - Hollingsworth, Kettle, Moore, Morales, Nelson, Rivera, Saka

Opposed: None

I. ITEMS REMOVED FROM CONSENT CALENDAR

There were none.

J. ADOPTION OF OTHER RESOLUTIONS

There were none.

K. OTHER BUSINESS

There was none.

L. ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 3:17 p.m.

Jodee Schwinn, Deputy City Clerk

Signed by me in Open Session, upon approval of the Council, on May 28, 2024.

Sara Nelson, Council President of the City Council

Attachment: Att 1 to Action 1 of Council Bill 120766

Attachment 1 to Action 1 of Council Bill 120766

Amendment A to CB 120766 – SPD Recruitment and Retention

Sponsor: Councilmember Moore

Require expanded and more frequent reporting on 30x30 initiative

Effect: This amendment would add to the bill’s reporting requirements: (1) a quarterly reporting schedule that is specific to the department’s efforts to implement the 30x30 Initiative; and (2) language that expands the scope of such reporting to include “scheduling flexibility for caretaker responsibilities.”

These changes modify language that was added under Amendment 4, which was passed at the May 9, 2024, Governance, Accountability and Economic Development Committee (see Bold and Double Underlined language).

Background: Currently, women make up only 12% of sworn officers and 3% of police leadership in the U.S. The 30x30 Initiative is a coalition of police leaders, researchers, and professional organizations who have joined together to advance the representation and experiences of women in policing agencies across the United States. Department culture and ability to retain women officers are inextricably linked. The Initiative’s ultimate goal is to increase the representation of women in police recruit classes to 30% by 2030, and to ensure police policies and culture intentionally support the success of qualified women officers throughout their careers.

The 30x30 Initiative recognizes that police departments must uproot gender-based discrimination and sexual harassment, which influences women officers’ decisions to resign or consider pursuing a law enforcement career.

1. Amend subsection 2.C as follows:

C. Information and metrics on new and innovative programs that are designed to increase diversity within the department, to include an increase in female candidates, consistent with SPD’s “30 by 30” campaign, including, but not limited to, recruitment **and retention** strategies and messaging that reflect SPD’s efforts to:

1. Show organizational support in various areas including: promotional opportunities, family or maternity-leave policies, **childcare and scheduling flexibility for caretaker responsibilities**, and redress for gender discrimination or sexual harassment;
2. Address negative attitudes with respect to women taking on leadership roles within SPD;
3. Ensure that women have an equal opportunity to become officers and will receive equal opportunities and treatment throughout their careers as officers;
4. Support women to perceive policing as a career in which they have a meaningful place;

5. Ensure equitable access to specialty assignments and professional development including leadership training; and
6. Increase the retention rates of women officers to allow them to have a greater impact on department culture, create a healthier workplace environment, and make SPD more efficient.

In addition to the information and metrics provided in the annual written report required by this section, the Seattle Police Department shall provide to the Mayor and Council quarterly updates on this items in this subsection.



Legislation Text

File #: CB 120791, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE appropriating money to pay certain claims for the week of May 13, 2024 through May 17, 2024 and ordering the payment thereof; and ratifying and confirming certain prior acts.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Payment of the sum of \$20,753,622.18 on PeopleSoft 9.2 mechanical warrants numbered 4100801605 - 4100803581 plus manual or cancellation issues for claims, e-payables of \$60,779.77 on PeopleSoft 9.2 9100014447 - 9100014471, and electronic financial transactions (EFT) in the amount of \$72,507,255.44 are presented to the City Council under RCW 42.24.180 and approved consistent with remaining appropriations in the current Budget as amended.

Section 2. RCW 35.32A.090(1) states, “There shall be no orders, authorizations, allowances, contracts or payments made or attempted to be made in excess of the expenditure allowances authorized in the final budget as adopted or modified as provided in this chapter, and any such attempted excess expenditure shall be void and shall never be the foundation of a claim against the city.”

Section 3. Any act consistent with the authority of this ordinance taken prior to its effective date is ratified and confirmed.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if

not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 28th of May 2024, and signed by me in open session in authentication of its passage this 28th of May 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this ____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)



Legislation Text

File #: CB 120773, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE amending Ordinance 126725, which adopted the 2023 Budget, including the 2023-2028 Capital Improvement Program (CIP); changing appropriations to various departments and budget control levels, and from various funds in the Budget; lifting a budget proviso; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. In order to pay for necessary costs and expenses incurred or to be incurred in 2023, but for which insufficient appropriations were made due to causes that could not reasonably have been foreseen at the time of making the 2023 Budget, appropriations for the following items in the 2023 Budget are increased from the funds shown, as follows:

Item	Department	Fund	Budget Summary Level/ BCL Code	Amount
1.1	Department of Finance and Administrative Services	Finance and Administrative Services Fund (50300)	Facilities Services (50300-BO-FA-FACILITY)	\$729,487
1.2	Ethics and Elections Commission	General Fund (00100)	Ethics and Elections (00100-BO-ET-V1T00)	\$52,887
1.3	Seattle Department of Human Resources	Industrial Insurance Fund (10110)	Industrial Insurance Services (10110-BO-HR-INDINS)	\$8,290,867
1.4	Seattle Public Utilities	Drainage and Wastewater Fund (44010)	Sediments (44010-BC-SU-C350B)	\$297,836
1.5	Seattle Public Utilities	Solid Waste Fund (45010)	General Expense (45010-BO-SU-N000B)	\$3,317,566

1.6	Seattle Public Utilities	Water Fund (43000)	Utility Service and Operations (43000-BO-SU-N200B)	\$128,411
Total				\$12,817,054

Section 2. The restrictions imposed by the following budget proviso are removed and they are no longer restrictions for any purpose including for subsection 1(b) of Ordinance 126725.

Item	Department	Council Budget Action	Proviso	Budget Summary Level
2.1	Finance and Administrative Services	FAS-003-A-002-2023	“No more than \$18,539,147 of the money appropriated in the 2023 budget for Finance and Administrative Services may be spent for jail services until authorized by future ordinance. Council anticipates that such authority will not be granted until the Mayor’s Office provides to the Chair of the Public Safety and Human Services Committee a finalized agreement between the City and the County addressing how funds from decreased jail bed usage will be used or a statement that no agreement between the City and County was reached.”	Jail Services (BO-FA-JAILSVCS)

Section 3. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 4. This ordinance shall take effect as provided by Seattle Municipal Code Sections 1.04.020 and 1.04.070.

Passed by a 3/4 vote of all the members of the City Council the _____ day of _____, 2024, and signed by me in open session in authentication of its passage this

_____ day of _____, 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)

SUMMARY and FISCAL NOTE

Department:	Dept. Contact:	CBO Contact:
City Budget Office	Caleb Wagenaar	Caleb Wagenaar

1. BILL SUMMARY

Legislation Title: AN ORDINANCE amending Ordinance 126725, which adopted the 2023 Budget, including the 2023-2028 Capital Improvement Program (CIP); changing appropriations to various departments and budget control levels, and from various funds in the Budget; lifting a budget proviso; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

Summary and Background of the Legislation: This legislation will implement various adjustments to the 2023 Adopted Budget that are needed to complete the City’s accounting process for the year.

The proposed legislation includes discrete actions that amend the 2023 Adopted Budget by adding budget authority to various departments to address unanticipated expenses and correct accounting errors which resulted in spending exceeding a budget control level’s budget authority.

The legislation also removes budget proviso FAS-003-A-002 on the Jail Services BSL in the Department of Finance and Administrative Services. Adequate appropriations to pay the City’s contractual obligation to King County exist in the 2023 Jail Services BSL, but a previous Council placed a partial proviso on the funds based on the 2023 increase over 2022 for contract inflation. The proviso requested the Executive to negotiate an agreement between the City and King County addressing how funds from decreased jail bed usage would be used or a statement that no agreement was reached. That formal agreement did not materialize in 2023 and the proviso needs to be lifted in order for the City to have the legal budget to meet its contractual obligation. The Executive continues to work with King County on these jail issues.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation have financial impacts to the City? Yes No

Expenditure Change (\$);	2023	2024 est.	2025 est.	2026 est.	2027 est.
General Fund	\$52,887	\$0	\$0	\$0	\$0
Expenditure Change (\$);	2023	2024 est.	2025 est.	2026 est.	2027 est.
Other Funds	\$12,764,167	\$0	\$0	\$0	\$0

Revenue Change (\$); General Fund	2023	2024 est.	2025 est.	2026 est.	2027 est.
	\$0	\$0	\$0	\$0	\$0
Revenue Change (\$); Other Funds	2023	2024 est.	2025 est.	2026 est.	2027 est.
	\$0	\$0	\$0	\$0	\$0

3.a. Appropriations

This legislation adds, changes, or deletes appropriations.

Appropriations Notes:

See Summary Attachment A for details on 2023 spending.

3.d. Other Impacts

Does the legislation have other financial impacts to The City of Seattle, including direct or indirect, one-time or ongoing costs, that are not included in Sections 3.a through 3.c? If so, please describe these financial impacts.

No. Please see Summary Attachment A for details on 2023 expenditures.

If the legislation has costs, but they can be absorbed within existing operations, please describe how those costs can be absorbed. The description should clearly describe if the absorbed costs are achievable because the department had excess resources within their existing budget or if by absorbing these costs the department is deprioritizing other work that would have used these resources.

Please describe any financial costs or other impacts of *not* implementing the legislation.

The same objectives could not be achieved without this legislation.

4. OTHER IMPLICATIONS

a. Please describe how this legislation may affect any departments besides the originating department.

This legislation provides retroactive budget appropriations for the Department of Finance and Administrative Services, Ethics and Elections Commission, Seattle Department of Human Resources, and Seattle Public Utilities to cover unanticipated spending above previously authorized 2023 appropriations.

b. Does this legislation affect a piece of property? If yes, please attach a map and explain any impacts on the property. Please attach any Environmental Impact Statements, Determinations of Non-Significance, or other reports generated for this property.

No

- c. Please describe any perceived implication for the principles of the Race and Social Justice Initiative.**
- i. How does this legislation impact vulnerable or historically disadvantaged communities? How did you arrive at this conclusion? In your response please consider impacts within City government (employees, internal programs) as well as in the broader community.**
 - ii. Please attach any Racial Equity Toolkits or other racial equity analyses in the development and/or assessment of the legislation.**
 - iii. What is the Language Access Plan for any communications to the public?**
See Summary Attachment A for any associated implications.
- d. Climate Change Implications**
- i. Emissions: How is this legislation likely to increase or decrease carbon emissions in a material way? Please attach any studies or other materials that were used to inform this response.**
 - ii. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle’s resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**
See Summary Attachment A for any associated implications.
- e. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s)? What mechanisms will be used to measure progress towards meeting those goals?**
See Summary Attachment A for any associated implications.

5. CHECKLIST

- Is a public hearing required?
- Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required?
- If this legislation changes spending and/or revenues for a fund, have you reviewed the relevant fund policies and determined that this legislation complies?
- Does this legislation create a non-utility CIP project that involves a shared financial commitment with a non-City partner agency or organization?

6. ATTACHMENTS

Summary Attachments:

Summary Attachment A – 2023 Budget Exceptions Summary Detail Table

2023 Budget Exceptions Ordinance Summary Detail Table

Item #	Title	Description	Amount/FTE
Section 1 – Appropriation Increases			
1.1	Facilities Exception (Department of Finance and Administrative Services)	This item provides a retroactive appropriation increase of \$729,487 amount for the Department of Finance and Administrative Services to pay unanticipated expenses from the Finance & Admin Services Fund, Facilities Services Budget Control Level (50300-BO-FA-FACILITY) for various emergent projects, mostly repairs, that have become increasingly frequent due to buildings falling behind on maintenance and expensive due to inflation and deferred asset management. Emergent maintenance projects increasing expenditures in 2023 include repair of water intrusion at harbor patrol, HVAC motors at City Hall, elevator recall issues at City Hall, and replacement of a control unit at Airport Way. Aside from emergent repairs, FAS was also tasked with building out office space for the CARE response team in SMT. This will be funded by 50300 fund balance as these expenditures were due to general maintenance and repairs and thus not billable to tenants for the additional expense. The Department will continue to closely monitor available resources and prioritize ongoing maintenance and repair needs as they emerge.	\$729,487
1.2	Exception for Labor Costs (Ethics and Elections Commission)	This item provides a retroactive appropriation increase of \$52,887 for Ethics and Elections to pay unanticipated costs in the Ethics and Elections BSL due to labor cost increases. These include overtime costs to prepare for the special election in 2024 that will occur due to the departure of a councilmember; a reclassification of one position that increased costs; two pay raises to align the Strategic Advisors I pay rates within the department; and two part time positions that have high hourly rates due to their length of service with the City.	\$52,887
1.3	Budget Exception for Industrial Insurance Fund (Seattle Department of Human Resources)	This item provides a retroactive appropriation increase of \$8,290,867 for the Industrial Insurance Fund (IIF) in Seattle Human Resources to pay unanticipated costs due to high volumes of pension payouts from the fund.	\$8,290,867

Item #	Title	Description	Amount/FTE
1.4	Budget Exception for Sediments Capital Program in SPU (Seattle Public Utilities)	This item provides a retroactive appropriation increase of \$297,836 for Seattle Public Utilities to pay unanticipated costs in the Drainage and Wastewater Fund Sediments Budget Control Level due to increased engineering requirements from the EPA. This will not have an impact on the Drainage and Wastewater fund due to underspending in other capital projects. In the future, the budget in this BCL will be adjusted more conservatively in order to avoid exceptions.	\$297,836
1.5	Budget Exception for General Expense in Seattle Public Utilities (Seattle Public Utilities)	This item provides a retroactive appropriation increase of \$3,317,566 for Seattle Public Utilities to pay unanticipated costs in the Solid Waste Fund General Expense Budget Control Level due to inflationary adjustments to the Solid Waste Major Service contracts. This impact has been taken into account for the Solid Waste fund and will not impact its performance on its financial policies. In the future, the budget in this BCL will be adjusted more conservatively in order to avoid exceptions.	\$3,317,566
1.6	Budget Exception for Utility Services and Operations in Seattle Public Utilities (Seattle Public Utilities)	This item provides a retroactive appropriation increase of \$128,411 for Seattle Public Utilities to pay unanticipated costs in the Water Fund Utility Services and Operations Budget Control Level due to reimbursable work projected to take place in 2022 that was delayed into 2023. This will not impact the Water Fund as services are being reimbursed. This budget line item will be examined in the future to determine if an increase is needed to avoid future exceptions.	\$128,411
Section 2 – Proviso Removal			
2.1	2023 Proviso Lift on Jail Funds (Finance and Administrative Services)	This item provides a retroactive proviso lift of \$1,070,000 for Finance and Administrative Services (FAS) in the Jail Services Budget Control Level (FAS-BO-FA-JAILSVCS) related to a 2023 proviso FAS-003-A-002. Adequate appropriations to pay the City’s contractual obligation to King County exist in the 2023 Jail Services BSL. The proviso requested the Executive to negotiate an agreement between the City and King County addressing how funds from decreased jail bed usage would be used or a statement that no agreement was reached. That formal agreement did not materialize in 2023 and the proviso needs to be lifted in order for the City to have the legal budget to meet its contractual obligation. The Executive continues to work with King County on these jail issues.	



Legislation Text

File #: CB 120779, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to public art museum facilities; authorizing a restatement of a guarantee and reimbursement agreement with the Museum Development Authority of Seattle and other parties that amends the second amended and restated guarantee and reimbursement agreement, as originally authorized by Ordinance 121950, as amended by Ordinance 122458, and as further amended by Ordinance 124429; and ratifying and confirming certain prior acts.

WHEREAS, Ordinance 121950 authorized a City guarantee for the debt service reserve established in connection with the Museum Development Authority of Seattle’s 2005 Special Obligation Bonds (the “2005 Bonds”) (issued to pay the cost of acquiring and equipping an addition to its downtown museum facilities), pursuant to the Guarantee and Reimbursement Agreement among the City, the Museum Development Authority, and other parties, which was executed and dated as of November 1, 2005; and

WHEREAS, Ordinance 121950, as amended, prohibited various actions by City officers in connection with the Guarantee and Reimbursement Agreement without future authorization by City ordinance; and

WHEREAS, Ordinance 122458 authorized certain amendments to that Guarantee and Reimbursement Agreement, memorialized in the First Amended and Restated Guarantee and Reimbursement Agreement, which was executed and dated as of October 1, 2007; and

WHEREAS, Ordinance 123893 further authorized certain specific actions that require the approval of the City Council under the terms of Ordinances 121950 and 122458, including consent to certain lease terms and certain other clarifications, waivers, and consents; and

WHEREAS, Ordinance 124429 authorized certain additional amendments to that First Amended and Restated

Guarantee and Reimbursement Agreement to permit the refunding of the 2005 Bonds by the issuance by the Authority of its Special Obligation Refunding Bonds, 2014 (the “2014 Refunding Bonds”), for the purpose of achieving a debt service savings over the life of the bonds, and those amendments were memorialized in the Second Amended and Restated Guarantee and Reimbursement Agreement, which was executed and dated as of April 29, 2014; and

WHEREAS, the Museum Development Authority of Seattle now desires to refund its outstanding 2014 Refunding Bonds by the issuance of its Special Obligation Refunding Bonds, 2024 (the “2024 Refunding Bonds”), for the purpose of achieving additional debt service savings over the life of the bonds; and

WHEREAS, in connection with the refunding of the 2014 Refunding Bonds and the issuance of the 2024 Refunding Bonds, it is in the interest of the City to authorize, by this ordinance, certain specific revisions to the Second Amended and Restated Guarantee and Reimbursement Agreement and to allow the Director of Finance to approve these certain specific revisions in the form of a Third Amended and Restated Guarantee and Reimbursement Agreement attached to this ordinance as Exhibit A; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Amendments Authorized. The Director of Finance is hereby authorized to approve and sign the amendments to the Second Amended Guarantee and Reimbursement Agreement, as set forth in the form of a Third Amended and Restated Guarantee and Reimbursement Agreement by and among the City, the Museum Development Authority of Seattle (the “Authority”), the Seattle Art Museum (the “Museum”), U.S. Bank Trust Company, National Association, as Bond Trustee, and U.S. Bank Trust Company, National Association, as Lockbox Agent, that includes all of, and only, the amendments to the Second Amended and Restated Guarantee and Reimbursement Agreement, dated as of April 29, 2014, that are specifically shown on Exhibit A to this ordinance. The Director of Finance is also authorized to execute a continuing disclosure undertaking, in

substantially the form attached as Exhibit B to this ordinance (with such additions, changes, or deletions as the Director of Finance deems necessary), and such other certificates, documents, agreements, and instruments (including amendments to previously executed certificates, documents, agreements, and instruments to conform with the terms of this ordinance) as the Director of Finance deems necessary in order to carry out the refunding of the Authority’s Special Obligation Refunding Bonds, 2014, as described in this ordinance and in the form of the Third Amended and Restated Guarantee and Reimbursement Agreement shown in Exhibit A.

Section 2. Authorizations. The authorizations, directions, and limitations set forth in Ordinance 121950, as amended by Ordinance 122458, as further clarified by Ordinance 123893, and as further amended by Ordinance 124429, shall apply to actions to be taken in connection with the Third Amended and Restated Guarantee and Reimbursement Agreement authorized herein, as if it were the Guarantee Agreement, the First Amended and Restated Guarantee and Reimbursement Agreement, or the Second Amended and Restated Guarantee and Reimbursement Agreement, as applicable, referred to in each of those ordinances.

Section 3. Ratify and Confirm. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 4. Effective Date. This ordinance shall take effect as provided by Seattle Municipal Code Sections 1.04.020 and 1.04.070.

Passed by the City Council the _____ day of _____, 2024, and signed by
me in open session in authentication of its passage this _____ day of _____, 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this ____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)

Attachments:

Exhibit A - Form of Third Amended and Restated Guarantee and Reimbursement Agreement, (showing amendments to Second Amended and Restated Guarantee and Reimbursement Agreement in strikethrough/underline format)

Exhibit B - Form of Undertaking to Provide Continuing Disclosure

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EXHIBIT A
FORM OF
THIRD AMENDED AND RESTATED
GUARANTEE AND REIMBURSEMENT AGREEMENT

FORM OF AGREEMENT
in blackline format showing changes from the
Second Amended and Restated Guarantee and Reimbursement Agreement

[Remainder of this page blank]

~~SECOND~~THIRD
AMENDED AND RESTATED
GUARANTEE AND REIMBURSEMENT AGREEMENT
by and among
THE CITY OF SEATTLE
and
THE MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE
and
THE SEATTLE ART MUSEUM
and
U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
as Bond Trustee
and
U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
as Lockbox Agent
Museum Development Authority of Seattle
~~\$44,375,000~~ Special Obligation Refunding Bonds, 20142024
(refunding its Special Obligation Bonds, 2014,
which refunded its Special Obligation Bonds, 2005)

Dated as of November 1, 2005
and amended and restated as of October 1, 2007
and amended and restated as of April 29, 2014
and amended and restated as of _____, 2024

This document prepared by:
Foster Pepper PLLC
1111 Third Avenue Stradling Yocca Carlson & Rauth LLP
601 Union Street, Suite ~~3400~~2424
Seattle, Washington 98101
~~(206) 447-4400~~

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**SECOND~~THIRD~~ AMENDED AND RESTATED
GUARANTEE AND REIMBURSEMENT AGREEMENT**

relating to the

**Museum Development Authority of Seattle
\$44,375,000 Special Obligation Refunding Bonds, 2014~~2024~~
(refunding its Special Obligation Bonds, 2014,
which refunded its Special Obligation Bonds, 2005)**

THIS GUARANTEE AND REIMBURSEMENT AGREEMENT is (“Agreement”), originally dated as of November 1, 2005, ~~and~~ as amended and restated effective as of October 1, 2007, ~~and~~ as amended by the Second Amended and Restated Guarantee and Reimbursement Agreement, dated as of April 29, 2014, and as subsequently amended and restated, ~~effective as of April 29, 2014,~~ by this Third Amended and Restated Guarantee and Reimbursement, dated as of _____, 2024, is entered into by and among THE CITY OF SEATTLE (the “City”), a first class city organized under the laws of the State of Washington; the MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE (the “Authority”), a public corporation chartered by the City to provide for the management and operation of a public art museum facility; the SEATTLE ART MUSEUM (the “Museum”), a Washington nonprofit corporation and an entity described under Section 501(c)(3) of the Code; U.S. Bank Trust Company, National Association, in its capacity as Trustee (the “Bond Trustee”) for the benefit of the owners of the Authority’s Special Obligation Refunding Bonds, ~~2014~~2024 (the “Bonds”) issued to refund its Special Obligation Bonds, ~~2005~~2014, and U.S. Bank Trust Company, National Association, in its capacity as Lockbox Agent, as defined below.

The City, the Authority, the Museum, the Bond Trustee and the Lockbox Agent agree as follows:

**ARTICLE 1.
Recitals**

The following facts and circumstances form the background of this Agreement:

1. The City, by Ordinance 112923, passed July 7, 1986, determined that a public art museum in downtown Seattle would make the considerable collections of the Seattle Art Museum, a Washington nonprofit corporation (the “Museum”), more accessible to the public; would provide a facility capable of hosting major touring exhibitions; would include space needed for the Museum’s educational, administrative and curatorial activities; and would contribute to the economic viability and attractiveness of downtown Seattle.

2. The City chartered the Authority pursuant to RCW 35.21.730, et seq. and Seattle Municipal Code (SMC) Chapter 3.110 (Ordinance 103387, as amended) to undertake, assist with and otherwise facilitate the development and operation of a public art museum in downtown Seattle.

3. On September 16, 1986, the voters approved a measure authorizing annual taxes to fund construction of a downtown museum facility.

4. In order to facilitate the financing of construction of a new downtown museum facility, the City and the Authority entered into a Museum Cooperation Agreement dated as of December 8, 1986, pertaining to the financing, construction and operation of the downtown museum facility. That agreement enabled \$24,795,000 of the Authority's bonds to be secured by the proceeds of the 1986 voter-approved levy.

5. The construction of the downtown museum facility, defined in this Agreement as the Existing Museum Facility, was completed in late 1991. The Existing Museum Facility has been owned by the Authority and operated by the Museum, pursuant to the "Operating Agreement (Part II) for the Design, Development, Construction and Operation of a Public Art Museum" dated September 25, 1985, between the Authority and the Museum.

6. The Authority expanded the Existing Museum Facility in 2005 by the addition of the MDA Unit, as defined below. The MDA Unit is owned by the Authority and leased to the Museum, together with the Existing Museum Facility, for a term of approximately 99 years under the MDA Lease, as defined below, which is applicable to the MDA Real Estate Parcels, as defined below. The Authority, by resolution adopted by the Authority Council on September 7, 2005, and the Museum by resolution of its Board, adopted on August 24, 2005, have each authorized the MDA Lease, which was entered into and became effective as of October 1, 2005, and was amended by the Amendment to Lease, dated as of April 29, 2014.

7. The Museum simultaneously had the opportunity to provide for future expansion by owning the Museum Expansion Unit, as defined below. The Museum Expansion Unit was originally leased by the Museum to Washington Mutual Bank under an Office Space Lease, as defined below. Following rejection of that Office Space Lease, the Museum by a resolution of its Board, adopted on December 15, 2009, authorized the Museum to enter into the Nordstrom Office Space Lease, which became effective April 2, 2010. The Museum intends to apply some or all of the Office Space Lease Revenue to pay rent to the Authority under the MDA Lease.

8. The Authority, by resolution adopted by the Authority Council on November 2, 2005, authorized the issuance of \$60,720,000 principal amount of the Authority's Special Obligation Bonds, 2005 (the "2005 Bonds") for the purpose of carrying out the Project, as defined below. ~~There~~The 2005 Bonds were subsequently refunded by the issuance of the Authority's Special Obligation Refunding Bonds, 2014 (the "2014 Bonds"), which are currently outstanding in the aggregate principal amount of \$49,625,000, which are _____, and became callable on April 1, 2015~~2024. By refunding the 2005 Bonds with the proceeds of the 2014 Bonds, the Authority reduced the maximum annual debt service on the bonds from \$4,429,225 to \$3,894,875.~~

9. It now appears to the Authority that it may issue refunding bonds (the "Bonds") to carry out a ~~defeasance~~current refunding of, and ~~on April 1, 2015 to defease~~, call, pay, and redeem, ~~its~~the outstanding ~~2005~~2014 Bonds in order to achieve a debt service savings, further reducing maximum annual debt service on the Bonds to \$ _____.

10. ~~9.~~ In addition to its other covenants, the Authority has covenanted in the Bond Resolution, as defined below, and in this Agreement: (a) to use the proceeds of the Bonds to carry out the defeasance and refunding of the outstanding ~~2005~~2014 Bonds and to pay the costs of issuance of the Bonds and the administrative costs of carrying out the refunding; and (b) to make payments at times and in the amounts necessary to pay debt service on the Bonds.

11. ~~10.~~ The Authority has agreed to maintain and fund a Reserve Account to provide additional assurances that principal of and interest on the Bonds will be paid when due. In addition, the Authority and the Museum have asked the City to facilitate the financing by providing certain additional assurances that the Reserve Requirement (as defined below) will be maintained in the Reserve Account.

12. ~~11.~~ The City, by Ordinance 121950, passed by the City Council on September 29, 2005, authorized the City to enter into the Guarantee and Reimbursement Agreement by among the Authority, the Museum, the Bond Trustee and the Lockbox Agent for the 2005 Bonds (the “Guarantee Agreement”). The Guarantee Agreement was entered into among the parties thereto as of November 1, 2005, and provides a City guarantee for the debt service reserve established in connection with the 2005 Bonds, which were issued pursuant to an Indenture of Trust, dated as of October 1, 2005, (the “2005 Indenture”) to pay the cost of acquiring and equipping an addition to the Authority’s downtown museum facilities. The Guarantee Agreement was amended and restated as of October 1, 2007, pursuant to authorization set forth in Ordinance 122458, passed by the City Council on August 13, 2007, and was further subject to clarification, waivers and revision as set forth in Ordinance 123893, passed by the City Council on May 21, 2012. The Guarantee Agreement was again amended and restated as of April 29, 2014, pursuant to Ordinance 124429 passed by the City Council on February 24, 2014, which approved the form of the Second Amended and Restated Guarantee Agreement in order to accommodate the issuance of the 2014 Bonds pursuant to an Indenture of Trust dated as of April 1, 2014 (the “2014 Indenture”) to defease and refund the 2005 Bonds.

13. ~~12.~~ The Authority now desires to defease and refund all or a portion of its outstanding ~~2005~~2014 Bonds in order to achieve a debt service savings, and has requested that the City amend and restate its guarantee to apply to the Bonds to be issued under ~~an~~the Indenture of Trust, dated as of April 1, 2014 (the “2014 Indenture”), as supplemented by the Supplemental Indenture, dated as of _____, 2024 (the “2024 Supplement” and together with the 2014 Indenture, the “Indenture”) to carry out such refunding.

14. ~~13.~~ Ordinance ~~124429~~_____, passed by the City Council on ~~February 24~~_____, ~~2014~~2024, has approved the form of this ~~Second~~Third Amended and Restated Guarantee and has authorized its execution by the ~~Director of City Finance and Administrative Services~~Director on behalf of the City.

ARTICLE 2.

Incorporation of Documents; Rules of Construction; Definitions

Section 2.1 Incorporation of Documents; No Amendments.

(a) The Bond Debt Service Schedule and the Lease Payment Schedules (all as defined

below) are attached as Exhibit A-1, A-2 and A-3, and by this reference are incorporated into this Agreement. The legal descriptions of the MDA Real Estate Parcels and other real property listed in Exhibit B are by this reference incorporated into this Agreement.

(b) So long as this Agreement is in effect, neither the Authority nor the Museum shall amend or agree to the amendment of any of the Security Documents or the Indenture, without first obtaining the written consent of the City Finance Director. Nor shall the Authority or the Museum permit any amendment to the MDA Lease, the Office Space Lease, or the Condominium Documents presented as of Bond Closing, without first obtaining the written consent of the City Finance Director, which written consent shall not be unreasonably withheld or delayed, but in no event shall the City be required to permit any amendment that would have the effect of diminishing the City’s security for reimbursement of advances it may make under this Agreement.

Section 2.2 Rules of Construction. The following rules shall apply to the construction of this Agreement unless the context otherwise requires:

(a) Words describing the singular number shall include the plural number and vice versa, except where otherwise indicated.

(b) All references herein to particular articles, sections or exhibits are references to articles, sections or exhibits of this Agreement, unless otherwise expressly stated.

(c) The headings and table of contents herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

Section 2.3 Definitions. The following terms shall have the respective meanings set forth below for all purposes of this Agreement.

“**2005 Bonds**” means the Special Obligation Bonds, 2005 of the Authority, authorized by resolution of the Authority Council adopted on November 2, 2005, and issued in the original principal amount of \$60,720,000 for the purpose of carrying out the Project.

“**2005 Bank Reimbursement Agreement**” means the Letter of Credit Reimbursement Agreement with respect to the ~~Commission Bonds~~-2005 Commission Bonds.

“**2005 City Ordinance**” means Ordinance 121950, passed by the City Council on September 29, 2005, as subsequently amended, authorizing the City to enter into a guarantee and reimbursement agreement with the Authority, the Museum, the Bond Trustee and the Lockbox Agent for the 2005 Bonds to evidence the City’s guarantee with respect to the 2005 Bonds and approving the final forms of certain related documents.

“**2005 Commission Bonds**” means the Washington State Housing Finance Commission’s Variable Rate Demand Nonprofit Revenue Bonds (Seattle Art Museum Project), Series 2005, dated October 6, 2005, issued to make loans to the Museum for Museum purposes.

“**2005 Indenture**” means the Indenture of Trust, dated as of October 1, 2005, with respect to the 2005 Bonds, between the Bond Trustee for the 2005 Bonds and the Authority.

“2005 Reserve Account” means the debt service Reserve Account established in the custody of the 2005 Bond Trustee pursuant to the 2005 Indenture.

“2014 Bonds” means the Special Obligation Refunding Bonds, 2014 of the Authority, authorized by resolution of the Authority Council adopted on February 20, 2014, and issued in the original principal amount of \$44,375,000 for the purpose of defeasing and refunding the then-outstanding 2005 Bonds.

“2014 City Ordinance” means Ordinance 124429, passed by the City Council on March 3, 2014/February 24, 2014, authorizing the City to enter into a second amended and restated guarantee and reimbursement agreement with the Authority, the Museum, the Bond Trustee and the Lockbox Agent for the 2014 Bonds to evidence the City’s guarantee with respect to the 2014 Bonds and approving the final forms of certain related documents.

“2014 Indenture” means the Indenture of Trust, dated as of April 1, 2014, with respect to the 2014 Bonds, between the Bond Trustee for the 2014 Bonds and the Authority.

“2014 Refunding Resolutions” means, collectively: (1) that resolution of the Museum Board, adopted on March 10, 2014 which authorizes the execution and delivery of the 2014 Lease Amendment, the Letter of Representation and the Second Amended and Restated Guarantee and Reimbursement Agreement and the carrying out by the Museum of all actions necessary to complete the transactions described therein (the “Museum 2014 Resolution”); and (2) the resolution of the Authority Council, adopted on February 20, 2014, authorizing the issuance and sale of the 2014 Bonds, and authorizing the Authority to enter into the Second Amended and Restated Guarantee and Reimbursement Agreement and the carrying out by the Authority of all actions necessary to complete the transactions described therein (the “MDA 2014 Resolutions”).

“2014 Reserve Account” means the debt service Reserve Account established in the custody of the 2014 Bond Trustee pursuant to the 2014 Indenture.

“2024 City Ordinance” means Ordinance _____, passed by the City Council on _____, 2024, as it may be amended, authorizing the City to enter into this Third Amended and Restated Guarantee and Reimbursement Agreement with the Authority, the Museum, the Bond Trustee and the Lockbox Agent to evidence the City’s commitment to replenish the Reserve Account to the Reserve Requirement, when and to the extent necessary, and approving the final forms of certain related documents.

“2024 Indenture” means the Supplemental Indenture, dated as of _____, 2024, with respect to the 2024 Bonds, between the Bond Trustee for the 2024 Bonds and the Authority.

“2024 Refunding Resolutions” means, collectively: (1) that resolution of the Museum Board, adopted on _____, 2024 which authorizes the execution and delivery of this Third Amended and Restated Guarantee and Reimbursement Agreement and the carrying out by the Museum of all actions necessary to complete the transactions described herein (the “Museum 2024 Resolution”); and (2) the Bond Resolution and each other resolution of the Authority Council, relating to the issuance of the Bonds, the execution and delivery of this Third Amended and

Restated Guarantee and Reimbursement Agreement, the 2024 Indenture, the Letter of Representation, the 2024 Refunding Escrow Agreement, and the carrying out by the Authority of all actions necessary to complete the refunding of the 2014 Bonds, as described herein and therein (the “MDA 2024 Resolutions”).

“**Agreement**” means the Guarantee and Reimbursement Agreement by and among the City, the Museum, the Authority, the Bond Trustee and the Lockbox Agent, dated as of November 1, 2005; as amended and restated by the Amended and Restated Guarantee and Reimbursement Agreement, dated as of October 1, 2007; subject to the further clarifications, waivers and consents as set forth in Ordinance 123893, adopted May 21, 2012; ~~and~~ as further amended and restated by this Second Amended and Restated Guarantee and Reimbursement Agreement; and as further amended and restated by this Third Amended and Restated Guarantee and Reimbursement Agreement.

“**Annual Debt Service**” means the amount required, as shown on the Bond Debt Service Schedule, to make the payments of principal of (including scheduled mandatory redemption payments with respect to term bonds) and interest on the Bonds during the 12-month period immediately following the date of computation. Annual Debt Service does not include any amounts to be paid in connection with the optional redemption, or other special or extraordinary redemption of Bonds.

“**Authority**” or “**MDA**” means the Museum Development Authority of Seattle or its successors, established by the City pursuant to RCW 35.21.730 et seq. and SMC Chapter 3.110, and chartered to undertake, assist with or otherwise facilitate the development and operation of a public art museum in downtown Seattle.

“**Authority Council**” means the Council of the Authority established pursuant to its Charter and Bylaws.

“**Authority Representative**” means the person or persons at the time designated by the Authority to act on behalf of the Authority by written certificate furnished to the City containing the specimen signatures of such person or persons and signed on behalf of the Authority by one of the Authority’s officers. That certificate may designate an alternate or alternates.

“**Authorizing Resolutions**” means, collectively: (1) that resolution of the Museum Board, adopted on September 14, 2005 which authorizes the execution of the Development Agreement and acquisition of the Museum Expansion Unit, the execution of the Office Space Lease, the MDA Lease, the Museum Security Documents, the Standby Security Documents and this Agreement, and the carrying out by the Museum of all actions necessary to complete the transactions described herein and therein (the “**Museum Authorizing Resolution**”); (2) the resolutions of the Authority Council, adopted on September 7, 2005 and November 2, 2005, authorizing the execution of the Development Agreement and acquisition of the MDA Unit, the execution of the MDA Lease, the MDA Security Documents, the Museum Security Documents, and this Agreement and the carrying out by the Authority of all actions necessary to complete the transactions described herein and therein (the “**MDA Authorizing Resolutions**”); ~~and~~ (3) the 2014 Refunding Resolutions; and (4) the 2024 Refunding Resolutions.

“Available MDA Funds” means all money, securities, revenues and receivables of the Authority from any source whatsoever, including but not limited to: (1) all rent, delinquency payments, penalties, fees and other payments received or to be received by the Authority, including but not limited to all MDA Lease Revenue and all other revenue from any lessee of any portion of the MDA Unit or the Existing Museum Facility; (2) all amounts received by the Authority under the Museum Security Documents; (3) all payments on contractors’ bonds and all insurance proceeds relating to the MDA Unit or the Existing Museum Facility; and (4) all amounts, if any, held in any Prepayment Reserve established and maintained by the Authority in accordance with a Bond Prepayment Plan.

“Available Museum Funds” means all funds, securities, receivables and other resources of the Museum from any source whatsoever, including but not limited to: all interest earned on the unrestricted portion of the Museum’s endowment, all income from operations, and all donations available for general Museum operating expenses. Available Museum Funds excludes donor pledges that are subject to a security interest given in connection with the Museum Bonds, and excludes amounts in the Collateral Account, as defined in the 2005 Bank Reimbursement Agreement.

~~**“Bank Reimbursement Agreement”** means the Letter of Credit Reimbursement Agreement with respect to the Commission Bonds.~~

“Bankruptcy Recovery” means any payment of principal of or interest on the Bonds, which has become Due for Payment and has been paid to the Bondowner by or on behalf of the Authority, but which payment has been deemed an avoidable transfer and recovered from the Bondowner pursuant to the United States Bankruptcy Code or other applicable statutory or common law, in accordance with a final, nonappealable order of a court of competent jurisdiction.

“Bond Closing” means the date on which there is an exchange of the Bonds for the proceeds representing the purchase of the Bonds by the initial purchasers thereof.

“Bond Counsel” means a firm of nationally recognized bond counsel selected by the Authority.

“Bond Debt Service Schedule” means the schedule for repayment of the Bonds attached as Exhibit A-1 to this Agreement.

“Bond Prepayment Account” means an account of that name to be maintained by the Bond Trustee (or other escrow agent acceptable to the City Finance Director) in connection with a Bond Prepayment Plan.

“Bond Prepayment Plan” means a plan to provide for the purchase, redemption, or defeasance of a principal amount of Bonds: (a) in connection with a Museum termination of all or a portion of the Office Space Lease as required under Section 4.4 of this Agreement, or (b) in relation to the damage, destruction or condemnation of the MDA Unit or the Museum Expansion Unit (or any portion of either unit) pursuant to Section 4.5.

“**Bond Resolution**” means the resolution of the Authority Council, adopted on ~~February 20, 2014~~2024, authorizing the issuance and sale of the Bonds, and authorizing the Authority to enter into this ~~Second~~Third Amended and Restated Guarantee and Reimbursement Agreement and to take such actions as are necessary to carry out the transactions contemplated by the Bonds and this Agreement.

“**Bond Trustee**” means U.S. Bank Trust Company, National Association of Seattle, Washington, or its successor under the Indenture.

“**Bondowner**” means any person, other than (1) the Authority, or (2) any person whose obligations constitute the underlying security or source of payment for the Bonds, who, as of the applicable record date (as defined in the Indenture), is the registered owner of a Bond.

“**Bonds**” means the \$~~44,375,000~~_____ Special Obligation Refunding Bonds, ~~2014~~2024 of the Authority issued for the purpose of carrying out the defeasance and refunding of the ~~2005~~2014 Bonds, and any Additional Bonds issued for the purposes of refunding (or defeasing and refunding) all or a portion of the then-Outstanding Special Obligation Refunding Bonds, ~~2014–2024~~ pursuant to the Indenture and a supplement or amendment to this Agreement as provided herein.

“**Business Day**” means any day other than (a) a Saturday or Sunday, (b) a day on which commercial banks in Seattle or any of the cities in which is located the Principal Office of the Bond Trustee or the Lockbox Agent are authorized or required by law or executive order to close, or (c) a day on which the offices of the City are closed.

“**City**” means The City of Seattle, Washington, a city of the first class of the State of Washington.

“**City Default**” means the failure of the City to make an advance to the Bond Trustee at such time, following notice given in accordance with this Agreement, and in such amount as is required under this Agreement.

“**City Finance Director**” means the City’s Director of ~~the Department of Finance and Administrative Services of the City~~, or any such other officer who succeeds to substantially all of the responsibilities of that office.

~~“**City Ordinance**” means Ordinance 124429, passed by the City Council on March 3, 2014, as it may be amended, authorizing the City to enter into this second amended and restated guarantee and reimbursement agreement with the Authority, the Museum, the Bond Trustee and the Lockbox Agent to evidence the City’s commitment to replenish the Reserve Account to the Reserve Requirement, when and to the extent necessary, and approving the final forms of certain related documents.~~

“**Code**” means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the United States Treasury Department or the Internal Revenue Service, to the extent applicable to the Bonds.

~~“**Commission Bonds**” means the Washington State Housing Finance Commission’s Variable Rate Demand Nonprofit Revenue Bonds (Seattle Art Museum Project), Series 2005, dated October 6, 2005, issued to make loans to the Museum for Museum purposes.~~

“**Condominium Association**” means the condominium association created pursuant to the Condominium Documents.

“**Condominium Declaration**” means that certain Condominium Declaration for the Washington Mutual – Seattle Art Museum Project, a Condominium, recorded under King County Recording No. 20060329000201, as it may be amended from time to time in accordance with its terms and upon approval by the City Finance Director.

“**Condominium Documents**” means, collectively: (a) the Condominium Declaration and all related covenants, conditions and restrictions; (b) the condominium survey maps and plans; and (c) the articles of incorporation, bylaws, rules and regulations of the Condominium Association.

“**Cost Reimbursement Agreement**” means the Cost Reimbursement Letter Agreement, dated as of ~~April 29~~ April 29, ~~2014~~2024 and accepted on ~~April 29~~ April 29, ~~2014~~2024, among the City, the Authority and the Museum.

“**Coverage Requirement**” means, in each Bond year commencing with the first full Bond year, (a) an amount of MDA Lease Revenue equal to at least 1.0 times Annual Debt Service, and (b) ~~for so long as Nordstrom is the sole Office Space Tenant, Office Space Lease Revenue at least equal to (i) for all bond years through and including the bond year ending September 30, 2015, not less than 1.0 times Annual Debt Service; (ii) for the bond years ending September 30, 2016, 2017 and 2018, not less than 1.09 times Annual Debt Service; and (iii) thereafter (and for all bond years with respect to any Office Space Lease with a tenant other than Nordstrom) an amount of Office Space Lease Revenue equal to at least 1.2 times Annual Debt Service.~~ For the purposes of calculating the Coverage Requirement, MDA Lease Revenue and Office Space Lease Revenue shall exclude landlord expense pass-throughs, if any.

“**Declaration of Default**” has the meaning given in Section 6.1 of this Agreement.

“**Defeasance Opinion**” means an opinion of Bond Counsel to the Authority to the effect that all of the outstanding ~~2005~~2014 Bonds have been legally defeased, using Seasoned Funds or the proceeds of the Bonds or amounts released from the 2014 Reserve Account ~~(or the reserve account for the 2005 Bonds)~~, and are no longer to be considered Outstanding under the ~~2005~~2014 Indenture and are no longer entitled to the benefits of the guarantee of the City under the ~~first~~Second Amended and Restated Guarantee and Reimbursement Agreement, dated as of ~~October 1~~April 29, ~~2007~~2014.

“**Development Agreement**” means the “Development Agreement” originally entered into by and among Washington Mutual Bank, the Museum and the Authority, as of October 1, 2002, as amended, restated and supplemented by: (1) the “Amended and Restated Development Agreement,” dated as of May 23, 2003; (2) the “First Amendment and Supplement to Amended and Restated Development Agreement” dated as of January 26, 2004; (3) the “Second Amendment

to Amended and Restated Development Agreement” dated as of June 3, 2004; (4) the “Third Amendment and Supplement to Amended and Restated Development Agreement” dated as of December 20, 2004; and (5) the “Fourth Amendment and Supplement to Amended and Restated Development Agreement” dated as of September 28, 2005.

“**Due for Payment**” means: (1) as to principal of the Bonds, the scheduled maturity date or mandatory redemption date for the application of a required sinking fund installment, in accordance with the Bond Debt Service Schedule; and (b) as to interest on the Bonds, the scheduled date for payment of interest in accordance with the Bond Debt Service Schedule. Due for Payment does not refer to any earlier date on which payment is due by reason of call for redemption (other than by application of required sinking fund installments), other advancement of maturity.

“**Event of Default**” has the meaning given in Section 6.1 of this Agreement.

“**Existing Museum Facility**” means the art museum facility located at 100 University Street in Seattle, the legal description of which is in Exhibit B.

“**Finance Director Determined Liability**” means the aggregate amount of potential liability that, in the City Finance Director’s good faith judgment, presents a substantial enough risk of loss by the Museum that it should be treated as a Finance Director Determined Liability. The determination of risk and amount of potential liability as to each event, claim, demand or lawsuit shall be made by the City Finance Director, acting in good faith, in accordance with the following process:

- (1) The Museum shall provide written notice to the City Finance Director within 10 Business Days of each of the following:
 - (i) receipt of a complaint, demand letter, claim or other notice that a lawsuit has been or will be commenced involving the Museum (regardless of the propriety of any service of process on the Museum) where the amount in controversy (either as stated by the claimant or, for so long as no amount is stated by the claimant, an amount reasonably estimated by the Museum to be at risk), when added to the amounts in controversy (as described above) in all matters pending or threatened as described in this paragraph, against the Museum, exceeds the limits of the Museum’s primary insurance coverage (regardless of whether the Museum tenders or intends to tender the matter to its primary insurer);
 - (ii) receipt of a letter or other notice from the Museum’s primary insurer reserving rights or denying coverage with respect to the defense or indemnity of the Museum for any matter or matters where the individual or aggregate amount in controversy (as described above) exceeds 10% of the difference between (A) Museum Net Assets less the amount of previously determined Finance Director Determined Liability (if any, and only to the extent not otherwise treated by the Museum as a liability), and (B) \$90,000,000; or

- (iii) receipt of audited financial statements that disclose any event as to which unasserted claims may exist.

The notice shall describe the matter and shall include a copy of the complaint, demand letter, claim or notice (if any). The City Attorney's Office shall consult with the Museum and its counsel in order to assist the City Finance Director in reviewing the matter. The Museum and its counsel shall cooperate with and provide assistance to the City Attorney's Office in the preliminary review of the matter.

- (2) The City Finance Director, in consultation with the City Attorney's Office, shall make a preliminary assessment of the matter. If the City Finance Director makes a preliminary assessment that:
 - (i) the Museum's risk of liability for the matter is other than remote; and
 - (ii) the amount at risk exceeds 10% of the difference between (A) Museum Net Assets less the amount of previously determined Finance Director Determined Liability (if any, and only to the extent not otherwise treated by the Museum as a liability), and (B) \$90,000,000; and
 - (iii) either: (A) the Museum's primary insurance carrier has denied coverage, (B) there is a material possibility that the Museum's primary insurance carrier would deny coverage after an acceptance under reservation of rights, or (C) the Museum has not sought coverage of the matter from its primary insurer;

then the City Finance Director shall communicate with the Museum regarding the preliminary assessment. If the Museum agrees that the City Finance Director should add the full amount determined to be at risk in the City Finance Director's preliminary assessment to the amount of previously determined Finance Director Determined Liability for a new aggregate total, then there shall be no further inquiry or investigation by the City. However, if the Museum does not agree that the City Finance Director should add the preliminary assessment amount to the previously determined amount of Finance Director Determined Liability, the City Finance Director shall select outside counsel to assist the City Finance Director in further analyzing the risk of loss and in making a judgment as to the amount of such potential liability. The City Finance Director shall consult with the Museum in the selection of such outside counsel, but the City Finance Director shall retain discretion in such selection. The City Finance Director's outside counsel shall provide legal advice to the City Finance Director at the sole expense of the Museum. The Museum and its counsel shall cooperate fully with the City Finance Director's outside counsel. The records reviewed by the City Finance Director's outside counsel shall be limited to: (i) the inspection of non-privileged Museum files or documentation; and (ii) the pleadings (if any), court file (if any), and

discovery that is not subject to protective order (if any). The City Finance Director’s counsel may also make inquiries of Museum officers and staff.

- (3) Following this review, the City Finance Director shall determine, in his sole discretion, acting in good faith and in consultation with the City Finance Director’s outside counsel, the amount of potential liability as to which the risk of loss is substantial enough that it should be treated as a Finance Director Determined Liability and added to the previously determined Finance Director Determined Liability for a new aggregate total.

“Future Museum Bonds” means any bonds or other debt obligations incurred by the Museum after the date of this Agreement in accordance with Section 5.6 other than those obligations incurred within the limits set forth in Section 5.6(a)(1) and (2).

“Hazardous Substances Certifications” means, collectively, the “Certificate and Indemnity Agreements Regarding Hazardous Substances” executed by (a) the Authority, in the form attached as Exhibit C-2 (the “MDA Hazardous Substances Certification”); and (b) the Museum, in the form attached as Exhibit E-2 (the “Standby Hazardous Substances Certification”).

“Indenture” means, depending on context, (1) with respect to the Bonds, the 2024 Indenture of Trust, dated as of April 1, 2014, and (2) with respect to the 2014 Bonds, between the Bond Trustee and the Authority the 2014 Indenture.

“Interest Payment Date” means each [April 1 and October 1, commencing October 1, ~~2014~~2024].

“Lease Default” means the occurrence (and, in each case, expiration of any applicable cure period) of an Event of Default under the Office Space Lease or under the MDA Lease.

“Lease Payment Schedules” means, collectively, the schedules for the payment of rent under: (a) the MDA Lease (the “MDA Lease Payment Schedule”), attached as Exhibit A-2; and (b) the Office Space Lease to Nordstrom (the “Office Space Lease Payment Schedule”), attached as Exhibit A-3, and any such schedule established in relation to any other Office Space Lease.

“Leases” means, collectively, the MDA Lease and every Office Space Lease.

“Lockbox Account” means the account of that name created in the custody of the Lockbox Agent pursuant to Section 4.1(b), into which shall be deposited all Office Space Lease Revenue, including all amounts paid under a Tenant Payment Agreement.

“Lockbox Addendum” means the “Lockbox Account and Control Addendum” attached as Exhibit J and by reference incorporated into this Agreement.

“Lockbox Agent” means U.S. Bank Trust Company, National Association of Seattle, Washington.

“MDA” means the Authority.

“**MDA Deed of Trust**” means that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated May 8, 2006, as amended by the First Amendment to Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (MDA) dated April 29, 2014, as further amended by the Second Amendment to Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (MDA), dated _____, 2024, relating to the MDA Real Estate Parcels and the Museum Assignment, in the form attached as Exhibit C-1.

“**MDA Lease**” means the Lease for the Downtown Seattle Art Museum Property and Expansion Project, between the MDA and the Museum dated as of October 6, 2005 relating to the MDA Real Estate Parcels, as amended by the Amendment to Lease, dated as of April 29, 2014, and as further amended by the Second Amendment to Lease, dated as of _____, 2024.

“**MDA Lease Payment**” means a monthly payment made from the Lockbox Account to the Bond Trustee, pursuant to Section 4.1(b), in accordance with an MDA Lease Payment Schedule, in satisfaction of the Museum’s obligation to pay rent under the MDA Lease.

“**MDA Lease Revenue**” means all revenue (including but not limited to all rent, delinquency payments, penalties, fees and other payments) received or to be received by the Authority under the MDA Lease.

“**MDA Real Estate Parcels**” means the MDA Unit, and the Existing Museum Facility, the legal descriptions of which are attached as Exhibit B.

“**MDA Security Documents**” means, collectively, the MDA Deed of Trust; the MDA Subordination, Nondisturbance and Attornment Agreement; the MDA Hazardous Substances Certification; and any and all UCC filings relating to the foregoing.

“**MDA Subordination, Nondisturbance and Attornment Agreement**” means the Subordination, Nondisturbance and Attornment Agreement (MDA Lease) dated May 8, 2006, as amended by the First Amendment to Subordination, Nondisturbance and Attornment Agreement (MDA Lease) dated as of April 29, 2014, as further amended by the Second Amendment to Subordination, Nondisturbance and Attornment Agreement (MDA Lease), dated as of _____, 2024, relating to the MDA Lease.

“**MDA Unit**” means the condominium units (collectively) owned by the Authority, as described in Exhibit B.

“**Museum**” means the Seattle Art Museum, a Washington nonprofit corporation and an entity described under Section 501(c)(3) of the Code.

“**Museum Assignment**” means that certain Assignment of Rents Proceeds and Negative Pledge Agreement dated May 8, 2006, as amended by the First Amendment to Assignment of Rents Proceeds and Negative Pledge Agreement dated April 29, 2014, as further amended by the Second Amendment to Assignment of Rent Proceeds and Negative Pledge Agreement, dated _____

, 2024, relating to the proceeds of rents from the Museum Expansion Unit, in the form attached as Exhibit D-1.

“**Museum Bonds**” means the 2005 Commission Bonds and any Future Museum Bonds.

“**Museum Expansion Unit**” means the condominium units (collectively) owned by the Museum, as described in Exhibit B.

“**Museum Net Assets**” means:

- (4) the total assets of the Museum, as determined by generally accepted accounting principles applicable to nonprofit entities such as the Museum, but excluding specifically: (i) the Museum’s art collection and proceeds from the sale of art; (ii) the Capital Campaign Pledges and all amounts in the Collateral Account, as those capitalized terms are defined in the Bank Reimbursement Agreement; (iii) the amount of the OSP Endowment Pledge, as defined in the Bank Reimbursement Agreement, during the time that the amount is set aside in a separate account as required under the Bank Reimbursement Agreement; and (iv) receivables; less
- (5) the total liabilities of the Museum, as determined by generally accepted accounting principles applicable to nonprofit entities such as the Museum. Environmental claims arising out of the property at 10 Broad Street or the Olympic Sculpture Park shall not be included among the Museum’s liabilities. The Museum’s assets and liabilities shall not include assets and liabilities of any other entity (e.g., the Seattle Art Museum Foundation).

“**Museum Security Documents**” means, collectively, the Museum Assignment; the Museum Subordination, Nondisturbance and Attornment Agreement; the Tenant Payment Agreement; and any and all UCC filings relating to the foregoing.

“**Museum Subordination, Nondisturbance and Attornment Agreement**” means each “Subordination, Nondisturbance and Attornment Agreement” relating to an Office Space Lease.

“**Nonpayment**” means the failure of the Authority to have provided sufficient funds to the Bond Trustee for payment in full of all principal of and interest on the Bonds that are Due for Payment.

“**Nordstrom**” means Nordstrom, Inc.

“**Office Premises**” means all or a portion of the Museum Expansion Unit leased under an Office Space Lease.

“**Office Space Lease**” means: (1) that certain Office Space Lease between the Museum and Nordstrom, under which the Museum agrees to lease the Office Premises to Nordstrom (the “**Nordstrom Office Space Lease**”), in the form in effect as of the date hereof, with such changes hereafter as may be approved by the City Finance Director; and (2) any future agreement by the Museum, or its successor or assign, to lease out any portion of the Museum Expansion Unit.

“**Office Space Lease Revenue**” means all payments received and to be received by the Museum or its successors under an Office Space Lease.

“**Office Space Tenant**” means any tenant of any portion of the Museum Expansion Unit under an Office Space Lease.

“**Principal Office**” means: (a) with respect to the Bond Trustee, the corporate trust office of the Trustee, which at the date of this Indenture is located in Seattle, Washington, at the address shown in Section 7.2, and (b) with respect to the Lockbox Agent, the corporate trust office of the Lockbox Agent, which at the date of the Indenture is located in Seattle, Washington, at the address shown in Section 7.2.

“**Project**” means the acquisition, design, construction and equipping of the MDA Unit, including the Authority’s improvements to the MDA Unit, and the Authority’s improvements to the Existing Museum Facility in connection with the expansion of the existing downtown art museum to include the MDA Unit, as described in Exhibit F.

“**Project Costs**” means, to the extent permitted by the Code and by State law, any and all costs, including financing costs, incurred by the Authority with respect to the acquisition, construction, and equipping of the Project including, without limitation, costs for site preparation, the acquisition of real property and of tangible personal property, the removal or demolition of existing structures, and all of the Authority’s costs relating to the issuance of the Bonds, including, without limitation, the cost of consulting, accounting and legal services, other expenses directly allocable to the Project, insurance premiums, costs of surveys and appraisals, administrative and other expenses necessary or incident to the development and the financing thereof and all other costs approved by Bond Counsel.

“**Rating Agency**” means Moody’s Investors Service, Inc. (“Moody’s”) or ~~Standard and Poor’s, a division of The McGraw Hill Corporation, Inc.~~ S&P Global Ratings (“S&P”).

“**RCW**” means Revised Code of Washington.

“**Rebate Amount**” means the amount, if any, determined to be payable with respect to the Bonds in accordance with Section 148(f) of the Code.

“**Refunding Plan**” means the deposit of Bond proceeds, together with amounts, if any, released from the ~~reserve account for the 2005 Bonds~~ 2014 Reserve Account for this purpose, with the Refunding Trustee at Bond Closing in an amount ~~sufficient~~, together with interest earnings thereon, ~~(if any), sufficient~~ to defease all outstanding ~~2005~~ 2014 Bonds, and to call, pay and redeem such bonds on ~~April 1, 2015~~.

“**Refunding Resolutions**” means, collectively: (1) ~~that resolution of the Museum Board, adopted on March 10, 2014 which authorizes the execution and delivery of the Lease Amendment, the Letter of Representation and this Agreement and the carrying out by the Museum of all actions necessary to complete the transactions described herein and therein (the “Museum Refunding Resolution”);~~ and (2) ~~the Bond Resolution and each other resolution of the Authority Council,~~

~~relating to the issuance of the Bonds, the execution and delivery of this Agreement, the Indenture, the Letter of Representation and the Refunding Escrow Agreement and the carrying out by the Authority of all actions necessary to complete the transactions described herein and therein (the “MDA Refunding Resolutions”) _____, 2024.~~

“**Refunding Escrow Agreement**” means an agreement among the Authority, the City and the Refunding Trustee providing for the carrying out of the Refunding Plan.

“**Refunding Trustee**” means U.S. Bank Trust Company, National Association of Seattle, Washington, serving as trustee or escrow agent or any successor trustee or escrow agent under the Refunding Escrow Agreement.

“**Reimbursement Interest Rate**” means the interest rate established pursuant to Section 3.2(a) and stated in the Reimbursement Schedule.

“**Reimbursement Schedule**” means any schedule for reimbursing the City for advances made under this Agreement, stating the interest rate and other terms for reimbursement, subject to the approval of the City Finance Director, in accordance with Section 3.2.

“**Reserve Account**” means the Reserve Account established in the custody of the Bond Trustee pursuant to the Indenture.

“**Reserve Account Reconciliation Date**” means each March 1 and September 1, or if such date is not itself a Business Day, then in each case the preceding Business Day.

“**Reserve Assets**” means as of any calculation date, collectively, the total dollar amount of all money and investments in the Reserve Account.

“**Reserve Deficiency**” means the amount necessary, if any, to replenish the Reserve Account to the Reserve Requirement, calculated by subtracting: (1) the Reserve Assets, together with all other amounts available to the Bond Trustee under the Indenture for deposit into the Reserve Account as of the date of calculation, from (2) the Reserve Requirement.

“**Reserve Deficiency Notice**” means written notice provided by the Bond Trustee under Section 3.5, indicating the Reserve Deficiency, substantially in the form attached as Exhibit G-1.

“**Reserve Requirement**” means an amount determined as of the Bond Closing date and equal to the least of the following: (a) 10% of the original proceeds of the Bonds; (b) the Maximum Annual Debt Service on the Bonds; and (c) 1.25 times the Average Annual Debt Service on the Bonds. Maximum Annual Debt Service and Average Annual Debt Service shall be calculated with reference to the Bond Debt Service Schedule and shall otherwise be defined as provided in the Bond Resolution and the Indenture. Upon the optional redemption, open market purchase or defeasance of a portion of the outstanding principal amount of the Bonds, the Reserve Requirement shall be reduced on a pro rata basis.

“**Seasoned Funds**” means any funds (other than proceeds of the Bonds or money previously deposited in the Reserve Account or the reserve account for the 2005 Bonds) received

by the Bond Trustee from the Authority or the Museum that, in the written opinion (delivered to the City and to the Bond Trustee) of nationally recognized bankruptcy counsel practicing regularly before Federal Bankruptcy Court, are not subject to treatment as an “avoidable transfer” under any applicable section of the Federal Bankruptcy Code in the event of a Bankruptcy by the Authority or the Museum.

“**Security Documents**” means, collectively, the MDA Security Documents; the Museum Security Documents; the Standby Security Documents; and the Lockbox Addendum.

“**SMC**” means Seattle Municipal Code.

“**Standby Deed of Trust**” means the standby Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, in the form attached at Exhibit E–1, to be held by an escrow agent with instructions in the form attached as Exhibit E–3, all in accordance with Section 5.10 of this Agreement.

“**Standby Security Documents**” means, collectively, the Standby Deed of Trust, the Standby Hazardous Substances Certification, the escrow instructions relating to the Standby Security Documents, and any and all UCC filings relating to the foregoing.

“**State**” means the State of Washington.

“**Tenant Payment Agreement**” means those provisions, whether in a separate agreement or incorporated in an Office Space Lease, substantially in the form attached as Exhibit D–2, under which an Office Space Tenant agrees to remit all amounts payable to the landlord under an Office Space Lease directly to Lockbox Agent for deposit into the Lockbox Account.

“**Valuation Date**” means each January 1 and July 1.

All other capitalized terms used but not defined in this Agreement shall have the meanings assigned to them in the Bond Resolution and the Indenture.

ARTICLE 3. **Guarantee of Authority Bonds**

Section 3.1 City Guarantee Provided.

(a) *City Guarantee.* The City agrees to provide, for the benefit of the owners of the Bonds, deposits into the Reserve Account in an amount or amounts sufficient, together with all other money deposited with the Bond Trustee and available for this purpose, to replenish the Reserve Account to the Reserve Requirement, at such time or times as may be required in accordance with the procedures and terms described in this Article 3. The City further agrees to provide, for the benefit of the owners of the Bonds, advances to the Bond Trustee for payment to Bondowners in the event of a Bankruptcy Recovery. Each instance of providing amounts to the Bond Trustee for deposit into the Reserve Account, or for payment in the event of a Bankruptcy Recovery, shall constitute an “advance.” The City’s obligation shall be enforced in accordance with Section 6.3, consistent with applicable notice and cure periods stated in Section 6.3.

(b) *Time and Amount to be Advanced.* Funds shall be advanced at such time, if any, as the amount available to the Bond Trustee to replenish the Reserve Account is insufficient to meet the Reserve Requirement, as determined in accordance with Section 3.5 of this Agreement. In the event that the Bond Trustee has notice of any Bankruptcy Recovery and sufficient funds are not otherwise available to the Bond Trustee, the City shall, upon not less than 45 days' notice from the Bond Trustee, make an advance to the Bond Trustee for payment to such Bondowner(s) in the amount of such Bankruptcy Recovery. The total amount of funds to be advanced by the City pursuant to this Agreement (including all advances made into the Reserve Account and all advances made in the event of a Bankruptcy Recovery) shall not exceed the principal amount of the Bonds issued, plus an amount necessary to make the originally scheduled interest payments on those Bonds as shown in the Bond Debt Service Schedule.

(c) *Nature of City's Obligation.* The City is entering into this Agreement in reliance upon the representations, warranties and agreements of the Authority and of the Museum contained in this Agreement. The City's obligation to advance funds to the Bond Trustee in the amounts at the times and in the manner described in this Agreement shall commence as of the date of Bond Closing, and once commenced, shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise, and shall not be relieved upon the breach of a representation or warranty, or upon a Declaration of Default or the occurrence of an Event of Default hereunder. The full faith, credit and resources of the City are pledged irrevocably for the payment to the Bond Trustee of the required advances, payable in the amounts, at the times and in the manner described herein. The City makes no express or implied warranty that any money advanced to the Authority under the provisions of this Agreement will be sufficient to pay all the amounts which may have been incurred for Project Costs or to carry out the Refunding Plan. The City's obligation under this Agreement shall terminate upon the repayment, purchase and retirement, redemption or defeasance in full of all the Bonds. Notwithstanding the foregoing and except in the case of a defeasance in accordance with the Indenture, the City shall remain obligated to make advances, payable within 45 days of demand, to the Bond Trustee in the event of a Bankruptcy Recovery.

Section 3.2 Reimbursement Agreement. The Authority and the Museum each jointly and severally agrees to reimburse the City for any amounts advanced by the City to the Bond Trustee pursuant to this Agreement, as follows:

(a) *Reimbursement Schedule.* Reimbursements, including all interest due on advances made by the City, shall be paid to the City on or before the 5th Business Day of each month, in installments according to a Reimbursement Schedule proposed by the Authority and/or the Museum and acceptable to the City Finance Director, a copy of which shall be provided to the Lockbox Agent. If no Reimbursement Schedule is in effect, the City shall be reimbursed for its advances, plus interest, from amounts deposited in the Lockbox Account consistent with Section 4.1(b)(2)(iii). The interest rate shall be determined in accordance with subsection (b) of this section, and the term for reimbursement in full (including interest) shall not exceed 36 months from the date of any advance, except that the City Finance Director may in his sole discretion permit a reimbursement term of up to 60 months from the date on which the advance is made. Each Reimbursement Schedule shall state how interest is to be calculated consistent with Subsection 3.2(b).

(b) *Interest Rate.* Each advance made under the terms of this Agreement will bear interest on the amount advanced and unreimbursed, from the date of the advance until the date such advance is reimbursed in full. Interest on the advances will be calculated on the basis of the actual number of days in the year, for the actual number of days elapsed. The rate of interest borne by each advance shall be a variable rate, determined monthly on the first Business Day of each month, based on the source of funds used by the City to fund the advance to the Bond Trustee, as follows:

- (1) If the City borrows money in order to make the advance (other than any internal or inter-fund borrowing), the interest rate shall be equal to the City’s true interest cost plus 200 basis points.
- (2) If the City makes the advance from City funds (including general funds or funds from any internal or inter-fund borrowing), then interest shall be calculated in arrears each month, on the first Business Day of the month, and shall be equal to the greater of: (i) the Federal Funds rate plus 300 basis points, or (ii) the Bank Prime Loan rate, as those rates are identified in the Federal Reserve Statistical Release H.15 on the first Business Day of each month.

The City may employ either method or both for obtaining funds from which to make each advance, may change from one to the other from time to time after making an advance, and may refund its borrowing from time to time as it sees fit. Upon making an advance, the City shall promptly inform the Lockbox Agent, the Bond Trustee, the Authority and the Museum of the amount advanced, whether the initial source of the funds advanced is the source described in clause (1) or (2) above, and the applicable initial interest rate. The City shall also provide the Authority, the Museum, the Lockbox Agent and the Bond Trustee with prompt notice of the interest rate and any change therein.

(c) *Source and Method of Reimbursement.*

- (1) For so long as a Reimbursement Schedule is in effect or the City remains unreimbursed for amounts advanced (including interest), the Lockbox Agent shall apply the money deposited into the Lockbox Account to items 4.1(b)(2)(i) through (iv) only.
- (2) Reimbursements shall be made from the following sources in the following order: (i) from the Lockbox Account in accordance with the flow of funds in Section 4.1(b)(2); (ii) from any Available MDA Funds; and (iii) from any Available Museum Funds. So long as no City Default has occurred and is continuing, the provisions of this paragraph shall not limit the City’s right to recover following a Declaration of Default, against any source of payment or revenue available to it and in any order as the City may determine.
- (3) Reimbursement amounts received by the City shall be applied first to any interest due on any advance, and then to the principal amount of each advance in the order made.

Section 3.3 Authority Obligation.

(a) *Security.* The Authority has granted to the City the security interests evidenced by the

MDA Security Documents and agrees to enforce the Authority’s rights under the MDA Lease and the Museum Security Documents in strict accordance with their terms.

(b) *Nature of Authority’s Obligation.* The Authority agrees: (1) to take all actions reasonably necessary to realize the amount of MDA Lease Revenue required to pay the principal of and interest on the Bonds and to maintain the Reserve Requirement (including, without limitation, making deposits into the Reserve Account in the amount of any Reserve Deficiency following a draw on the Reserve Account in accordance with the procedures under Section 3.5(c)) without resort to the availability of any advance from the City made pursuant to this Agreement; (2) to make available sufficient MDA Lease Revenue or Available MDA Funds to fulfill its reimbursement obligation under this Agreement; and (3) to perform and observe all other covenants and obligations on its part contained in this Agreement. The Authority’s obligations under this Agreement shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise.

The Authority’s obligations under this Agreement (including but not limited to its reimbursement obligation and its obligation under Section 7.4) shall continue in effect and shall survive the satisfaction of the Authority’s obligations under the Bonds, the Bond Resolution, and the Indenture until such time as: (1) the City has been reimbursed in full for all amounts advanced by it pursuant to this Agreement (including interest on those amounts, if applicable), together with any costs owed to the City pursuant to Section 7.5, and (2) the Authority’s obligations with regard to the Bonds have been satisfied and (i) the bankruptcy law or other applicable statutory or common law transfer avoidance period(s) applicable to all payments to Bondowners and to the City have expired without voluntary or involuntary filing of a petition in bankruptcy, for receivership or under other similar statutes or procedures involving protection from creditors with respect to the Authority, the Museum, or any Office Space Tenant, and (ii) the City has been reimbursed in full for any amounts recovered in a Bankruptcy Recovery and paid by the City (including interest on those amounts, if applicable), and (iii) the City has received an opinion from nationally recognized bankruptcy counsel that no other possibility of a Bankruptcy Recovery exists.

The Authority is not acting as the agent of the City or the Museum and its obligations under this Agreement and the Bonds do not constitute obligations of the Museum, the City or any entity other than the Authority. The Museum Development Authority of Seattle is organized pursuant to Seattle Municipal Code (SMC) 3.110 and 35.21.730-.755. RCW 35.21.750 provides as follows: “[A]ll liabilities incurred by such public corporation, commission, or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission or authority and no creditor or other person shall have any right of action against the city, town, or county creating such corporation, commission, or authority on account of any debts, obligations, or liabilities of such public corporation, commission, or authority.”

Section 3.4 Museum Obligation.

(a) *Security.* The Museum has granted to the Authority the security interests evidenced by the Museum Security Documents and agrees to enforce its rights under any Office Space Lease in strict accordance with its terms, and has deposited the executed Standby Security Documents with

an escrow agent for the benefit of the City. The Museum has further covenanted to maintain minimum Museum Net Assets and to deliver the Standby Security Documents, all as described in Section 5.10.

(b) *Nature of Museum’s Obligation.* The Museum agrees: (1) to make available sufficient Office Space Lease Revenue or Available Museum Funds to make deposits into the Reserve Account in the amount of any Reserve Deficiency following a draw on the Reserve Account in accordance with the procedures under Section 3.5(c) and to fulfill its reimbursement obligation under this Agreement; and (2) to perform and observe all other covenants and obligations on its part contained in this Agreement. The Museum’s obligations under this Agreement shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise.

The Museum’s obligations under this Agreement (including but not limited to its reimbursement obligation and its obligations under Section 7.4) shall continue in effect and shall survive the satisfaction of the Museum’s obligations in connection with the MDA Lease until such time as: (1) the City has been reimbursed in full for all amounts advanced by it pursuant to this Agreement (including interest on those amounts, if applicable), together with any costs owed to the City pursuant to Section 7.5, and (2) the Museum’s and the Authority’s obligations with regard to the Bonds have been satisfied and (i) the bankruptcy law or other applicable statutory or common law transfer avoidance period(s) applicable to all payments to Bondowners and to the City have expired without voluntary or involuntary filing of a petition in bankruptcy, for receivership or under other similar statutes or procedures involving protection from creditors with respect to the Authority, the Museum, or any Office Space Tenant, and (ii) the City has been reimbursed in full for any amounts recovered in a Bankruptcy Recovery and paid by the City (including interest on those amounts, if applicable), and (iii) the City has received an opinion from nationally recognized bankruptcy counsel that no other possibility of a Bankruptcy Recovery exists.

The Museum is not acting as the agent of the City or the Authority and its obligations under this Agreement and the MDA Lease do not constitute obligations of the Authority, the City or any entity other than the Museum.

Section 3.5 Procedures under Guarantee. The following procedures shall apply for so long as the City’s guarantee is in effect. All notices and communications required under this Agreement shall be given in accordance with Section 7.2. Failure by any party to provide timely notice shall not excuse any other party from performance of its obligations under this Agreement upon actual receipt of such notice.

(a) *Notice by Lockbox Agent.* The Lockbox Agent shall provide to the City, the Museum, the Authority and the Bond Trustee, by the fifth Business Day of each month, a regular monthly report of the deposits to and disbursements from the Lockbox Account. If the Lockbox Agent fails to receive, in full and when due, any Office Space Lease Payment or other payment under a Tenant Payment Agreement, the Lockbox Agent shall provide notice within two Business Days following the due date. Such notice shall be provided to the Authority, the Museum the Bond Trustee and the City, in the form attached as Exhibit G–2.

(b) *Notices by Bond Trustee.* The Bond Trustee shall provide:

- (1) Notice to the Authority, the Museum, the City and the Lockbox Agent within two Business Days (unless otherwise noted below) after each of the following events:
 - (i) On each Interest Payment Date (or within two Business Days thereafter), notice of balance in the Reserve Account;
 - (ii) Notice of the total Reserve Assets on each Valuation Date and immediately following any draw on the Reserve Account;
 - (iii) Notice of its receipt of any notice relating to any Bankruptcy Recovery requiring an advance by the City; and
- (2) Such additional notices as are required under subsections (c) and (d) of this section.

(c) *Reserve Replenishment Procedures and Notices.* Within two Business Days following any draw on the Reserve Account, the Bond Trustee shall give notice, using substantially the form attached as Exhibit G–1, of any Reserve Deficiency to the Authority, the Museum, the City, and the Lockbox Agent demanding that the Authority deposit or cause to be deposited the amount of such Reserve Deficiency. If a Reserve Deficiency exists on the Valuation Date, the Bond Trustee shall, within two Business Days, give notice to the Museum, the Authority and the City demanding that the Museum deposit or cause to be deposited the amount of such Reserve Deficiency. If the Reserve Account is not replenished to the Reserve Requirement within five Business Days after the giving of this second notice, the Bond Trustee shall, within two Business Days, give a third notice to the Museum, the Authority, and the City demanding that the Authority take all action necessary under Section 4.4 to replenish the Reserve Account to the Reserve Requirement and to realize MDA Lease Revenue sufficient to fulfill the Authority’s obligations under this Agreement and the Indenture. If at any time prior to the Reserve Account Reconciliation Date, the Bond Trustee receives funds for deposit into the Reserve Account, it shall immediately give notice to the Authority, the Museum, the City and the Lockbox Agent.

(d) *Reserve Deficiency Procedures.* If on any Reserve Account Reconciliation Date, the Bond Trustee determines, pursuant to Section 4.1(a)(2), that a Reserve Deficiency exists, the following actions shall be required:

- (1) *Reserve Deficiency Notice by Bond Trustee.* The Bond Trustee shall provide a Reserve Deficiency Notice to the Authority, the Museum and the City within two Business Days after any Reserve Account Reconciliation Date on which a Reserve Deficiency is found to exist.
- (2) *Actions by City.* After receipt of a Reserve Deficiency Notice, the City shall, no later than 10:00 a.m., Seattle time, on the Business Day prior to the next Interest Payment Date, deliver to the Bond Trustee the Reserve Deficiency for deposit into the Reserve Account.
- (3) *Actions by Authority and the Museum.* Within 20 Business Days after receipt of a Reserve Deficiency Notice, the Authority and the Museum shall provide or cause to be provided to the City: (i) an accounting of the operation of the Existing Art Museum Facility, the MDA Unit and the Museum Expansion Unit, including cash

flow information and projections; and (ii) a Reimbursement Schedule that conforms to the terms for reimbursement described in Section 3.2.

Section 3.6 Refunding of the ~~2005~~2014 Bonds.

(a) *Generally.* The proceeds of the Bonds shall be deposited with the Refunding Trustee for the benefit of the holders of the ~~2005~~2014 Bonds, and shall be used solely to carry out the Refunding Plan in accordance with the Refunding Escrow Agreement.

(b) *Bond Closing Conditions.* The City’s obligation under this Agreement shall be conditioned upon the performance at or prior to the Bond Closing, by the Authority and by the Museum, of the evidence, covenants, agreements and conditions in this subsection.

- (1) Representations and Warranties. The representations and warranties of the Authority in Exhibit H–1, and of the Museum in Exhibit H–2, shall be true, complete and correct in all material respects on the date of this Agreement, and on and as of the date of Bond Closing.
- (2) Resolutions in Effect. On the date of Bond Closing, the Refunding Resolutions shall be in full force and effect in accordance with their respective terms and shall not have been amended, modified or supplemented since the date of this Agreement except as shall have been agreed to in writing by the City Finance Director.
- (3) Reserve Fully Funded. As of the date of Bond Closing, the Reserve Account shall be funded to the Reserve Requirement.
- (4) Execution of a Tax Exemption and Nonarbitrage Certificate. On or prior to the date of Bond Closing, the Authority shall execute a certificate acceptable to the Authority’s Bond Counsel and to the City Finance Director, pertaining to certain tax exemption and arbitrage matters relating to the Bonds, including the calculation and payment of any Rebate Amount with respect to the Bonds.
- (5) [Reserved].
- (6) City Examination of Documents. On or prior to the date of Bond Closing, the following documents shall have been executed, acknowledged, delivered, recorded and filed, as applicable, and conformed copies of each document, with recording and filing information, if applicable, shall have been delivered to the City Finance Director:
 - (i) From the Authority: (A) evidence of the Authority’s incorporation and continued corporate existence; (B) the MDA Authorizing Resolutions; (C) the Refunding Resolution; and (D) the 2024 Indenture.
 - (ii) From the Museum: (A) the Museum’s Articles of Incorporation, Bylaws, and certificate of existence from the Washington Secretary of State; (B) a signed exemption letter from the Internal Revenue Service evidencing the Museum’s status as a 501(c)(3) organization pursuant to the Code; and (C) the Museum Authorizing Resolution.

- (iii) [Reserved]
- (iv) the MDA Lease and Memorandum of Lease and amendments thereto.
- (v) Certificates of insurance or other evidence in forms acceptable to the City Finance Director, demonstrating that the insurance described in Exhibit I has been obtained and is in effect with respect to the Existing Museum Facility.
- (vi) a copy of the Museum’s audited financial statements and all necessary supplemental documentation in a form that demonstrates that the Museum is in compliance with the covenants set forth in Section 5.10.
- (vii) Certified copies of the following documents, which shall be final and shall not be modified after the date of Bond Closing, except for such changes as may be approved in writing by the City Finance Director: (A) the Office Space Lease or, in lieu of a copy of such lease, written confirmation that the Office Space Lease is substantially in the form previously represented to the City and a representation to the effect that the Office Space Lease is in compliance with the terms of this Agreement and that no default or event of default under the Office Space Lease has occurred; (B) the Condominium Documents; and (C) the Security Documents.
- (viii) Legal Opinions. On or prior to the date of Bond Closing, the City Finance Director shall be provided legal opinions of counsel to the Authority and counsel to the Museum addressed to the City dated the date of Bond Closing, in form and substance acceptable to the City Finance Director, including without limitation, a Defeasance Opinion.
- (ix) The Refunding Escrow Agreement.
- (x) Such additional certificates, instruments and other documents as the City Finance Director may reasonably request to evidence the truth and accuracy, as of the date of Bond Closing, of any or all of the following: (A) the representations and warranties of the Authority and the Museum and of the Authority in Exhibits H-1 and H-2 to this Agreement, (B) the due performance by the Authority and the Museum on or prior to the date of Bond Closing of all the respective agreements then to be performed by them and the satisfaction on or prior to the date of Bond Closing of all the conditions prescribed in this section, and (C) the recording and filing of all recordable documents required to be recorded under the terms of this Agreement on or prior to the date of Bond Closing and necessary to carry out the transactions contemplated under this Agreement, the Indenture and the Security Documents.

- (7) All In Form and Substance Acceptable to City Finance Director. All of the evidence, opinions, letters, certificates, instruments and other documents referred to in this Section 3.6(b) are in form and substance acceptable to the City Finance Director.
- (c) [Reserved]

ARTICLE 4.
Covenants and Agreements Relating to the Bonds and Leases

Section 4.1 Funds and Accounts.

(a) *Debt Service Reserve Account.* The Authority shall establish and maintain, or cause to be established and maintained, a Reserve Account to be managed and disbursed by the Bond Trustee pursuant to the Indenture. The Authority shall maintain a balance in the Reserve Account equal to the Reserve Requirement.

- (1) Draw on Reserve Account; Procedures. In accordance with the Indenture amounts in the Reserve Account shall be drawn upon and applied solely by the Bond Trustee in the event that sufficient money is not available to it to make the scheduled debt service payments on the Bonds as shown on the Bond Debt Service Schedule. Notice of any draw shall be provided as required under Section 3.5(c). Following any draw, the Reserve Account shall be replenished in accordance with Section 3.5(c) and (d).
- (2) Reserve Account Reconciliation. The Authority shall cause the Bond Trustee to determine, on each Reserve Account Reconciliation Date, whether a Reserve Deficiency exists. If a Reserve Deficiency is found to exist on the Reserve Account Reconciliation Date, the actions described under Section 3.5(d) shall be required.

(b) *Lockbox Account.* The Lockbox Account shall be established, to be held by the Lockbox Agent under the Lockbox Addendum, separate and apart from all other funds and accounts of the Museum. By acknowledging and accepting this Agreement, the Lockbox Agent accepts the terms of this Section 4.1(b) and the Lockbox Addendum, attached as Exhibit J and by this reference incorporated herein, and its responsibilities under this Agreement.

- (1) Deposits into Account. For so long as the Bonds are outstanding, any and all Office Space Lease Revenue shall be deposited in the Lockbox Account. As security for the MDA Lease, the Museum shall include a Tenant Payment Agreement in every Office Space Lease, or shall otherwise enter into an agreement requiring the tenant to remit all payments due under an Office Space Lease directly to the Lockbox Account in satisfaction of the tenant's obligation to make those payments to the Museum.
- (2) Flow of Funds in Lockbox Account. Except as provided in paragraph (3) of this subsection, for so long as the Bonds are outstanding, all amounts deposited into the Lockbox Account and all interest earned thereon shall, on the 5th Business Day of each month, be applied by the Lockbox Agent only for the following purposes in

the following order of priority:

- (i) To pay any outstanding unpaid regular Lockbox Agent fees, if any;
 - (ii) To pay to the Bond Trustee amounts equal to those shown on the MDA Lease Payment Schedule attached as Exhibit A-2, which amount shall be credited against the Museum’s obligation (if any) to pay rent under the MDA Lease.
 - (iii) If no Reimbursement Schedule under Section 3.2(a) is in effect, to the extent necessary to pay all amounts due to the City to reimburse the City for City advances to the Reserve Account, and if a Reimbursement Schedule is in effect, to pay to the City amounts due under a Reimbursement Schedule approved in accordance with Section 3.2(a) of this Agreement (which payments shall in either event be applied as set forth in Section 3.2(c)(3));
 - (iv) To pay to the Bond Trustee any monthly payment required under a Bond Prepayment Plan approved in accordance with Article IV of this Agreement; and
 - (v) Any amounts remaining after satisfaction of items (i) through (iv), including any interest earned thereon, shall be released to the Museum for any Museum purpose.
- (3) Exceptions for Particular Events and Circumstances. In each of the following circumstances and until notified by the City that the circumstance has been cured or no longer applies, the Lockbox Agent shall cease applying amounts in the Lockbox Account to items (iv) and (v), above. The Lockbox Agent shall instead apply all amounts received to items (i) through (iii), above and then, on a monthly basis, pay any amounts remaining to the Bond Trustee for deposit first, into the Reserve Account in an amount not to exceed the Reserve Deficiency (if any), and second, to the extent necessary to pay to the City for any and all amounts due in connection with an insurance reimbursement due under Section 6.2(c), and third, all remaining amounts shall be equally divided for deposit into the Principal and Interest Accounts, as defined in the Indenture. Upon receipt of a notice of failure to replenish the Reserve Account as described in the third sentence of Section 3.5(c), the Lockbox Agent shall within two Business Days, pay to the Bond Trustee any amounts remaining in the Lockbox Account and shall provide notice to the City, the Museum, and the Authority of the amount so paid. The circumstances include:
- (i) Receipt of notice given under Section 3.5(c) of a draw on the Reserve;
 - (ii) Receipt of a copy of a Reimbursement Schedule provided under Section 3.2 (unless the Reimbursement Schedule provides for payments under a Bond Prepayment Plan, in which case the Lockbox Agent shall apply to (iv) amounts available after applying funds to items (i)–(iii), above, in accordance with the

Reimbursement Schedule);

- (iii) Failure to receive a monthly Office Space Lease Payment in full when due in accordance with the schedule attached as Exhibit A-3;
- (iv) Receipt of any notice given under Section 4.2(c);
- (v) Receipt of a notice of Declaration of Default declaring a Museum or Authority default under any of subsections (1) through (5) of Section 6.1(a);
- (vi) Receipt of any insurance proceeds (whether from property or casualty insurance, rental and business interruption insurance, or any other source of insurance proceeds) or any condemnation award); and
- (vii) Receipt of a notice given under Section 6.2(c)(2) of failure to reimburse the City for amounts due relating to insurance payments.

Section 4.2 Reports and Records; Notices by Authority and Museum.

(a) *Records.* The Authority and the Museum each hereby covenants: (1) to permit the City or its duly authorized representatives, access (wherever regularly located) during normal business hours to the books, records, and any and all accounts and data of the Authority and of the Museum, respectively, pertaining to the Bonds, the Project, the MDA Unit, the Museum Expansion Unit, and every Office Space Lease, and (2) to make such books and records available for audit, copying, and inspection, at reasonable times and under reasonable conditions to the City and its duly authorized representatives.

(b) *Reports.* The Authority and the Museum each further agrees to provide to the City copies of the following:

- (1) Within ten Business Days after receipt, the Authority’s audited and unaudited financial statements;
- (2) Within ten Business Days after receipt, the Museum’s audited and unaudited financial statements, prepared according to generally accepted accounting practices applicable to nonprofit corporations;
- (3) Within three Business Days after receipt, each report provided to the Authority under Section 4.3(b) by an arbitrage rebate compliance consultant;
- (4) Within three Business Days after receipt, each report received from the Bond Trustee under the Indenture (but only in the event that the transmittal for such report does not show that the Bond Trustee has already provided the City with a copy of such report); and
- (5) At the time provided to the Bond Trustee, any and all certificates required to be given by the Museum or the Authority (as applicable) to the Bond Trustee under the Indenture.

(c) *Additional Notice of Certain Events.* In addition, the Authority and the Museum shall

each provide notice to the City, the Bond Trustee and the Lockbox Agent, within two Business Days of its knowledge after the occurrence of:

- (1) Any default under any of the Security Documents, the MDA Lease, any Office Space Lease, the Lockbox Addendum or the Indenture;
- (2) Any event which, with the passage of time or service of notice, or both, would constitute ~~an~~ default under any of the above. Such notice shall specify the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto; or
- (3) The voluntary or involuntary filing of a petition of bankruptcy, receivership or other similar status involving protection from creditors with respect to the Authority, the Museum, or any Office Space Tenant.

Section 4.3 Tax Exempt Status of Bonds; Arbitrage. It is the intention of the Authority and the City that interest on the Bonds shall be and remain excluded from gross income of the owners of the Bonds under federal tax law.

(a) The Authority therefore covenants and agrees that it has not taken or permitted to be taken and will not take or permit to be taken any action that will cause the interest on the Bonds to become included in gross income for federal tax purposes pursuant to the Code or to become “arbitrage bonds” within the meaning of Section 148 of the Code. The Authority covenants that it will not take any action, fail to take any action or make or allow any use of the Project, or the proceeds of the Bonds, which would cause the interest on any of the Bonds to be or become includable in the gross income of such bond owners for federal income tax purposes. Specifically, and without limitation, the Authority shall actively enforce the provisions of Section 18.1 of the MDA Lease regarding the use of the MDA Unit for purposes that could cause the interest on the Bonds to be or become taxable. Moreover, without limiting the generality of the foregoing, the Authority covenants and agrees that it will take such action or actions as are legally permissible and necessary in the opinion of Bond Counsel (including, without limitation, making or consenting to amendments to the Bond Resolution, the Indenture, the Security Documents or this Agreement), so that the Authority, the Project, and all subsequent owners and tenants of the MDA Unit comply fully and continuously with Sections 145 and 148 of the Code and with all applicable legislative enactments or applicable final decisions of courts of competent jurisdiction so as to maintain the exclusion from gross income of interest on the bonds.

(b) The Authority agrees to obtain, within 45 days after the first, second, fifth and tenth anniversaries of the Bond Closing and at the Authority’s expense, a report by an arbitrage rebate compliance consultant and in a form acceptable to the City Finance Director, calculating the Rebate Amount, if any, owing to the United States of America with regard to the Bonds, and further agrees to pay such Rebate Amount, if any.

(c) By virtue of the preceding agreement to comply with future laws or regulations, the Authority and the City do not intend nor shall they be deemed to waive any rights or defenses they may have, individually or collectively, to contest the application of such laws or regulations to the Project on the grounds that such application would constitute a prohibited impairment of contract or on any other applicable grounds. Nevertheless, while contesting the application of any such

laws or regulations, the Authority and the City shall take such actions deemed necessary in the opinion of Bond Counsel to maintain the exclusion from gross income of interest on the Bonds.

(d) The Authority's and the City's responsibilities under this section shall be limited to actions within each entity's respective control. None of the covenants and agreements herein contained shall require the City to enter an appearance or intervene in any administrative, legislative or judicial proceeding in connection with any changes in applicable laws, rules or regulations or in connection with any decisions of any court or administrative agency or other governmental body affecting the taxation of interest on the Bonds.

Section 4.4 Provisions Relating to Office Space Lease.

(a) *Required Provisions.* The Museum shall not enter into, and the Authority shall not permit the execution of, an Office Space Lease that does not meet the Coverage Requirement under Section 5.3. Furthermore, the Museum and the Authority agree that each Office Space Lease shall include provisions regarding the termination of such Office Space Lease substantially similar to those in Section 2.4 of the Office Space Lease in effect as of October 1, 2007 and a Tenant Payment Agreement substantially similar to that attached at Exhibit D-2.

(b) *Lease Defaults.* The Museum agrees that, promptly upon notice of an Event of Default under any Office Space Lease, as defined in that Office Space Lease (and the expiration of any applicable cure period), it shall use all commercially reasonable efforts to evict a nonpaying tenant and relet the Office Premises, consistent with subsection (d) of this section.

(c) *Failure to Replenish Reserve Account.* Upon the receipt of a notice under the third sentence of Section 3.5(c), the Museum, as required by the MDA Lease, agrees to grant and the Authority agrees to accept appointment as the Museum's leasing agent and property manager with respect to the Office Premises. Upon such appointment and acceptance, the Authority shall use its best efforts to collect amounts due under the Office Space Lease and, if necessary, shall use commercially reasonable efforts to evict any non-paying tenant and to relet the Office Premises on the Museum's behalf. As leasing agent and property manager, the Authority shall have the right, in its sole discretion consistent with the remaining obligations of the Museum to the Authority under the MDA Lease, to relet the Office Premises on the Museum's behalf. The Authority agrees that upon the Authority's undertaking to act as leasing agent and property manager for the Museum, the Authority shall use all commercially reasonable efforts to relet the Office Premises. The Museum agrees to cooperate with the Authority in its re-leasing efforts and in connection with the collection of delinquent rent payments and evicting nonpaying tenants. The Museum further agrees to execute any documents requested by the Authority or the City consistent with this Agreement and in furtherance of such re-leasing efforts and to join in any litigation in connection therewith. All net proceeds of such re-leasing shall be deposited to the Lockbox Account and used as set forth in Section 4.1, above. Performance of the obligation to use commercially reasonable efforts to relet the Office Premises shall not relieve any party of any obligation under this Agreement, any Security Document or the Indenture.

(d) *Museum Takedown of Office Space Lease.* The Museum agrees that it will not take action to terminate all or any portion of any Office Space Lease except with the prior written consent of the City Finance Director, or otherwise in accordance with this subsection.

- (1) *Covenant to Redeem or Defeasance Bonds.* The Museum agrees not to terminate any or all of any Office Space Lease (other than for the purpose of ejecting a non-paying tenant and re-letting the Office Premises, as to which termination prior City consent is not required) unless it has prepaid MDA Lease Payments in an amount sufficient to purchase, redeem or defease that portion of the Bonds described in Section 4.6(b).
- (2) *Notice to City Required Prior to Lease Termination.* The Museum shall provide to the Authority and to the City written notice of the Museum’s intent to terminate all or any portion of an Office Space Lease simultaneously with any notice of termination to an Office Space Tenant given under section 2.4 of the Office Space Lease in effect as of October 1, 2007 or under provisions of any other Office Space Lease permitting termination by the Museum. The Museum covenants to include in every Office Space Lease the requirement that notice of termination by the Museum is revocable by the Museum, at its sole option and for any reason without penalty and without right of the Tenant to terminate, for at least 12 months following the giving of the termination notice.
- (3) *Bond Prepayment Plan Required; City Approval Required.* Simultaneously with the notice under subsection (b)(2), the Museum shall also submit a Bond Prepayment Plan, as described in Section 4.6, to the City Finance Director for approval, with a copy to the Authority. Included in the submission shall be information regarding cash flow expectations for the Museum, the Authority and the Lockbox Account and any request to alter the flow of funds into the Lockbox Account, which shall be subject to approval by the City Council. The submission must demonstrate to the satisfaction of the City Finance Director that no later than the date of the proposed lease termination, the Museum and/or the Authority will have set aside or caused to be set aside in a Bond Prepayment Account, amounts of Seasoned Funds sufficient for the Authority to redeem, purchase or defease a principal amount of the Bonds in the proportion described in Section 4.6(a)(2).
- (4) *Timeline for City Approval; Revocation of Termination Notice.* If the City Finance Director’s approval has not been obtained within 60 days after the Museum’s submission of a proposed Bond Prepayment Plan, such plan shall be deemed rejected, unless the City Finance Director extends such deadline in writing, for 30 days. In the case of such an extension, the plan shall be deemed rejected upon expiration of the extension unless the City Finance Director has approved the plan in writing, or has further extended the deadline. Further extensions shall be in 30–day increments to a maximum of 120 days after the date of the original notice and plan submission. On the 120th day after the Museum’s first submission of a Bond Prepayment Plan, all plans submitted shall be deemed rejected unless the City Finance Director has approved a plan in writing. After the 120th day, no further extensions shall be permitted, and the Museum shall within five Business Days revoke its termination notice to the Office Space Tenant, with copies of such revocation to the Authority and the City. The Authority agrees to take such action as may be necessary under the MDA Lease and the Museum Security Documents to enforce this section. No Bond Prepayment Plan or plan of lease termination shall

be approved under this subsection so long as any advance made by the City under this Agreement remains unreimbursed. The Authority shall not permit the Museum to terminate all or any portion of an Office Space Lease unless and until the City Finance Director’s approval has been obtained under this section and Section 4.6.

Section 4.5 Insurance and Condemnation Proceeds.

(a) *Repair and Replacement.* The Museum and the Authority each covenants to take all action within its control to cause any insurance proceeds (other than rental or business interruption insurance) and any condemnation award to be applied as set forth in Section 4.5(b) or to the repair or replacement of the Existing Museum Facility, the MDA Unit and the Museum Expansion Unit, as applicable, or the portion of either or both units that is damaged or subject to condemnation, in accordance with the Condominium Documents, the Leases and the provisions of this section and Section 4.6 of this Agreement.

(b) *No Repair or Replacement.* To the extent that property insurance proceeds or condemnation awards are not applied to repair or replacement of the facilities, the Authority shall develop a Bond Prepayment Plan to purchase, redeem or defease a principal amount of Bonds in proportion to the portion of the MDA Real Estate Parcels or the Museum Expansion Unit that will not be repaired or replaced. In addition, the Museum and the Authority shall irrevocably direct that:

- (1) All insurance proceeds (other than from rental or business interruption insurance) and condemnation awards to be paid to or on behalf of the Museum or the Authority and which are not applied to repair or replacement with respect to any of the MDA Real Estate Parcels shall be used: (i) to pay to the Bond Trustee amounts necessary to carry out a Bond Prepayment Plan (including the payment or prepayment of principal of and interest on the Bonds and any transaction costs and redemption premium, if any, associated with the purchase, redemption or defeasance of the Bonds), and (ii) for the repayment of any amounts owed to the City under this Agreement; and
- (2) All insurance proceeds (other than from rental or business interruption insurance) and condemnation awards to be paid to or on behalf of the Museum or the Authority and which are not applied to repair or replacement with respect to the Museum Expansion Unit shall be paid to the Lockbox Agent for deposit into the Lockbox Account and used in accordance with the flow of funds in Section 4.1(b).

(c) *Rental & Business Interruption Insurance Proceeds.* All rental or business interruption insurance proceeds with respect to the Museum Expansion Unit shall be paid to the Lockbox Agent for deposit into the Lockbox Account and used in accordance with the flow of funds in Section 4.1(b). All rental or business interruption insurance proceeds with respect to the MDA Real Estate Parcels shall be paid to the Bond Trustee for deposit into the Interest Account and then the Principal Account.

Section 4.6 Bond Prepayment Plans. No Bond Prepayment Plan shall become effective until approval of the City Finance Director has been obtained in writing. The Authority shall not proceed with any plan to redeem, purchase or defease any or all of the Bonds unless and until the

City Finance Director’s approval has been obtained. The Museum shall provide a copy of any approved Bond Prepayment Plan to the Authority, the Bond Trustee and the Lockbox Agent, within five Business Days of written approval by the City Finance Director.

(a) *Contents; Requirements.* Every Bond Prepayment Plan that includes defeasance shall provide for compliance with the defeasance requirements under Article XII of the Indenture and shall provide that:

- (1) The City will receive (in addition to such other certificates, reports, opinions or other documentation as the City Finance Director may require): (i) in the case of a proposed advance refunding, a verification by a nationally recognized independent certified public accounting firm acceptable to the City confirming that the maturing principal of and interest on the securities held by the Bond Trustee (or other escrow agent appointed with respect to such refunding or defeasance), in the Bond Prepayment Account (or other trust account established in connections with the refunding or defeasance), if paid when due and assuming no reinvestment thereof, together with any other cash then held by that escrow agent, will be sufficient to carry out the Bond Prepayment Plan; and (ii) an opinion of Bond Counsel that the bonds so prepaid have been legally defeased, using Seasoned Funds, funds previously deposited in the Reserve Account (but only if no amounts are due and owing to the City in respect of advances made under this Agreement), or funds available from another source (e.g., insurance proceeds, a condemnation award, grants contributions, borrowing, or a letter of credit) that are, that, in the written opinion (delivered to the City, the Bond Trustee and the refunding escrow agent, if any) of nationally recognized bankruptcy counsel practicing regularly before Federal Bankruptcy Court, are not subject to treatment as an “avoidable transfer” under any applicable section of the Federal Bankruptcy Code in the event of a Bankruptcy by the Authority or the Museum, and are no longer outstanding. The City shall be entitled to rely upon the verification and opinion described in this paragraph, and all of the City’s obligations under this Agreement with respect to the Bonds so defeased shall terminate.
- (2) The proportion of Bonds to be purchased, redeemed or defeased shall be in the same proportion to the amount of Bonds then outstanding as (i) the amount payable during the preceding calendar year under the Office Space Lease(s) and attributable on a per square foot basis to that portion of the Office Premises subject to lease termination, damaged or destroyed, bears to (ii) the total amount payable under the Office Space Lease(s) for that period.

(b) *Seasoned Funds.* The amounts set aside or to be set aside in any Bond Prepayment Account must be deposited in Seasoned Funds, funds previously deposited in the Reserve Account (but only if no amounts are due and owing to the City in respect of advances made under this Agreement), or funds available from another source (e.g., insurance proceeds, a condemnation award, grants contributions, borrowing, or a letter of credit) that are, that, in the written opinion (delivered to the City, the Bond Trustee and the refunding escrow agent, if any) of nationally recognized bankruptcy counsel practicing regularly before Federal Bankruptcy Court, are not subject to treatment as an “avoidable transfer” under any applicable section of the Federal

Bankruptcy Code in the event of a Bankruptcy by the Authority or the Museum.

Section 4.7 No Transfer of Property. Neither the Authority nor the Museum shall voluntarily transfer or permit the voluntary transfer of all or any portion of the property or security interests described the Security Documents. Any transfer that is in violation of this Section shall not relieve the Authority or the Museum of any obligations under this Agreement and shall be an Event of Default hereunder.

Section 4.8 City’s Continuing Disclosure Agreement. The City agrees to execute, in connection with the issuance of the Bonds, a written undertaking (the “Undertaking”) for the benefit of the holders of those bonds, as required by United States Securities and Exchange Commission (the “SEC”) Rule 15c2-12 (the “Rule”), in a form acceptable to the City, its Counsel and the purchaser of the Bonds. For purposes of the undertaking, the term “holders of the bonds” shall have the meaning intended for such term under the Rule.

ARTICLE 5.

Representations, Warranties, Covenants and Agreements

Section 5.1 Project Description. A description of the Project is shown in Exhibit F.

(a) *Project Operation.* The Authority and the Museum will furnish any money necessary to operate and maintain the Project and neither the Authority nor the Museum expects or intends to request any such money from the City. The Authority and the Museum each acknowledges that the obligation of the City under this Agreement to provide a guarantee as to the Bonds does not in any way constitute a representation, warranty, guaranty, advice or suggestion by the City as to the feasibility or viability of the Project, and may not be relied on as such by any investor, tenant, lender, or other person, for any reason.

(b) *Public Access to the Project.* The Authority and the Museum shall admit, or cause to be admitted, individuals to the Project without regard to race, sex, marital status, national origin, religious belief, creed, sexual orientation, gender identity, political ideology or the presence of any sensory, mental or physical handicap, and shall respect, permit and not interfere with the religious beliefs of persons using the Project. Except to the extent permitted by the constitution, statutes and laws of the United States and the State, the Authority and the Museum each further agrees that it will not use or permit the use of the Project as a place of religious worship or sectarian instruction. The Authority and the Museum shall provide access to the public spaces of the Project consistent with the Public Benefits set forth in Section 3.4 of the MDA Lease.

Section 5.2 Representations, Warranties and Covenants. It is specifically understood by the Authority and the Museum that all representations and warranties are being relied upon by the City as an inducement to provide the guarantee under this Agreement, and that if any such statements, representations and warranties were materially incorrect at the time they were made or as of the Closing Date, the City may consider any such misrepresentation or breach an Event of Default.

(a) *Representations, Warranties and Covenants of the Authority.* As of the date of this Agreement and as of the Closing Date, the Authority represents and agrees that: (i) each of the

representations and warranties of the Authority set forth in Exhibit H–1 is (as of the date of this Agreement) and shall be (as of the Closing Date) true, accurate and complete and by this reference is incorporated herein; (ii) as of the Closing Date, the MDA Security Documents shall have been duly authorized, executed and delivered by the Authority, shall not have been modified, amended, superseded or rescinded, and shall be in full force and effect; (iii) as of the Closing Date, the Authority shall have complied with all agreements and covenants and satisfied all conditions contemplated by the MDA Security Documents on its part to be performed or satisfied at or prior to the Closing Date; and (iv) the insurance required to be obtained under Section 5.4 of this Agreement shall be in full force and effect as of the Closing Date.

(b) *Representations, Warranties and Covenants of the Museum.* As of the date of this Agreement and as of the Acquisition Date, the Museum represents and agrees that: (i) each of the representations and warranties of the Museum set forth in Exhibit H–2 is (as of the date of this Agreement) and shall be (as of the Closing Date) true, accurate and complete and by this reference is incorporated herein; (ii) as of the Closing Date, the Museum Security Documents: (A) shall have been duly authorized, executed and delivered by the Authority; (B) shall not have been modified, amended, superseded or rescinded; and (C) shall be in full force and effect; (iii) as of the Closing Date, the Museum shall have complied with all agreements and covenants and satisfied all conditions contemplated by this Agreement, the Museum Security Documents, the Office Space Lease and the MDA Lease on its part to be performed or satisfied at or prior to the Closing Date; and (iv) the insurance required to be obtained under Section 5.4 of this Agreement, shall be in full force and effect as of the Closing Date.

Section 5.3 Debt Service Coverage Requirement Covenant. The Authority agrees to establish such terms under the MDA Lease and to take all actions necessary to realize amounts of MDA Lease Revenue at least equal to the Coverage Requirement. The Museum agrees to establish such terms under any Office Space Lease and to take all actions necessary to realize payments into the Lockbox Account of amounts of Office Space Lease Revenue at least equal to the Coverage Requirement.

Section 5.4 Insurance. The Authority and the Museum each agrees to obtain and continuously maintain, or to cause to be obtained and continuously maintained, at the expense of the Authority and the Museum, all policies of insurance with regard to the MDA Real Estate Parcels and the Museum Expansion Unit, respectively, as described in Exhibit I. In addition to the above covenant to obtain and maintain the insurance policies described in Exhibit I, the Authority and the Museum each agrees to be bound by each of the covenants contained in Exhibit I, which exhibit is incorporated herein by reference, and to enforce all provisions of the Condominium Documents relating to such insurance.

Section 5.5 Maintenance and Repair. The Authority and the Museum each agrees to maintain, or cause to be maintained, the MDA Real Estate Parcels and the Museum Expansion Unit, during the term of this Agreement (i) in a reasonably safe condition and (ii) in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof.

Section 5.6 Additional Indebtedness.

(a) Except for the Museum Bonds, neither the Authority nor the Museum shall issue any additional bonds, notes or other evidences of indebtedness in excess of \$1,000,000 aggregate outstanding at any given time, in the course of ordinary business, without the prior written consent of the City Finance Director, except as follows:

- (1) The Museum may incur indebtedness not to exceed an aggregate maximum of \$28,000,000 outstanding at any given time, and is not required to seek additional City consent for indebtedness issued or incurred under this ceiling. Any borrowing from or secured by endowment funds shall be included in the calculation of indebtedness under this ceiling.
- (2) If at any time, the Museum desires to incur debt in excess of this ceiling, it may do so only upon consent given in writing by the Director of Finance, acting in his sole discretion and without requiring additional authorization from the City Council, but only insofar as the aggregate amount of debt outstanding (including the proposed debt and all outstanding debt) will not exceed \$40,000,000. The consent of the Director of Finance is specific to the particular debt with respect to which the consent is given and does not act to raise the ceiling described in subsection 5.6(a)(1), above, for purposes of any other borrowing. If the aggregate amount of debt outstanding plus the debt proposed to be incurred would exceed \$40,000,000, the Director of Finance may consent only upon additional authorization by a resolution or ordinance of the City Council.
- (3) If the Authority desires to incur any additional debt at any time during which the Museum has any debt outstanding as described in subsection 5.6(a)(1) or (2), the Authority may incur such additional debt only upon consent of the Director of Finance given upon additional authorization by a resolution or ordinance of the City Council.

Nothing in this Agreement obligates the City in any way with regard to any additional bonds or refunding bonds or with respect to any waiver of ~~the any required~~ redemption schedule for ~~the any~~ Museum Bonds.

(b) 2005 Commission Bonds.

- (1) Capitalized terms not defined but used in this subsection shall have the meanings set forth in the 2005 Bank Reimbursement Agreement.
- (2) ~~(b) The Museum~~ 2005 Commission Bonds were originally authorized to be issued in one or more issues and/or series in an aggregate principal amount not to exceed \$85 million, for the purpose of financing the Museum's transformation plan (including the downtown expansion, the Olympic Sculpture Park and the Asian Art Museum), capitalizing interest, funding reserves, and paying costs of issuance of the ~~Museum~~ 2005 Commission Bonds and the 2005 Bonds. The terms of the ~~Museum~~ 2005 Commission Bonds ~~are~~ as follows: variable rate bonds with a maximum term of 30 years, subject to prepayment in accordance with the 2005 Bank Reimbursement Agreement; a tax-exempt issue and a taxable issue; optional

redemption; extraordinary redemption; mandatory tender; optional tender; open market purchase; no acceleration (except term-out provisions provided for in the 2005 Bank Reimbursement Agreement) except in accordance with the applicable trust indenture for that issue of ~~Museum~~2005 Commission Bonds, notice of which shall be provided to the City at the same time as notice is provided to the parties to those ~~Museum~~2005 Commission Bonds; and covenants to set aside the OSP Endowment Pledge to maintain liquidity during construction of the Olympic Sculpture Park and downtown expansion. ~~Each issue of Museum~~The 2005 Commission Bonds ~~is~~were enhanced by a direct pay irrevocable letter of credit for the full outstanding principal amount of that issue and a specified number of days of interest. Pursuant to the 2005 Bank Reimbursement Agreement, the Museum ~~is~~was required to prepay the ~~Museum~~2005 Commission Bonds pursuant to a redemption schedule.

- (3) ~~(e)~~(e) The security ~~to be~~ offered in relation to the ~~Museum~~2005 Commission Bonds ~~may include~~included: a security interest in the Capital Campaign Pledges and in the Collateral Account (as those terms are defined in the 2005 Bank Reimbursement Agreement), a security interest in collateral provided by certain third party donors to secure their Capital Campaign Pledges, a springing deed of trust on the Olympic Sculpture Park property, and a general contractual obligation of the Museum to pay the 2005 Commission Bonds.

(c) Future Museum Bonds. Upon consent of the City by ordinance of the City Council, the Museum may issue Future Museum Bonds for the purpose of providing working capital or for other purposes approved by the City Council by ordinance and paying costs of issuance of such Future Museum Bonds. The terms of any Future Museum Bonds shall be subject to approval by the City Finance Director given upon future authorization by ordinance of the City Council within parameters set forth therein based upon a borrowing proposal presented by the Museum. The terms of the Future Museum Bonds and the security that may be offered in relation to those Future Museum Bonds may not have the effect of diminishing the security held by the City pursuant to this Agreement except upon approval of the Mayor and an ordinance of the City Council.

(d) Covenants with respect to Additional Indebtedness. In connection with any Additional Indebtedness under this Section 5.6, except as expressly approved by future action of the City Council and the Mayor in accordance with subsection (c):

- (1) The Authority covenants to create or permit no leasehold or subleasehold interest in the MDA Unit or the Existing Museum Facility other than the Museum's leasehold interest created by the MDA Lease and subleases permitted by the Security Documents~~;~~_;
- (2) The Museum covenants to create no leasehold or subleasehold interest in the Museum Expansion Unit other than the leasehold interest of an Office Space Tenant created by an Office Space Lease that includes the Tenant Payment Provisions, and subleases permitted by the Museum Expansion Unit Assignment of Rents unless approved by the City Finance Director in connection with a Bond Prepayment Plan~~;~~_;

- (3) The Museum and the Authority each covenant: (~~1a~~) to grant no deed of trust (springing or otherwise) or other consensual lien or negative pledge, and to permit no nonconsensual lien (other than nonconsensual liens being contested by the Authority or the Museum in good faith so long as adequate provision is made for payment of the same, such that the City’s security interests are not jeopardized) with regard to the Museum Expansion Unit or the MDA Unit or the Existing Museum Facility (in each case, other than the deeds of trust and pledges granted to the City or placed in escrow for the City as security for this Agreement); and (~~2b~~) to create no lien and grant no negative pledge on any other asset of the Museum or the Authority other than: (i) the Olympic Sculpture Park and related assets (e.g., fixtures, improvements, leasehold interests, etc.) for so long as the Olympic Sculpture Park and those related assets are pledged as security under the Bank Reimbursement Agreement, (ii) the Capital Campaign Pledges, and (iii) the Collateral Account.

Section 5.7 Payment of Taxes and Assessments. The Authority represents that it has filed or caused to be filed all federal, state and local tax returns or information returns which are required to be filed with respect to the MDA Real Estate Parcels, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due and payable other than those payable without penalty or interest. In addition, the Authority agrees to pay, or cause to be paid, when due, all taxes and assessments, general or special, including, without limitation, all ad valorem taxes, concerning or in any way related to the MDA Real Estate Parcels, or any part thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments. The Authority has reserved the right to contest in good faith the legality of any tax or governmental charge concerning or in any way related to the MDA Real Estate Parcels.

The Museum represents that it has filed or caused to be filed all federal, state and local tax returns or information returns which are required to be filed with respect to the Museum Expansion Unit, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due and payable other than those payable without penalty or interest. In addition, the Museum agrees to pay, or cause to be paid, when due, all taxes and assessments, general or special, including, without limitation, all ad valorem taxes, concerning or in any way related to the Museum Expansion Unit, or any part thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments. The Museum has reserved the right to contest in good faith the legality of any tax or governmental charge concerning or in any way related to the Museum Expansion Unit.

Section 5.8 Additional Instruments. The Authority and the Museum each hereby covenants to execute and deliver such additional instruments and to perform such additional acts as may be necessary, in the reasonable opinion of the City Finance Director, to carry out the transactions contemplated in the Refunding Resolution, the Authorizing Resolutions and the Indenture, or to perfect or give further assurances of any of the rights granted or provided for in this Agreement or the Security Documents.

Section 5.9 Authority Board. The Authority and the Museum each hereby covenants that for so long as this Agreement remains in effect, no more than one-third of the members of the Authority Council shall also hold positions as board members, officers or employees of the Museum or be family members or employees of Museum board members, officers or employees.

Section 5.10 Museum Covenants and the Standby Security Documents.

(a) On or prior to the Closing Date, the Museum shall have executed and placed in escrow (with an escrow agent agreed upon by the Museum and the City Finance Director) the fully executed Standby Deed of Trust for the Museum’s fee interest in the Museum Expansion Unit (subject only to the Office Space Lease and the Museum Security Documents) for the benefit of the City and to secure the Museum’s obligations hereunder, together with the other fully executed Standby Security Documents, substantially in the forms attached as Exhibit E. If at any time the City notifies such escrow agent holding the Standby Security Documents that the Museum is not in compliance with or has failed to meet the requirements of any one or more of the covenants set forth in this Section 5.10, then the escrow agent shall record, file or deliver, as applicable, the Standby Security Documents consistent with the escrow instructions. In the event of the Museum’s failure to comply with Section 5.10(b) that results solely from an increase in Finance Director Determined Liability, the City shall not give notice to the escrow agent until at least 30 days after the City has provided notice to the Museum according to the last paragraph of Section 5.10(b), below. In all other circumstances, the City need not wait nor must the City provide any notice to the Museum prior to giving notice to the escrow agent that the Museum is not in compliance with or has failed to meet the requirements of any one or more of the covenants set forth in this Section 5.10 (including Section 5.10(b)), or that an event described in Section 5.12 has occurred. The Standby Security Documents shall be deemed to have been granted by the Museum at the time of recordation, filing or delivery, as applicable. Simultaneously with the recording of the Standby Deed of Trust, the Museum shall cause to be delivered one or more lender’s extended ALTA policies of title insurance, with respect to the Standby Deed of Trust, for the benefit of the City on forms, in substance and in amounts acceptable to the City Finance Director, with such endorsements as the City Finance Director shall request, in accordance with pro forma policies approved by the City Finance Director in accordance with Section 3.6(b).

(b) *Museum Covenants With Regard to Net Assets.* The Museum covenants that, so long as any obligation under this Agreement remains in effect:

- (1) The Museum shall maintain Museum Net Assets sufficient so that when the amount of Finance Director Determined Liability (if any, and only to the extent that the Museum has not treated such amount as a liability in computing Museum Net Assets) is subtracted from Museum Net Assets, the remainder is not less than \$90,000,000.
- (2) The Museum shall cooperate with the City and shall perform all actions required of it, as described in the procedure for determining the amount of Finance Director Determined Liability (if any).
- (3) At least annually and any time a certification under subsection (4) of this Section 5.10(b) is required, the Museum shall request the City Finance Director to confirm

the amount of Finance Director Determined Liability (if any) and, based upon the amount provided by the City Finance Director, shall deliver to the City a certification signed by the Executive Director and Chair of the Board of the Museum certifying that the amount of the Museum Net Assets, less Finance Director Determined Liability (if any, and only to the extent that the Museum has not treated such amount as a liability in computing Museum Net Assets), is not less than \$90,000,000.

- (4) The Museum shall annually deliver to the City a copy of the Museum’s audited financial statements (including all necessary supplemental documentation and the above certification signed by the Executive Director and the Chair of the Museum Board). The audited financial statements and necessary supplemental documentation and certification shall be delivered within ten Business Days after the Museum’s receipt of its audited financial statements. In addition, if the City notifies the Museum that the City desires additional assurance that the Museum is in compliance with the covenants set forth in this Section 5.10(b), the Museum either shall immediately provide unaudited financial statements prepared during the previous 30 days or shall provide immediate access to the Museum’s books for review by an independent auditor appointed by the City. Such independent auditor shall be provided access in order to provide the City with a report concerning compliance with the Museum covenants set forth in this subsection, and the cost of the auditor’s review and preparation of such report shall be shared equally by the City and the Museum. In addition, the Museum shall also immediately request the City Finance Director to confirm the amount of Finance Director Determined Liability (if any) and shall immediately provide a certification signed during the previous 30 days by the Executive Director and the Chair of the Museum Board as described in Section 5.10(b)(3), above.

If, at any time, the City Finance Director determines that Museum Net Assets (as determined based on the most recent audited financial statements) less the Finance Director Determined Liability that is not treated by the Museum as a liability in its most recent audited financial statements is less than \$90,000,000, the City shall notify the Museum in writing that the City intends to cause the escrow agent to record, file and deliver, as applicable, the Standby Security Documents consistent with the escrow instructions. Upon expiration of 30 days following the giving of such notice, the City may proceed to cause the recording, filing and delivery (as applicable) of the Standby Security Documents. The recording, filing and delivery (as applicable) of the Standby Security Documents shall serve to remedy in full the Museum’s breach of its covenants set forth in this Section 5.10(b). If the Standby Security Documents are recorded, filed and delivered (as applicable), the procedure for determining Finance Director Determined Liability shall be discontinued.

(c) *Prepayment of ~~Museum~~ 2005 Commission Bonds.* The capitalized terms used in this Section 5.10(c) but not defined in this Agreement shall have the meanings assigned to them in the 2005 Bank Reimbursement Agreement. The Museum covenants that, so long as any obligation under this Agreement remains in effect, during each year from and after April 1, 2008, if and to the extent that funds are available in the Collateral Account after deducting the Budget Disbursement Amounts set forth below, the Museum shall withdraw from the Collateral Account

and deposit with the trustee for the applicable issue of Museum Bonds (or with the Bank), all amounts required in order to redeem Museum2005 Commission Bonds so that the total aggregate amount of Outstanding Museum2005 Commission Bonds (as defined in the 2005 Bank Reimbursement Agreement) will be no greater than the Maximum Outstanding Museum2005 Commission Bond Amount set forth in the table below:

<u>Year ending April 1</u>	<u>Budget Disbursement Amount</u>	<u>Maximum Outstanding Museum2005 Commission Bond Amount¹</u>
2008	\$2,000,000 ²	\$65,000,000
2009	\$2,900,000	\$60,000,000
2010	\$5,900,000	\$50,000,000
2011	\$5,000,000	\$40,000,000
2012	\$ 0	\$30,000,000
2013	\$ 0	\$20,000,000
2014 (and all subsequent years)	\$ 0	\$10,000,000

The escrow agent with regard to the Standby Security Documents shall be instructed that upon receipt of notice from the City that the Museum has failed to comply with this covenant, the escrow agent shall take the actions described in Section 5.10(a) to record, file or deliver, as applicable, the Standby Security Documents. Such recording, filing and delivery (as applicable) of the Standby Security Documents shall serve to remedy in full the Museum’s breach of its covenants set forth in this Section 5.10(c).

Section 5.11 Authority Covenant With Regard to Maintenance of Powers and Bankruptcy. As long as any obligation under this Agreement remains in effect, the MDA shall preserve its existence under the Act, and will not be dissolved or lose its right to exist as such or lose any rights necessary to enable it to function and to maintain the MDA Lease Revenues. The MDA shall at all times use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to law, or assure the assumption of its obligations under the Lease, this Agreement and this Indenture by any corporation or political subdivision succeeding to its powers, and will not at any time voluntarily do, suffer or permit any act or thing the effect of which would be to hinder, delay or imperil either the payment of the indebtedness evidenced by any of the Bonds or the observance of any of the covenants herein contained, specifically including, but not limited to, any voluntary filing in bankruptcy, insolvency or similar proceedings.

Section 5.12 Termination of MDA Lease or Condemnation of MDA Unit. If the MDA

¹ In determining the amount of Museum Bonds that the Museum is required to optionally redeem, the Museum shall be permitted to take into account all Museum Bonds previously redeemed, whether pursuant to this table, the redemption schedule set forth in Schedule II to the Bank Reimbursement Agreement, or from any funds received by the Museum from any donation, gift, contribution or bequest made subject to donor restrictions or instructions that require the use of such funds to redeem, cause the redemption of, or otherwise prepay Museum Bonds.

² All listed Budget Disbursement Amounts, including the \$0 amounts listed in years 2012 through 2014 and all subsequent years, shall be automatically deemed increased by an amount equal to the cumulative amount of authorized, but unused, Capital Campaign Budget funds from prior years.

Lease terminates due to condemnation or if the Museum withholds rent or asserts for any reason that it is not obligated to pay any amount under the MDA Lease, the City shall have the remedy described in this section in addition to any other remedies available to it. The escrow agent with regard to the Standby Security Documents shall be instructed that upon receipt of notice from the City that an event described in this section has occurred, the escrow agent shall take the actions described in Section 5.10(a) to record, file or deliver, as applicable, the Standby Security Documents. The Standby Security Documents shall be deemed to have been granted by the Museum at the time of recordation, filing or delivery, as applicable. Simultaneously with the recording of the Standby Deed of Trust, the Museum shall cause to be delivered one or more lender's extended ALTA policies of title insurance, with respect to the Standby Deed of Trust, for the benefit of the City on forms, in substance and in amounts acceptable to the City Finance Director, with such endorsements as the City Finance Director shall request, in accordance with pro forma policies approved by the City Finance Director in accordance with Section 3.6(b) of the First Amended and Restated Guarantee Agreement.

ARTICLE 6.

Events of Default and Remedies

Section 6.1 Authority and Museum Defaults; Notice and Opportunity to Cure.

(a) *Events of Default.* Each of the following shall be an Event of Default and, except as provided in subsections (b) and (c), notice of such event shall constitute a Declaration of Default:

- (1) The City has made any advance to the Bond Trustee pursuant to its receipt of a Reserve Deficiency Notice and has not, within 20 days after the date that such advance was made, either: (1) been reimbursed in full, or (2) received a Reimbursement Schedule that is acceptable to the City; or
- (2) The Authority and the Museum both fail to pay or cause to be paid amounts required to reimburse the City under a Reimbursement Schedule accepted by the City; or
- (3) Either the Authority or the Museum fails to perform or observe any of its other obligations, covenants or agreements contained in this Agreement, including but not limited to: the failure to give any notice required under Section 4.2(c)(3) of this Agreement, and the failure to repay any amounts that have been previously paid to the City but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings; or
- (4) The MDA or the Museum fails to perform one or more of its obligations under any Security Document, the MDA Lease, the Office Space Lease, the Lockbox Addendum, the Indenture or the Bond Resolution; or
- (5) Any representation or warranty of the Authority or the Museum is determined by the City Finance Director to have been materially false when made or as of the Acquisition Date.
- (6) Five business days prior to the expiration or termination date of any property or liability insurance policy, the City has not received Evidence of Insurance and/or Binders (as required by Exhibit I) and the broker opinion letter required by Exhibit

I all demonstrating to the City Finance Director’s reasonable satisfaction that the renewal/replacement policy complies with all requirements of Exhibit I.

- (7) Issuance of (i) notice of cancellation of any insurance required by Exhibit I, or (ii) notice of any change to an insurance policy submitted under the insurance covenant in Section 5.4, that: (A) reduces coverage limits below those required under Exhibit I; (B) reduces or eliminates the earthquake insurance or the terrorism insurance below what is required by Exhibit I; or (C) removes any of the following statuses with respect to any of the City, the Bond Trustee, or the Lockbox Agent: (1) additional insured, (2) loss payee, or (3) mortgagee, including provision(s) providing for waivers of subrogation benefiting the City, the Bond Trustee, and the Lockbox Agent.
- (8) Any other breach of any insurance covenant in Section 5.4 or in Exhibit I.

(b) *Notice of Default; Opportunity to Cure; Declaration of Default.* Notice of an Event of Default under paragraphs (1) through (4) of subsection (a) shall not constitute a Declaration of Default until the City Finance Director has issued a notice stating that such notice is a “Declaration of Default.” The City Finance Director shall issue a Declaration of Default under this subsection (b) only after:

- (1) The City Finance Director shall give notice to the Authority, the Museum, the Lockbox Agent and the Bond Trustee of such default specifying the same and stating that such notice is a “Notice of Default”; and
- (2) Thirty days have elapsed since the giving of such notice to correct the default and the event, condition or circumstance giving rise to the default has not been corrected. However, if the default stated in the notice is of such a nature that it cannot be completely remedied within the 30 days, the City Finance Director shall not issue a Declaration of Default hereunder so long as: (i) the applicable party institutes corrective action within 30 days and diligently pursues such action until the default is corrected (which shall extend to no more than 120 days after the date of the Notice of Default, unless an extension is obtained from the City Finance Director); and (ii) in the opinion of Bond Counsel, the failure to cure said default within 30 days will not adversely affect the exemption from federal income taxation of interest on the Bonds.

(c) *Insurance Defaults; Opportunity to Cure.* Each event described under paragraphs (6) through (8) of subsection (a) shall be an Event of Default from the time of its occurrence, and upon expiration of the applicable cure period as described in this section, shall constitute a Declaration of Default without the necessity of any notice of default or Declaration of Default being sent by the City. If any notice by the City is required under subsection (d), this requirement shall not affect the timing of an Event of Default or Declaration of Default under this section. The following cure periods shall apply from the occurrence of the default:

- (1) An insurance default under Section 6.1(a)(6) shall have a cure period that expires on the last business day prior to the expiration or termination date of the applicable property or liability insurance policy, but if the default does not relate to coverage

types and levels, and instead relates only to the form of the policy or the manner in which the parties' insured interests are identified, then the parties agree that the cure period will be extended (not to exceed 30 calendar days) to allow for completion of arbitration before an independent arbitrator as described in Exhibit K.

- (2) An insurance default under Section 6.1(a)(7) shall have a cure period that expires at the effective date and time of the reduction, cancellation or change identified in the notice.
- (3) An insurance default under Section 6.1(a)(8) shall have a 30 calendar day cure period.

All cure periods described in this subsection (c) shall run from the date of the occurrence of the Event of Default, and the cure periods (and extensions thereof) under Section 6.1(b) shall be inapplicable.

(d) If the City Finance Director determines that an insurance default under Section 6.1(a)(6), (7), or (8) has occurred, and the City Finance Director intends to pay an unpaid premium or obtain replacement insurance, the City Finance Director shall provide to the Authority, the Museum, the Lockbox Agent and the Bond Trustee notice of his intent at least one business day prior to taking such action. This notice shall not extend or otherwise affect the cure periods set forth in Section 6.1(c), which shall run from the occurrence of the Event of Default and not from the date of the notice. Failure or deficiency in the giving or receiving of notice under this paragraph shall not in any way affect the City's rights and available remedies under this Guarantee Agreement and the Security Documents, and shall not affect the City's right to exercise those remedies at the expiration of the cure periods described in Section 6.1(c).

Section 6.2 Rights and Remedies of City on Authority or Museum Default.

(a) *Remedies Available.* Upon a Declaration of Default (including at the expiration of a cure period described in Section 6.1(c)), the City at its sole option may take any one or more of the following steps:

- (1) The City may take whatever action at law or in equity may appear necessary or desirable to collect the payments required to be made by the Authority and the Museum under this Agreement and the Security Documents, or to enforce performance and observance of any obligation or agreement of the Authority under the Security Documents.
- (2) The City may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained herein (including without limitation the enforcement of the requirement that notice of extraordinary redemption be sent), or for the enforcement of any other appropriate legal or equitable remedy, as the City may deem most effectual to protect and enforce any of its rights or interests under this Agreement and the Security Documents.
- (3) If, and only if, the Bonds are no longer outstanding, then in the case of an Event of Default resulting from the failure of both the Authority and the Museum to fulfill

their reimbursement obligations under this Agreement, the City may declare the entire principal balance of the advance (if not then due and payable) to be due and payable immediately, and upon any such declaration the principal of the advance shall become and be immediately due and payable, together with all interest accrued thereon to the date of such acceleration, anything in this Agreement to the contrary notwithstanding.

(b) *Additional Insurance Default Remedies.* In the event of a default described in Section 6.1(a)(6), (7), or (8), on the last business day of the applicable cure period under Section 6.1(c), the City, in the City Finance Director’s sole discretion and without waiving any other remedies, may:

- (1) (i) pay any unpaid premium; or (ii) procure or provide such insurance as the City Finance Director in his sole discretion deems necessary to protect the City’s interest (including insurance protecting the interests of the Bond Trustee and Lockbox Agent under this Agreement), not to exceed the requirements of Exhibit I. In so doing, the City may act at the City Finance Director’s absolute sole discretion as to the insurance carrier(s) selected, the cost paid, the terms of the policy(ies) chosen, and coverages (not to exceed the requirements of Exhibit I), and shall be under no obligation to act in a commercially reasonable manner.
- (2) During the period beginning on the fifth business day prior to the end of the applicable cure period, if the City Finance Director has a reasonable basis to conclude, based on the information available to him, that the default will not be cured, the City may proceed to arrange for replacement insurance to be placed effective no earlier than the final day of the cure period, and the Authority and the Museum shall be jointly and severally obligated to reimburse the City for any costs incurred, including interest computed in accordance with Section 3.2(b).
- (3) Any policy placed by the City under this Section 6.2(b) shall remain in effect until the City Finance Director has been satisfied that the Authority or the Museum has caused other insurance to be obtained that meets the requirements of Exhibit I, and shall be subject to cancellation (and refund of unearned premium) to permit the Authority or the Museum to place (or cause placement of) replacement insurance. To carry out the foregoing, within 5 business days after the City Finance Director’s receipt of binders and/or evidence of insurance (as applicable) submitted by the Authority or the Museum in order to demonstrate that such replacement insurance is in compliance with Exhibit I: (i) if the City Finance Director is satisfied that the Exhibit I requirements have been met, the City shall give any required notice of cancellation of the City-placed insurance; or (ii) if the City Finance Director is not satisfied that the Exhibit I requirements have been met, the City shall invoke the arbitration procedure described in Section 6.1(c)(1). If and to the extent that any reimbursement of premium to the City (from its insurance company) causes the City to have recovered in total more than the costs it incurred arising from an Event of Default under Section 6.1(a)(6), (7), or (8), the excess shall be returned to the Authority or the Museum (or credited against any amount due from the Authority or the Museum) after the City has been made whole.

(c) *Reimbursement of Insurance Payments.* The following provisions shall govern reimbursement of the City’s costs incurred in connection with the placement or procurement of replacement insurance by the City pursuant to Section 6.1(d):

- (1) The Authority and the Museum each jointly and severally agree to reimburse the City, within 5 business days after demand, for any insurance premium paid by the City hereunder (whether force-placed or otherwise) and all costs, including without limitation, any insurance premium(s), interest on such premium payment(s) and any other costs or fees the City may incur in obtaining the insurance. City costs incurred during the period described in Section 6.2(b)(2) are recoverable even if the Authority or the Museum cures the default. The obligations of the Authority and the Museum to reimburse the City under paragraph (1) of this subsection is secured by the Security Documents. This reimbursement obligation is not governed by the provisions under Section 3.2 for reimbursement of advances made to the Bond Trustee (except as reference may be made to Section 3.2(b) for calculation of appropriate interest rates on reimbursement obligations). Notice of the demand shall be sent by the City to the Authority, the Museum, the Lockbox Agent and the Bond Trustee.
- (2) If the Museum and the Authority fail to reimburse the City in full within 5 business days after demand, the City Finance Director may deliver notice to the Lockbox Agent (with copies to the Bond Trustee, the Authority and the Museum) that the Authority and the Museum have failed to reimburse City for such insurance payments, and the Lockbox Agent shall act in accordance with Section 4.1(b).

In addition to receiving the excess funds from the Bond Trustee and Lockbox Agent, the City may also pursue any and all other remedies available to it to recover reimbursement for any and all costs, including without limitation, any insurance premium(s), interest on such premium payment(s) and any other costs or fees the City may incur in obtaining replacement insurance.

(d) *Effect of Waiver in Accordance with City Ordinance.* The City (through the City Finance Director or by Council ordinance, as applicable, in accordance with the City Ordinance) may waive any Authority or Museum default and may rescind a Declaration of Default and its consequences; but no such waiver, rescission or annulment shall extend to or affect any subsequent Authority or Museum default or impair any right incident thereto.

Section 6.3 City Default; Bond Trustee Default.

(a) *City Default.* Upon the occurrence of a City Default, the Authority or the Bond Trustee may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the Authority or the Bond Trustee, as applicable, may deem most effectual to protect and enforce any of its rights or interests hereunder.

(b) *Default by Trustee or Lockbox Agent.* It shall constitute a default of this Agreement by the Bond Trustee or the Lockbox Agent if either, as applicable, fails to perform one or more of its obligations required under this Agreement. In the event of a default by the Bond Trustee or the Lockbox Agent, the Authority or the City may take such action to compel the Bond Trustee to

perform its defaulted obligation, including but not limited to the commencement and prosecution of appropriate legal or equitable proceedings, as the Authority or the City, as applicable, may deem most effectual to protect and enforce any of its rights or interests hereunder. Nothing in this section shall limit the City’s right to recover damages in an appropriate case.

Section 6.4 No Remedy Exclusive. No remedy conferred upon or reserved to any party by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or the Indenture or now or hereafter existing at law or in equity or by statute, and either party hereto shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Agreement, under the Indenture or otherwise.

Section 6.5 No Implied Waiver. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. For the exercise of any remedy, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

ARTICLE 7. Miscellaneous

Section 7.1 Governing Law; Venue. This Agreement is governed by and shall be construed in accordance with the substantive laws of the State of Washington and shall be liberally construed so as to carry out the purposes hereof. Except as otherwise required by applicable law, any action under this Agreement shall be brought in the Superior Court of the State of Washington in and for King County.

Section 7.2 Notices. All notices, certificates or other communications shall be in writing and shall be sufficiently given and shall be deemed given (except for notices to the Bond Trustee or the Lockbox Agent, which shall be deemed given only when actually received) using the notice addresses in this section: (a) ~~for all communications 10 or fewer pages in length (including any transmittal cover sheet),~~ on the Business Day on which the same have been transmitted by ~~facsimile or~~ electronic mail with a telephone call by sender immediately to follow confirming receipt and verbal confirmation by recipient, with a hard copy to follow via a commercial messenger or courier service that guarantees next day delivery, or (b) ~~for all other communications,~~ on the Business Day following the day on which the same have been sent using same day or overnight delivery via a commercial messenger or courier service that guarantees next day delivery.

If to the City:

The City of Seattle
~~Department~~Office of City Finance and Administrative
Services
600 Fourth Avenue, Sixth Floor, Debt Management
M/S-42-80
PO Box 94669
Seattle, WA 98124-4747Washington 98104

Attn: Director of Debt Management
Telephone
Phone: (206) 684-8347
Fax: (206) 684-8534233-0026
Email: Kristi.beattie@seattle.gov

If to the Authority: Museum Development Authority of Seattle
1300 First Avenue
Seattle, WA 98101
Attn: Chair
Telephone: (206) 344-5260
~~Fax: (206) 654-3135~~Email:

If to the Museum: Seattle Art Museum
1300 First Avenue
Seattle, WA 98101
Attn: Chief Financial Officer
Telephone: (206) 654-3150
~~Fax: (206) 654-3135~~Email:

If to the Lockbox Agent: U.S. Bank Trust Company, National Association
1420 Fifth Avenue, 7th Floor
Seattle, WA 98101
Attn: Corporate Trust Services
Telephone: (206) 344-4681
~~Fax: (206) 344-4630~~Email:

If to the Bond Trustee: U.S. Bank Trust Company, National Association
1420 Fifth Avenue, 7th Floor
Seattle, WA 98101
Attn: Corporate Trust Services
Telephone: (206) 344-4681
~~Fax: (206) 344-4630~~Email:

Any party may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 7.3 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City, the Authority, the Museum, the Bond Trustee, the Lockbox Agent and their successors. This Agreement may not be assigned, except that the Authority, acting alone, shall have the right to assign to the Bond Trustee the right to obtain performance by the City of its obligation under this Agreement for the benefit of the owners of the Bonds.

Section 7.4 Indemnification. The Authority and the Museum, jointly and severally, shall indemnify, hold harmless and defend the City, and its officers, agents and employees from and against: (i) any and all claims by or on behalf of any person arising from any cause whatsoever

in connection with this Agreement, any of the Security Documents, the financing of the Project or the making of any advance under this Agreement, other than claims established to be caused by the sole negligence or willful misconduct of the City or its officers, agents or employees; (ii) any and all claims arising from any act or omission of the Authority, the Museum, the Bond Trustee, the Lockbox Agent, the escrow agent for the Standby Security Documents, or any other agents, servants, employees or licensees of the Authority or the Museum, in connection with any advance under this Agreement, the Project or the Museum Expansion Unit; and (iii) all reasonable costs, counsel fees, or liabilities incurred in connection with any such claim or proceeding brought thereon. In the event that any action or proceeding is brought against the City, its officers, agents or employees, with respect to which indemnity may be sought hereunder, the Authority and the Museum, each upon written notice from the City, shall assume the investigation and defense thereof, including the employment of counsel selected by the City and the payment of all expenses related thereto, provided, that no settlement of a claim or proceeding against the City shall occur without the consent of the City. The rights of the City under this section shall survive final payment or defeasance of the Bonds. Notwithstanding any other provision to the contrary, the indemnification in this section does not apply to matters covered by the Hazardous Substances Certifications.

Section 7.5 Payment of City’s Costs and Attorneys’ Fees.

(a) *City Costs.* The Authority and the Museum jointly and severally agree to pay, or cause to be paid, as and when the same become due:

- (1) All amounts due to the City under the Cost Reimbursement Agreement;
- (2) Upon written notice from the City, all costs and expenses reasonably incurred by the City in connection with: (i) the making of any advance made by the City under this Agreement, and (ii) the enforcement of this Agreement or the security interests represented by the Security Documents; and
- (3) All costs incurred in connection with any federal or state tax audit or any audit or investigation or enforcement action by the Securities and Exchange Commission or other agency with respect to the Bonds.

(b) *Agreement to Pay Attorneys’ Fees and Expenses.* If a default arises under any of the provisions of this Agreement and any party hereto should employ attorneys or incur other expenses for the collection of amounts due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the other party contained in this Agreement, on demand therefor, the nonprevailing party or parties shall pay or reimburse the prevailing party or parties for the reasonable fees of such attorneys and such other expenses so incurred.

Section 7.6 Compliance with Usury Laws. Notwithstanding any other provision of this Agreement, it is agreed and understood that in no event shall this Agreement or any Reimbursement Schedule relating to this Agreement be construed as requiring the Authority or any other person to pay interest and other costs or considerations that constitute interest under any applicable law which are contracted for, charged or received pursuant to this Agreement in an amount in excess of the maximum amount of interest allowed under any applicable law.

In the event of any acceleration of the payment of any amount advanced under this Agreement, that portion of any interest payment in excess of the maximum legal rate of interest, if any, provided for in this Agreement or related documents shall be cancelled automatically as of the date of such acceleration, or if theretofore paid, credited against the Authority's and the Museum's obligations, as applicable, under the Cost Reimbursement Agreement.

The provisions of this Section shall prevail over any other provision of this Agreement.

Section 7.7 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7.8 Amendments. This Agreement may not be effectively amended, changed, modified or altered, except by an instrument in writing duly executed by the City, the Authority and the Museum (or their successors in title) and unless, in the opinion of Bond Counsel to the Authority, such amendment will not adversely affect the owners of the Bonds, the consent of the affected owners of the Bonds is obtained. For illustrative purposes, the parties agree that any amendment to Sections 3.1, 3.5, 4.1, 4.2, 4.6, 4.8 (except for amendments pursuant to the procedures set forth in such section), 5.11 and 6.3 shall be deemed to adversely affect the owners of the Bonds and any such amendment shall require that the consent of the affected owners of the Bonds is obtained.

Section 7.9 Termination of Agreement. This Agreement and all obligations hereunder, except for those obligations that expressly survive termination of the Agreement (including, without limitation: (i) the obligation of the City to make advances in the case of a Bankruptcy Recovery, (ii) the obligations of the Authority and the Museum to reimburse the City for all amounts advanced under this Agreement, and (iii) all instruments and agreements securing the Authority's and Museum's reimbursement obligations), shall terminate upon the full payment, purchase and retirement, redemption or defeasance of all of the Bonds.

Section 7.10 Waivers and Consents. No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it.

City waivers and consents under this Agreement are effective only if given in the manner described in, and in all other respects consistent with, the City Ordinance.

Section 7.11 Rights Created in Third Parties. The terms of this Agreement are not intended to establish nor to create any rights in any persons or entities other than the City, the Authority, the Museum, the Bond Trustee, the Lockbox Agent and the respective successors and assigns of each.

Section 7.12 Time of Essence. Time and all terms and conditions shall be of the essence of this Agreement.

Section 7.13 Oral Agreements Not Enforceable. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Section 7.14 Counterparts. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, all as of the day and year first above mentioned.

THE CITY OF SEATTLE, a municipal corporation

By _____

THE MUSEUM DEVELOPMENT AUTHORITY, a public corporation

By _____

THE SEATTLE ART MUSEUM, a nonprofit corporation

By _____

Acknowledged and Accepted by:

U.S. BANK TRUST COMPANY,
NATIONAL ASSOCIATION, as Bond
Trustee

By _____

Acknowledged and Accepted by:

U.S. BANK TRUST COMPANY,
NATIONAL ASSOCIATION, as Lockbox
Agent

By _____

Exhibit A
Payment Schedules

A-1..... Bond Debt Service Schedule
A-2..... MDA Lease Payment Schedule
A-3..... Office Space Lease Payment Schedule

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Exhibit B
Legal Descriptions of Real Property

It is the intent of the parties that the MDA Unit will comprise approximately all of the area commonly referred to as floors 1-4, and the Museum Expansion Unit will comprise approximately floors 5-12, of the structure referred to in the Development Agreement as the “Museum Units.”

1. The Existing Museum Facility is described as:

Parcel A of the City of Seattle Lot Boundary Adjustment No. 2207977, as recorded under Recording No. 20030417900008, records of King County;

Situate in the City of Seattle, County of King, State of Washington.

2. The MDA Unit is described as:

Museum Unit One (1) of WASHINGTON MUTUAL – SEATTLE ART MUSEUM PROJECT, a Condominium, recorded in 215 of Condominiums, pages 5 through 31, according to the Declaration thereof recorded under King County Recording Number 20060329000201 and any amendments thereto;

TOGETHER WITH: An undivided interest in the common elements and limited common elements as more particularly described in the Declaration.

Situate in the City of Seattle, County of King, State of Washington.

3. The Museum Expansion Unit is described as:

Museum Units Two (2), Three (3), Four (4), Five (5) and Six (6) of WASHINGTON MUTUAL – SEATTLE ART MUSEUM PROJECT, a Condominium, recorded in Volume 215 of Condominiums, pages 5 through 31, according to the Declaration thereof recorded under King County Recording Number 20060329000201 and any amendments thereto;

TOGETHER WITH: An undivided interest in the common elements and limited common elements as more particularly described in the Declaration.

Situate in the City of Seattle, County of King, State of Washington.

Exhibit C
Selected MDA Security Documents

- C-1 Form of MDA Deed of Trust and First Amendment
- C-2 Form of MDA Hazardous Substances Certification

[This space intentionally left blank.]

Exhibit D
Selected Museum Security Documents

- D-1.....Form of Museum Assignment and First Amendment
- D-2.....Form of Tenant Payment Agreement

[This space intentionally left blank.]

Exhibit E
Selected Standby Security Documents

- E-1 Form of Standby Deed of Trust
- E-2 Form of Hazardous Substances Agreement
- E-3 Form of Escrow Instructions

[This space intentionally left blank.]

Exhibit E-3
Form of Escrow Instructions
with regard to the Standby Security Documents

We hereby deposit with you in escrow:

[Insert list of Standby Security Documents]

You are authorized to:

1. Record the Standby Deed of Trust with the King County Recorder.
2. File the Financing Statement with the Washington State Department of Licensing, Uniform Commercial Code Division.
3. Record the Standby SNDA Agreement with the King County Recorder.
4. Deliver the Standby Environmental Indemnity to the City.
5. _____.

WHEN AND ONLY WHEN, you have received a notice from the City that the Museum has failed to keep any one or more of the covenants described in Section 5.10 of the Guarantee Agreement, or an event described in Section 5.12 has occurred, you shall take the actions listed in 1-5 above within one business day of receiving such notice. After taking the actions listed in 1-5 above, you shall notify all parties hereto that you have done so.

You shall act solely at the direction of the City with respect to the above, and need not, and shall not, obtain or attempt to obtain the concurrence of any other party before acting.

This escrow may be terminated only with the written consent of all parties hereto.

THE CITY OF SEATTLE, a municipal
corporation

By _____

THE SEATTLE ART MUSEUM, a nonprofit
corporation

By _____

Acknowledged and Accepted by:
[Escrow Agent]

By _____

Exhibit F
Project Description

The Project consisted of the acquisition, equipping and furnishing of a condominium (the “MDA Unit”) and related improvements to the existing downtown art museum to accommodate the expansion of the existing downtown art museum. The condominium was constructed as part of a joint development by a limited liability company of which the MDA, the Museum and WAMU were members. The development is on the east side of the block bounded by First and Second Avenues and University and Union Streets in downtown Seattle.

The MDA acquired the MDA Unit for lease to the Museum for museum expansion space. The MDA Unit consists of four floors of new construction, totaling approximately 118,000 square feet, roughly doubling the size of the downtown museum space when combined with the existing downtown art museum facility designed by Venturi, Scott, Brown & Associates. Other condominiums in the development were acquired by the Museum for future museum expansion (to be leased in the interim period pursuant to a long-term lease). The MDA Unit was completed for acquisition in February, 2006, and the expanded museum opened in 2007.

Exhibit G
Forms of Notices

G-1 Form of Bond Trustee’s Notice
G-2 Form of Lockbox Agent’s Notice

[This space intentionally left blank.]

Exhibit G-1-1
Form of Bond Trustee’s Notice

Under Section 3.5 of the Guarantee and Reimbursement Agreement
relating to the
Museum Development Authority of Seattle
\$ _____ **Special Obligation Refunding Bonds, 20142024**

DATE OF NOTICE: _____

GIVEN TO:

<p>The City of Seattle Department<u>Office of City Finance</u> 600 Fourth Avenue, Sixth Floor P.O., Debt Management M/S-42-80 PO Box 9474794669 Seattle, WA 98124-4747<u>Washington 98104</u> Attn: <u>Director of Debt Management</u> Telephone: (206) 684-8347 Fax: (206) 684-8534 Phone: (206) 233-0026 Email: <u>Kristi.beattie@seattle.gov</u></p>	<p>U.S. Bank <u>Trust Company</u>, National Association 1420 Fifth Avenue, 7th Floor Seattle, WA 98101 Attn: Corporate Trust Services Telephone: (206) 344-4681 Fax: _____ Email: (206) 344-4630</p>
--	--

<p>Museum Development Authority of Seattle 1300 First Avenue Seattle, WA 98101 Attn: Chair Telephone: (206) 344-5260 Fax>Email: (206) 654-3135</p>	<p>Seattle Art Museum 1300 First Avenue Seattle, WA 98101 Attn: Chief Financial Officer Telephone: (206) 654-3150 Fax>Email: (206) 654-3135</p>
--	---

NOTICE OF RESERVE ACCOUNT BALANCE

NOTICE is hereby given that as of the date set forth above, the Bond Trustee has determined the balance in the Reserve Account, as shown below, pursuant to the Indenture and the Guarantee and Reimbursement Agreement.

Reserve Account Balance as of / /20 : \$

**NOTICE OF DRAW ON RESERVE ACCOUNT & RESERVE REPLENISHMENT
(to be given in event of Draw on Reserve)**

NOTICE is hereby given that on the Interest Payment Date set forth above, a draw was made on the Reserve Account in the amount of \$ _____ for the purpose of paying principal of and/or interest on the Bonds. The amount of the draw was determined pursuant to the Indenture.

A REQUEST is hereby made for payment by the Authority to the Bond Trustee of [Insert the amount necessary to replenish the Reserve Account to the Reserve Requirement] on or before 5:00 p.m., Seattle time, on [insert date of next succeeding Valuation Date], in accordance with the Guarantee and Reimbursement Agreement.

NOTICE RE: RESERVE REPLENISHMENT (to be given on Valuation Date)

NOTICE is hereby given that on the Valuation Date (as defined in the Guarantee Agreement), the Bond Trustee has not received payment from the Authority in the amount necessary to replenish the Reserve Account to the Reserve Requirement.

A REQUEST is hereby made for payment by the Museum to the Bond Trustee of [Insert the amount necessary to replenish the Reserve Account to the Reserve Requirement] on or before 5:00 p.m., Seattle time, on the date that is 5 Business Days after the date of this Notice, in accordance with the Guarantee and Reimbursement Agreement.

NOTICE RE: RESERVE REPLENISHMENT

NOTICE is hereby given that on the date that was 5 Business Days following the giving of a 2nd notice requesting Reserve Replenishment, the Bond Trustee has not received payment from the Museum in the amount necessary to replenish the Reserve Account to the Reserve Requirement.

A REQUEST is hereby made for the Authority take action under Section 4.4 of the Guarantee and Reimbursement Agreement and under Section 3.2 of the MDA Lease.

NOTICE OF RESERVE DEPOSIT

NOTICE is hereby given that as of the date written below, the Bond Trustee has received the amount written below for deposit into the Reserve Account.

Date of Reserve Deposit: _____ / ____ / ____

Reserve deposit amount: \$ _____

NOTICE OF RESERVE DEFICIENCY

NOTICE is hereby given that on the Interest Payment Date set forth below, payment from the City in the amount equal to the Reserve Deficiency is due. The Reserve Deficiency has been determined pursuant to the above-referenced Guarantee and Reimbursement Agreement.

A REQUEST is hereby made for payment by the City of such Reserve Deficiency, at or before 10:00 a.m., Seattle time, on the Business Day prior to the Interest Payment Date set forth below, in accordance with the Guarantee and Reimbursement Agreement.

Reserve Account Reconciliation Date: _____ / ____ / ____

Interest Payment Date: _____ / ____ / ____

Reserve Requirement: \$ _____

Less: Total Reserve Assets: (\$ _____)

Reserve Deficiency: \$ _____

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, AS TRUSTEE

Authorized Signature: _____

Name: _____

Title: _____

Exhibit G-2
Form of Lockbox Agent’s Notice

Under Section 3.5 of the Guarantee and Reimbursement Agreement
relating to the

Museum Development Authority of Seattle
\$ _____ Special Obligation Refunding Bonds, 20142024

DATE OF NOTICE: _____

GIVEN TO:

~~The City of Seattle~~
~~Department of Finance~~
~~600 Fourth Avenue, Sixth Floor~~
~~P.O. Box 94747~~
~~Seattle, WA 98124-4747~~
~~Attn: Director~~

~~Telephone: (206) 684-8347~~
~~Fax: (206) 684-8534~~

~~Seattle Art Museum~~
~~1300 First Avenue~~
~~Seattle, WA 98101~~
~~Attn: Chief Financial Officer~~

~~Telephone: (206) 654-3150~~
~~Fax: (206) 654-3135~~

GIVEN TO:

~~Museum Development Authority~~~~The City~~
~~of Seattle~~
~~1300 First Avenue~~~~Office of City Finance,~~
~~Debt Management~~
~~M/S-42-80~~
~~PO Box 94669~~
~~Seattle, WA 98101~~~~Washington 98104~~
~~Attn: Chair~~~~Director of Debt Management~~

~~Telephone: (206) 344-5260~~
~~Fax: (206) 654-3135~~~~Phone: (206) 233-0026~~
~~Email: Kristi.beattie@seattle.gov~~

~~U.S. Bank Trust Company, National~~
~~Association~~
~~1420 Fifth Avenue, 7th Floor~~
~~Seattle, WA 98101~~
~~Attn: Corporate Trust Services~~

~~Telephone: (206) 344-4681~~
~~Fax~~~~Email: (206) 344-4630~~

Museum Development Authority of Seattle
1300 First Avenue
Seattle, WA 98101
Attn: Chair

Telephone: (206) 344-5260
Email:

[Office Space Tenant]
[Notice Address]

Seattle Art Museum
1300 First Avenue
Seattle, WA 98101
Attn: Chief Financial Officer

Telephone: (206) 654-3150
Email:

NOTICE OF FAILURE TO RECEIVE OFFICE SPACE LEASE PAYMENT

NOTICE is hereby given that the undersigned Lockbox Agent did not receive payment in full on *[insert date]* of amounts scheduled for payment and due on that date. The amount that remains due and owing as of the date of this Notice is \$ _____. This notice is sent in accordance with Section 3.5(a) of the Guarantee and Reimbursement Agreement.

A REQUEST is hereby made for immediate payment by the Office Space Tenant of the amount remaining due and unpaid, in accordance with the Office Space Lease and the Tenant Payment Agreement.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, AS LOCKBOX AGENT

Authorized Signature: _____

Name: _____

Title: _____

Exhibit H
Certificates regarding
Representations and Warranties

H-1 Form of Authority Certificate
H-2 Form of Museum Certificate

[This space intentionally left blank.]

Exhibit H-1
Form of
AUTHORITY CERTIFICATE

With respect to the ~~Second~~Third Amended and Restated Guarantee and Reimbursement Agreement, dated as of ~~April 29~~_____, ~~2014~~2024 (the “Guarantee Agreement”) by and among The City of Seattle (the “City”), the Museum Development Authority of Seattle (the “Authority”), the Seattle Art Museum (the “Museum”), U.S. Bank Trust Company, National Association, as Bond Trustee, and U.S. Bank Trust Company, National Association, as Lockbox Agent, regarding the Museum Development Authority of Seattle’s \$44,375,000_____ Special Obligation Refunding Bonds, ~~2014~~2024 (the “Bonds”) and for the benefit of the City, the owners of the Bonds and U.S. Bank Trust Company, National Association, in its capacity as Trustee for the Bonds (the “Bond Trustee”), the Authority makes the following certifications, representations, and warranties. Bond Counsel is specifically entitled to rely on the factual representations herein for the purposes of such firm’s opinions given in connection with the Guarantee Agreement.

All terms not otherwise defined herein are given the meanings and definitions contained in the Guarantee Agreement. The term “Authority Documents” as used in this certificate means, collectively, the Indenture, the Guarantee Agreement, the MDA Lease, the forms of the MDA Security Documents and all other documents delivered and to be delivered by the Authority to which it is or will be a party in connection with the requirements of the Guarantee Agreement.

1. I am the duly appointed Chair of the Authority Council and as such am authorized to provide this certification in connection with the Guarantee Agreement.
2. The Authority is a public corporation duly chartered by the City pursuant to RCW 35.21.730 et seq. and Seattle Municipal Code Chapter 3.110, qualified to transact business in the State of Washington. The corporate purpose of the Authority permits acquiring, constructing, equipping, owning, financing, refinancing and operating the MDA Unit.
3. The Authority Council has authorized, in a resolution adopted on _____, ~~2014~~2024 (the “MDA Authorizing Resolution”), the issuance of the Bonds for the purpose of refinancing the Project by carrying out a refunding of the Authority’s outstanding Special Obligation Bonds, ~~2005~~2014. The MDA Authorizing Resolution is in effect and constitutes a legal, valid, and binding obligation of the Authority, and has not been amended since adoption.
4. The Authority has full legal right, power and authority under its charter and the laws of the State to issue the Bonds, and to execute and deliver the Authority Documents, to be bound by the terms of those documents and to consummate the transactions described therein, and to take any and all such action as may be required of the Authority to carry out, give effect to and consummate the transactions contemplated thereby.
5. The Authority has duly authorized, executed and delivered the Authority Documents. The Authority has duly authorized the performance by the Authority of its obligations and the

consummation of the transactions contemplated under the Authority Documents.

6. The Authority Documents constitute legal, valid and binding obligations of the Authority enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
7. Neither the execution and delivery of the Authority Documents, nor the consummation of the transactions contemplated therein, or the compliance with the provisions thereof, conflicts with, or constitutes on the part of the Authority a violation of, or a breach of or default under the Authority's organizational documents, or any statute, indenture, mortgage, commitment, note or other agreement or instrument to which the Authority is a party or by which the Authority is bound, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Authority or any of the Authority's activities or properties.
8. As required by Section 3.6(b) of the Guarantee Agreement, copies of the documents described in that section have been provided to and have been approved by the City Finance Director.
9. The Authority has complied with all agreements and covenants to be undertaken by the Authority and satisfied all conditions required under the Authority Documents on its part to be performed or satisfied prior to the Closing Date.
10. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of the Authority's knowledge, threatened, against or affecting the Authority or the actions taken or contemplated to be taken by the Authority, nor, to the best of the Authority's knowledge, is there any basis therefor, wherein an unfavorable decision, ruling or finding would: (i) affect or seek to prohibit, restrain or enjoin the issuance, sale or delivery of the Bonds, or the execution and delivery of the Authority Documents; (ii) affect or question the validity or enforceability of the Bonds, or the Authority Documents, (iii) question the tax-exempt status of the Bonds, (iv) question the power or authority of the Authority to carry out the transactions contemplated by, or to perform its obligations under the Authority Documents, or the powers of the Authority to own, acquire, construct, equip, operate or lease the MDA Unit and to take assignment of rights with respect to the Museum Expansion Unit; or (v) materially affect the business, financial condition or operations of the Authority or the validity or enforceability of, any Authority Document, or which would in any way jeopardize the tax-exempt status of the interest on the Bonds.
11. No event has occurred and no condition exists which, with the passage of time, would constitute (or with the giving of notice or lapse of time, or both, would constitute) an Event of Default under any Authority Document.
12. The Authority is not in material default under any document, instrument or commitment to which the Authority is a party or to which it or any of its property is subject which default would or could materially adversely affect the ability of the Authority to carry out its obligations under the Authority Documents.

13. The Authority will cause the proceeds of the Bonds received by it, if any, to be applied as provided in and subject to all of the terms and provisions of the Indenture and will observe all covenants in the Authority Documents.
14. The Authority will take such action as may be reasonably requested to facilitate the timely consummation of the transactions contemplated by the Authority Documents, and will notify the City of any material adverse change in the Refunding Plan occurring before the Closing Date.
15. The Authority will not take any action or permit any action to be taken on the Authority's behalf, or cause or permit any circumstance within the Authority's control to arise or continue, if such action would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.
16. Except as identified in Section 5.6 of the Guarantee Agreement, the Authority has not and will not offer or issue any bonds, notes or other obligations for borrowed money. Additionally, the Authority has not incurred and will not incur any material liabilities, direct or contingent, or enter into any material transaction, which could reasonably be expected to affect payment of principal and interest on the Bonds.
17. There has been no material adverse change in the operations or condition, financial or physical, of the Authority or its properties since the date of the most recent audited financial statements.
18. The Authority will operate the facilities acquired or improved as part of the Project, or cause those facilities to be operated, either as governmental facilities or as facilities meeting all the requirements of Section 145 of the Code for so long as required by that section.
19. To the best of the Authority's knowledge, the Project and the operation of the facilities acquired or improved as part of the Project do not and will not conflict with any zoning, water, environmental or air pollution or other ordinance, order, law or regulation applicable thereto; the Authority has or will cause to be established an ongoing program to maintain the Project's compliance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety, and environmental quality; and the Authority has not failed to obtain (or will obtain when required) and maintain in effect any material licenses, permits, franchises or other governmental authorizations necessary for the carrying out of the Project and the operation of facilities acquired or improved as part of the Project.
20. The Authority agrees that for so long as any provision of the Guarantee Agreement remains in effect, it will (subject to the provisions of SMC 3.110 and the Authority's Charter) maintain its existence as a public corporation under RCW 35.21.730 et seq. and continue to be duly qualified to do business in the State, and that will neither dispose of all or substantially all of its assets nor consolidate with or merge into another entity, unless (i) the City shall have first received from Bond Counsel an opinion to the effect that such disposal of assets, consolidation or merger will not cause the interest on the Bonds to become subject to federal income taxation; (ii) the acquirer of its assets or the entity with which it shall consolidate or into which it shall merge shall be a governmental entity or a nonprofit corporation organized and existing under

the laws of the United States of America or one of the states of the United States of America and shall be qualified and admitted to do business in the State; and (iii) such acquiring or remaining entity shall assume in writing all of the obligations of the Authority under the MDA Security Documents, subject to all of the limitations of liability applicable to the Authority.

21. Not more than one-third of the members of the Authority Council hold positions as board members, officers or employees of the Museum, or are family members or employees of persons who hold positions as board members, officers, or employees of the Museum.
22. The Authority has obtained or will timely obtain all consents, approvals, permits, authorizations and orders of any governmental or regulatory agency that are required to be obtained by the Authority that are required for the carrying out of the Project and the operation of the facilities acquired or improved as part of the Project.
23. Any certificate signed by any officer of the Authority and delivered to the City shall be deemed a representation and warranty by the Authority to the City as to the truth of the statements therein contained.

DATED as of ~~April 29~~ _____, ~~2014~~2024

THE MUSEUM DEVELOPMENT AUTHORITY
OF SEATTLE

Chair of the Authority Council

Exhibit H-2
Form of
MUSEUM CERTIFICATE

With respect to the ~~Second~~Third Amended and Restated Guarantee and Reimbursement Agreement, dated as of ~~April 29~~____, ~~2014~~2024 (the “Guarantee Agreement”) by and among The City of Seattle (the “City”), the Museum Development Authority of Seattle (the “Authority”), the Seattle Art Museum (the “Museum”), U.S. Bank Trust Company, National Association, as Bond Trustee, and U.S. Bank Trust Company, National Association as Lockbox Agent, regarding the Museum Development Authority of Seattle’s \$44,375,000_____ Special Obligation Refunding Bonds, ~~2014~~2024 (the “Bonds”) and for the benefit of the City, the owners of the Bonds and U.S. Bank Trust Company, National Association, in its capacity as Trustee for the Bonds (the “Bond Trustee”), the Museum makes the following certifications, representations, and warranties. Bond Counsel is specifically entitled to rely on the factual representations herein for the purposes of such firm’s opinions given in connection with the Guarantee Agreement.

All terms not otherwise defined herein are given the meanings and definitions contained in the Guarantee Agreement. The term “Museum Documents” as used in this certificate means, collectively, the Guarantee Agreement, the MDA Lease, the form of Office Space Lease, the forms of the Museum Security Documents, and all other documents delivered and to be delivered by the Museum to which it is or will be a party in connection with the requirements of the Guarantee Agreement.

24. I am the duly appointed Chair of the Board of Trustees of the Museum and as such am authorized to provide this certification in connection with the Guarantee Agreement.
25. The Museum is a nonprofit corporation duly and validly created and is validly existing under the laws of the State of Washington, described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the “Code”), and has all necessary licenses, approvals and permits required to operate its facilities and to implement the transactions contemplated under the Museum Documents.
26. The Museum has full legal right, power and authority: to acquire, lease and manage the Museum Expansion Unit; to lease and operate the MDA Unit; to enter into and carry out the transactions contemplated under the Museum Documents.
27. The Museum has duly authorized, executed and delivered the Museum Documents that are required to be executed and delivered on or as of Bond Closing, and has duly authorized and delivered forms of the Museum Documents that are required to be executed and delivered on or as of the Closing Date. The Museum has duly authorized the performance by the Museum of its obligations and the consummation of the transactions contemplated under the Museum Documents.
28. Upon execution and delivery, the Museum Documents constitute or will constitute legal, valid and binding obligations of the Museum enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
29. The execution and delivery by the Museum of the Museum Documents and the compliance with the obligations on its part contained therein or herein does not conflict with or constitute a breach of or a default under the articles of incorporation or bylaws of the Museum, or under ch. 24.03

- RCW (the “Washington Nonprofit Corporation Act”), or any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Museum is a party or to which the Museum or any of its properties or other assets is otherwise subject, nor does any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or other assets of the Museum or under the terms of any such law, regulation or instrument, except as provided or permitted by the Museum Documents.
30. Under its articles of incorporation, its bylaws and the Washington Nonprofit Corporation Act, no approval, consent or order of any governmental authority, legislative body, board, agency, or commission is required for the Museum to duly authorize the execution of the Museum Documents.
 31. The Museum has complied with all agreements and covenants to be undertaken by the Museum and satisfied all conditions required under the Museum Documents on its part to be performed or satisfied at or prior to Bond Closing.
 32. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of the Museum’s knowledge, threatened, against or affecting the Museum or the actions taken or contemplated to be taken by the Museum, nor, to the best of the Museum’s knowledge, is there any basis therefor, wherein an unfavorable decision, ruling or finding would: (i) affect or seek to prohibit, restrain or enjoin the execution and delivery of the Museum Security Documents; (ii) affect or question the validity or enforceability of the Museum Security Documents, (iii) question the power of the Museum to carry out the transactions contemplated by, or to perform its obligations under the Museum Security Documents, or the powers of the Museum to own, acquire, construct, equip, operate or lease the Museum Expansion Unit and to assign its rights with respect to the Museum Expansion Unit; or (iv) materially affect the business, financial condition or operations of the Museum or the validity or enforceability of, any Museum Security Document, or which would in any way jeopardize the tax-exempt status of the interest on the Bonds.
 33. No event has occurred and no condition exists which, with the passage of time, would constitute (or with the giving of notice or lapse of time, or both, would constitute) an Event of Default under any Museum Document.
 34. The Museum is not in material default under any document, instrument or commitment to which the Museum is a party or to which it or any of its property is subject which default would or could materially adversely affect the ability of the Museum to carry out its obligations under the Museum Documents.
 35. The Museum will take such action as may be reasonably requested to facilitate the timely consummation of the transactions contemplated under the Museum Documents, and will notify the City of any material adverse change in the Refunding Plan occurring before the Closing Date.
 36. The Museum will not take any action or permit any action to be taken on the Museum’s behalf, or cause or permit any circumstance within the Museum’s control to arise or continue, if such action would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.
 37. Except as permitted pursuant to Section 5.6 of the Guarantee Agreement, the Museum has not and will not offer or issue any bonds, notes or other obligations for borrowed money. Additionally, the Museum has not incurred and will not incur any material liabilities, direct or contingent, or enter

into any material transaction, which could reasonably be expected to affect payment of principal and interest on the Bonds.

38. There has been no material adverse change in the operations or condition, financial or physical, of the Museum or its properties since the date of the most recent audited financial statements.
39. The Museum will operate the facilities acquired or improved as part of the Project, or cause those facilities to be operated, either as governmental facilities or as facilities meeting all the requirements of Section 145 of the Code for so long as required by that section.
40. As of the date of this certificate, the Museum is not insolvent and maintains Museum Net Assets sufficient so that when the amount of Finance Director Determined Liability (if any, and only to the extent that the Museum has not treated such amount as a liability in computing Museum Net Assets) is subtracted from Museum Net Assets the remainder is not less than \$90,000,000 (as those amounts are determined and terms are defined in the Guarantee Agreement). The Museum has: (a) disclosed to the City Finance Director all potential liabilities that are unresolved as of the date hereof and that meet the criteria that would require their disclosure to the City under the definition of Finance Director Determined Liability in Section 2.3 of the Guarantee Agreement if such claim, event, demand or lawsuit had arisen at a time when the Guarantee Agreement was in effect, (b) reached an agreed determination with the City Finance Director as to the amount at risk, and (c) treated such amount as the Finance Director Determined Liability and considered such Finance Director Determined Liability in making the calculation described in this paragraph.
41. The Museum has obtained or will timely obtain all consents, approvals, permits, authorizations and orders of any governmental or regulatory agency that are required to be obtained by the Museum that are required for the carrying out of the Project and the operation of the facilities acquired or improved as part of the Project.
42. Any certificate signed by any officer of the Museum and delivered to the City shall be deemed a representation and warranty by the Museum to the City as to the truth of the statements therein contained.

DATED as of ~~April 29~~ _____, ~~2014~~2024

THE SEATTLE ART MUSEUM

Chairman, Board of Trustees, Seattle Art Museum

Exhibit I
Insurance Requirements

(b) *Property and Liability Insurance.* The Authority and the Museum shall establish and maintain, or cause to be established and maintained by the Washington Mutual–Seattle Art Museum Condominium Owners Association (the “Condominium Association”), or another entity, as appropriate, minimum insurance coverages and limits as specified below:

- (1) **Property Insurance.** Property insurance shall cover all risks of direct physical loss and/or damage to the MDA Real Estate Parcels and the Museum Expansion Unit including tenant improvements and betterments but excluding the business or personal property or Objects d’Art of the Museum (“Insured Property”). Such property insurance shall incorporate the following provisions:
 - (i) The City of Seattle, the Bond Trustee and the Lockbox Agent shall be endorsed on the property insurance policy(ies) as additional insureds and loss payees subject to a mortgagee clause with a waiver of subrogation as their interests may appear on the direct physical loss coverages on the MDA Real Estate Parcels (and at such time if any as the Standby Deed of Trust on the Museum Expansion Unit is recorded, on the Museum Expansion Unit as well) and on the time element coverages on the Museum Expansion Unit, all in form acceptable to the City. The limit of liability on initial placement of the direct physical loss coverages shall not be less than the actual cost of the Insured Property and thereafter shall be based on a replacement cost basis as established by the evaluation made by the Museum’s and the Authority’s professional insurance advisors, as applicable, prior to each annual anniversary of the property insurance coverage policies.
 - (ii) Coverage shall include the perils of earthquake and flood that shall not have sublimits of liability less than the Probable Maximum Loss of the Insured Property from said perils as established by an industry recognized natural hazards analysis (such as Risk Link) on not less than five year intervals.
 - (iii) Coverage with respect to the Museum Expansion Unit and the MDA Unit shall include the perils of loss and/or damage by terrorism, including certified and non-certified acts of terrorism (or such other terminology as may be employed by the insurance industry in the future to describe such acts) to a sublimit of liability of \$100 million, or such lesser amount as is available in the marketplace and subject to such availability. Coverage with respect to the Existing Museum Facility shall include the perils of loss and/or damage by terrorism, including certified and non-certified acts of terrorism (or such other terminology as may be employed by the insurance industry in the future to describe such acts) to a sublimit of liability of \$65 million,

or such lesser amount as is available in the marketplace and subject to such availability. Nevertheless, in no event shall the Museum and the Authority be required to spend on the terrorism coverage described in this subparagraph (iii), in the aggregate, more than (A) \$25,000 per year as to the Museum Expansion Unit and the MDA Unit and (B) \$12,000 as to the Existing Museum Facility (both such premium caps being increased by the greater of 1% per year or the percentage increase over the prior year in the cost of the property insurance exclusive of terrorism coverage).

(iv) Coverage shall be extended to include time element coverage, including extra expense and rental value, for the Museum Expansion Unit with a separate limit of liability equal to twenty four (24) months rent under the Office Space Lease. The City must be named as loss payee.

(2) Liability Insurance. The Authority and the Museum shall maintain Commercial General Liability (CGL) insurance with a minimum limit of liability of not less than \$15,000,000 combined single limit each occurrence bodily injury and property damage. Such liability insurance shall provide coverage for premises and operations risks within and about the Insured Property and shall incorporate the following provisions:

(i) Coverage shall include contractual liability.

(ii) The City of Seattle shall be an additional insured for primary and noncontributory limits of liability subject to a separation of insureds clause.

(c) *Terms and Conditions.* The property and CGL insurance specified in paragraph (a) shall incorporate the following terms and conditions:

(1) As respects the City of Seattle, the Bond Trustee and the Lockbox Agent, coverage may not be cancelled or coverage or limits of liability reduced below the minimum coverages and/or limits specified herein until sixty (60) days after notice is given as specified in Article 7, Section 7.2 of the Agreement, except as follows:

(i) A provision for 10 days' notice of cancellation for nonpayment of premium is acceptable if the premium for such policy or renewal is paid on an annual basis (not on an installment basis) without the use of "premium financing" arrangements. In that event, the Museum and the Authority shall be obligated as follows:

(A) No later than the 31st day after any policy or renewal policy is bound, the Authority or the Museum provides evidence satisfactory to the City Finance Director that the premium has been paid for the full year of the policy term, and

(B) The Authority and the Museum shall provide to the City copies of each notice received with regard to insurance within three business

days after receipt of such notice.

- (ii) The 60 days' notice of reduction in coverage may be provided by the Authority, the Museum or the Association or other entity maintaining insurance on behalf of the Museum and the Authority or directly by the insurance carrier, so long as the restriction on reducing coverage as respects the City, the Bond Trustee and the Lockbox Agent is incorporated into the policy (in the body or in an endorsement to the policy). Neither the Authority nor the Museum shall consent to or permit a reduction in coverage below the levels specified in this Exhibit I and each shall take all action within its control to ensure that no request for a reduction in coverage below such levels is submitted to the insurance carrier.

(2) Insurance carriers shall have a minimum A.M. Best's rating of A- VII.

(d) *Certification of Coverage.*

(1) True and certified copies of the current property and CGL insurance policies shall be provided to the City that document compliance in all respects with the provisions of this Exhibit I to the City's satisfaction, expressly including documentation that:

- (i) the City, the Bond Trustee and the Lockbox Agent are additional insureds and loss payees as their interests may appear subject to a mortgagee clause with a waiver of subrogation, as stated in (a)(1)(i) above, and
- (ii) the City is, as respects CGL insurance, an additional insured for primary and noncontributory limits of liability subject to a separation of insureds clause, as stated in (a)(2)(ii) above.

If true and certified copies of the current property and CGL insurance policies are not available, Acord Evidence of Commercial Property Insurance forms and binders of liability insurance may be substituted so long as such Evidence of Commercial Property Insurance forms and binders of liability insurance are current and document compliance with the provisions of this Exhibit I. Certificates of insurance, whether on the Acord form or otherwise, may not be substituted for such Evidence of Commercial Property Insurance forms and binders of liability insurance.

(2) Annually, in addition to true and certified copies of the current property and CGL insurance policies, or temporarily in lieu thereof (but only for the temporary period during which each policy is unavailable), Acord Evidence of Commercial Property Insurance forms and binders of liability insurance as specified in (c)(1), the Authority's and the Museum's firms of professional insurance brokers shall submit broker's opinion letters to the City that certify that the insurance currently in force is compliant with the provisions of this Exhibit I. Such broker's opinion letter or letters shall be provided at the time of and with respect to each policy renewal or replacement.

- (3) As used in this Exhibit I, a “true and certified copy” of an insurance policy means a copy of the policy (including any endorsements in effect) certified by the insurance carrier to be in effect and binding on it in accordance with its terms. Immediately upon binding of each policy or replacement policy, the Authority and the Museum shall submit (or cause to be submitted) a request to the insurance carrier for “true and certified copies” of such policy or policies to be sent directly to the City, the Authority, and the Museum (as well as other insureds). Further, the Authority and the Museum each shall provide the City with copies of all specimens, agreed-upon endorsements and other documents that purport to describe policy or policies procured to comply with Section 5.4 of the Guarantee Agreement and each shall certify that the same are to be true and correct copies of the documents reviewed by the Authority and the Museum in procuring such insurance or causing it to be procured.

The Authority and the Museum shall provide to the City annually within three business days after either the Authority or the Museum receives the same, a “true and certified copy” (as defined in this subsection) of each insurance policy for the MDA Real Estate Parcels and the Museum Expansion Unit. If a certified copy of a policy that is in effect has already been provided to the City, the Authority or the Museum may provide an index referring to the date(s) of such certified cop(ies), indicating that the policy remains in effect as of such date.

(e) *Notice.* Notice to the City required under this Exhibit I shall be given as specified in Article 7, Section 7.2 (“Notices”).

(f) *Application of Proceeds.*

- (1) All proceeds of time element insurance coverage (i.e., the business interruption insurance) required to be maintained and to be paid to the Museum or the Authority pursuant to this Exhibit I shall be paid to the Lockbox Account and held, used, applied and disposed in accordance with the provisions of Section 4.1(b) of the Guarantee and Reimbursement Agreement and the Lockbox Addendum (Exhibit J to the Guarantee and Reimbursement Agreement).
- (2) With respect to the Museum Expansion Unit and the MDA Unit, the rebuilding shall take place, if at all, and the proceeds shall be held and disbursed, in accordance with the provisions of the Condominium Documents. To the extent that the Authority and the Museum have the right to vote in the condominium association whether or not to rebuild the Museum Expansion Unit or the MDA Unit, they shall not vote to not rebuild if there are insufficient net proceeds to repay the Bonds in such event. Any proceeds not used for the rebuilding under this subparagraph (i.e., any actual cash value payment) and paid to the Authority or the Museum shall be held, used, applied and disposed of in accordance with Section 4.5 of the Guarantee and Reimbursement Agreement.
- (3) All direct physical loss and/or damage Property Insurance proceeds with respect to the Existing Museum Facility shall be used to rebuild such property, if feasible and if sufficient proceeds are available. With regard to the Existing Museum Facility,

the proceeds in excess of \$50,000 shall be held by a third party insurance trustee acceptable to the City (the “Insurance Trustee”) and disbursed in accordance with the procedures customarily employed for large commercial construction loans, which procedures shall include monitoring of the construction by an independent consultant acceptable to the City and a requirement that any shortfall between the amount required to rebuild and the amount of available insurance proceeds be deposited with the Insurance Trustee and disbursed prior to any disbursements of insurance proceeds. Any proceeds under this subparagraph (i.e., any actual cash value payment) not used for rebuilding shall be held, used, applied and disposed of in accordance with Section 4.5 of the Guarantee and Reimbursement Agreement.

Exhibit J

LOCKBOX ACCOUNT AND CONTROL AGREEMENT ADDENDUM

The parties to this Lockbox Account and Control Agreement Addendum (the “Addendum”) are: the City, the Authority, the Museum, and the Lockbox Agent, all of whom have agreed to be bound by the provisions of this Addendum by signing the ~~Second~~Third Amended and Restated Guarantee and Reimbursement Agreement (the “Guarantee and Reimbursement Agreement”) and by signing this Addendum.

This Addendum is attached to the Guarantee and Reimbursement Agreement as Exhibit J and constitutes a part of such Guarantee and Reimbursement Agreement. All capitalized terms that are not defined in this Addendum shall have the meanings given to them in the Guarantee and Reimbursement Agreement.

RECITALS

A. The Museum is the Landlord and _____ is the Tenant under that certain lease (the “Nordstrom Office Space Lease”) dated _____, which lease demises space (the “Office Premises”) in Unit ___ of WM-SAM Project, a condominium, pursuant to Declaration recorded under Auditor’s File No. _____, Records of King County, Washington (the “Museum Expansion Unit”).

B. The Nordstrom Office Space Lease and any future leases demising space in the Museum Expansion Unit are sometimes hereinafter referred to collectively as the “Office Space Leases.” The rent and other payments received and to be received by the Museum or its successors under any Office Space Lease are sometimes hereinafter referred to collectively as the “Office Space Lease Revenues”

C. The Museum, the Authority, and the City are parties to a ~~Second~~Third Amended and Restated Guarantee and Reimbursement Agreement dated as of _____, ~~2014~~2024 (the “Guarantee and Reimbursement Agreement”), which has been executed in connection with the Authority’s issuance of its Special Obligation Refunding Bonds, ~~2014~~2024, in an aggregate principal amount of \$_____,000 (the “Bonds”).

D. Pursuant to the Guarantee and Reimbursement Agreement, and as security for certain obligations of the Museum to the Authority, as more particularly described in Section 1.4 below, the Museum has executed and delivered to the Authority an Assignment of Rents Proceeds and Negative Pledge Agreement (the “Museum Assignment”) dated _____, a memorandum of which was recorded with Auditor’s File No. _____, Records of King County, Washington. The Museum Assignment operates to assign to the Authority all cash proceeds of the Office Space Lease Revenues (the “Office Space Lease Revenue Proceeds”).

E. Also pursuant to the Guarantee and Reimbursement Agreement, and as security for certain obligations of the Authority to City, as more particularly described in Section 1.5 below, the Authority has granted a security interest in its rights under the Museum Assignment to the City pursuant to a deed of trust, security agreement, assignment of leases and rents and fixture filing

(the “MDA Security Document”) dated _____ and recorded under Auditor’s File No. _____, Records of King County, Washington.

F. And also pursuant to the Guarantee and Reimbursement Agreement, a lockbox account (the “Lockbox Account”) has been established with Lockbox Agent, in which all Office Space Lease Revenues are to be deposited directly by the tenants under the Office Space Leases and held, used, applied and disposed of in accordance with the provisions of the Guarantee and Reimbursement Agreement.

G. The Lockbox Account is Deposit Account No. _____ at the _____ Branch of Lockbox Agent. The Lockbox Account is in the name of the Museum and is subject to the security interests in favor of the Authority and the City created by this Addendum. Lockbox Agent has also agreed to establish and maintain for the Museum, Post Office Box Number _____ (the “Lockbox Address”) and to perform the services listed on Schedule 1 hereto, which include receiving mail at the Lockbox Address, processing it and depositing checks and other payment instructions (“Checks”) into the Lockbox Account, as well as making certain disbursements as contemplated by the Guarantee and Reimbursement Agreement (the “Lockbox Services”).

H. Under certain circumstances, as more particularly described in the Guarantee and Reimbursement Agreement, the Museum is obligated to grant the City a “Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing” (the “Standby Deed of Trust”) encumbering the Museum’s fee interest in the Museum Expansion Unit and all right, title and interest of the Museum in the Office Space Leases and the Office Space Lease Revenues. If and when granted, the Standby Deed of Trust will secure the Museum’s obligations to the City under the Guarantee and Reimbursement Agreement. The Standby Deed of Trust is deposited in escrow with a third party escrow agent. The escrow agent has been instructed to record the Standby Deed of Trust upon the happening of certain events, as more particularly described in the Guarantee and Reimbursement Agreement. The Standby Deed of Trust shall be deemed to have been granted by the Museum at the time of recordation.

I. The parties wish to define certain of their rights and obligations in connection with the funds deposited into the Lockbox Account.

TERMS CONCERNING THE LOCKBOX

1. Grant of Security Interest; Control.

1.1 This Addendum evidences the Authority’s control over the Lockbox Account and the transfer of that control from the Authority to the City. Lockbox Agent agrees not to commingle the amounts held, or designated to Lockbox Agent for deposit, in the Lockbox Account with any other amounts held on behalf of any party to this Addendum or any third party. Notwithstanding anything to the contrary in the deposit agreement between Lockbox Agent and the Museum governing the Lockbox Account, Lockbox Agent will comply solely with the provisions of this Addendum and any instructions received from the City directing the disposition of funds in the Lockbox Account without further consent of the Museum or the Authority.

1.2 The Museum represents and warrants to the Authority, the City, and Lockbox Agent that it has not assigned or granted a security interest in the Lockbox Account or any Check deposited in the Lockbox Account, except to the Authority and the City pursuant to this Addendum and the Museum Assignment.

1.3 Except as set forth in Section 1.6 below, the Museum will not cause or permit the Lockbox Account to become subject to any other pledge, assignment, lien, charge or encumbrance of any kind, other than the security interests in favor of the Authority and the City referred to in Section 1.2 above.

1.4 As security for the MDA Lease Obligations (as hereinafter defined) the Museum hereby pledges, transfers, assigns and sets over to the Authority, and grants to the Authority a continuing security interest in and to, the Lockbox Account, all money deposited therein from time to time, and all profits and proceeds thereof. The Museum agrees to execute, acknowledge, deliver, file or do, at its sole expense, all other acts, assignments, notices, agreements or other instruments as the Authority or the City may reasonably require in order to perfect the foregoing security interest, pledge and assignment or otherwise to fully effectuate the rights granted to the Authority by this Section 1.4. This Addendum constitutes a “security agreement” with respect to the security interests created by this Section 1.4 and the Lockbox Account constitutes a “deposit account” within the meaning of Article 9 of the UCC. In addition to all other rights and remedies provided for herein or otherwise available at law or in equity, the Authority shall have all rights of a secured party under Article 9 of the UCC with respect to the Lockbox Account and the funds deposited therein. The term “MDA Lease Obligations” shall mean those obligations of the Museum to the Authority that are secured by the Museum Assignment.

1.5 As security for the MDA Guarantee and Reimbursement Obligations (as hereinafter defined) the Authority hereby pledges, transfers, assigns and sets over to the City, and grants to the City a continuing security interest in and to, all rights of the Authority as secured party under Section 1.4 and other applicable provisions of this Addendum. The Authority agrees to execute, acknowledge, deliver, file or do, at its sole expense, all other acts, assignments, notices, agreements or other instruments as the City may reasonably require in order to perfect the foregoing security interest, pledge and assignment or otherwise to fully effectuate the rights granted to the City by this Section 1.5. This Addendum constitutes a “security agreement” with respect to the security interests created by this Section 1.5 within the meaning of Article 9 of the UCC. In addition to all other rights and remedies provided for herein or otherwise available at law or in equity, the City shall have all rights of a secured party under Article 9 of the UCC with respect to the security interests created hereby. And in addition, the Authority hereby transfers its right to control the Lockbox Account to the City and appoints the City as its attorney in fact to enforce any and all rights of the Authority under this Addendum and the Museum Assignment. This appointment shall be deemed to be coupled with an interest and may not be revoked until the MDA Guarantee and Reimbursement Obligations have been fully satisfied. The term “MDA Guarantee and Reimbursement Obligations” shall mean those obligations of the Authority to the City under the Guarantee and Reimbursement Agreement that are secured by the MDA Security Document.

1.6 As security for the Museum Guarantee and Reimbursement Obligations (as hereinafter defined), but effective only as of the date, if any, that the Standby Deed of Trust is

recorded, the Museum, in addition to and not in lieu of the security interest grants in Section 1.4 above, hereby pledges, transfers, assigns and sets over to the City, and grants to the City a continuing security interest in and to, the Lockbox Account, all money deposited therein from time to time, and all profits and proceeds thereof. The Museum agrees to execute, acknowledge, deliver, file or do, at its sole expense, all other acts, assignments, notices, agreements or other instruments as the City may reasonably require in order to perfect the foregoing security interest, pledge and assignment or otherwise to fully effectuate the rights granted to the City by this Section 1.6. This Addendum constitutes a “security agreement” with respect to the security interests created by this Section 1.6 within the meaning of Article 9 of the UCC and confers upon the City “control” over the Lockbox Account and the funds therein. In addition to all other rights and remedies provided for herein or otherwise available at law or in equity, the City shall have all rights of a secured party under Article 9 of the UCC with respect to the security interests created hereby. The term “Museum Guarantee and Reimbursement Obligations” shall mean those obligations of the Museum to the City under the Guarantee and Reimbursement Agreement that are secured by the Standby Deed of Trust.

2. Disposition of Funds. Lockbox Agent shall prevent the Museum or the Authority from making any withdrawals from the Lockbox Account. Lockbox Agent shall disburse the funds in the Lockbox Account at the times and in the manner set forth in Section 4.1(b) of the Guarantee and Reimbursement Agreement.

3. Waiver of Offset Rights. The Lockbox Agent agrees it shall not offset, charge, deduct or otherwise withdraw funds from the Lockbox Account, except as permitted by Section 4.

4. Lockbox Agent Rights to Charge Lockbox Account. The Lockbox Agent may charge the Lockbox Account for only the following items:

(a) for its fees and charges relating to the Lockbox Account or associated with the Lockbox Services and this Addendum, as set forth in the fee schedule attached hereto as Schedule 2; and

(b) to reverse the entry for any Check deposited into the Lockbox Account that is returned unpaid for any reason.

If the balances in the Lockbox Account are not sufficient to compensate Lockbox Agent for any fees or charges due the Lockbox Agent in connection with the Lockbox Account, the Lockbox Service or this Addendum, or for the face amount of any returned Check plus bank fees incurred on account of the returned check, the Museum agrees to pay the Lockbox Agent on demand the amount due the Lockbox Agent.

5. Reporting. Within five (5) business days of the close of each calendar month, the Lockbox Agent will send the other parties to this Addendum a report in the form attached hereto as Exhibit A showing all receipts and disbursements from the Lockbox Account for the applicable calendar month. The Lockbox Agent will also advise the parties immediately in the manner set forth in Section 9.6 below and using the form of notice attached to the Guarantee and Reimbursement Agreement as Exhibit G-2 in the event that a Check deposited into the Lockbox

Account is returned unpaid for any reason, or if all Office Space Lease Revenues due to be deposited for a particular calendar month have not been received by the Lockbox Agent by the third (3rd) business day of the month. In addition to the original bank statement for the Lockbox Account provided to the Museum, the Lockbox Agent will provide both the Authority and the City with a duplicate of such statement.

6. Exculpation. Lockbox Agent will not be liable for any expense, claim, loss, damage or cost (“Damages”) arising out of or relating to its performance under this Addendum other than those Damages which result directly from its acts or omissions constituting negligence or intentional misconduct. Lockbox Agent shall have no duty to inquire or determine whether the MDA Lease Obligations, the MDA Guarantee and Reimbursement Obligations, or the Museum Guarantee and Reimbursement Obligations are in default. Lockbox Agent may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party, but Lockbox Agent shall follow only the City’s instructions with respect to the Lockbox Account notwithstanding any conflicting instruction from any other party hereto.

7. Termination. This Lockbox Addendum shall terminate only at such time as the City has notified the other parties hereto in writing that all of the MDA and the Museum Guarantee and Reimbursement Obligations have been fully discharged and satisfied, and that as a consequence, the City authorizes termination of this Addendum. The City shall also have the right to terminate this Addendum upon a substitution of a new Lockbox Agent and establishment of a new Lockbox Account with the substitute Lockbox Agent, if such substitution is permitted by the Guarantee and Reimbursement Agreement and the documentation regarding the Bonds.

8. Warranties. Each party hereto represents and warrants to the other parties that (i) this Addendum constitutes its duly authorized, legal, valid, binding and enforceable obligation; (ii) the performance of its obligations under this Addendum and the consummation of the transactions contemplated hereunder will not (A) constitute or result in a breach of its organizational documents or charter, as applicable, or the provisions of any material contract to which it is a party or by which it is bound or (B) result in the violation of any law, regulation, judgment, decree or governmental order applicable to it; and (iii) all approvals and authorizations required to permit the execution, delivery, performance and consummation of this Addendum and the transactions contemplated hereunder have been obtained.

9. Miscellaneous.

9.1. This Addendum may be amended only by writing signed by all parties hereto, except that the Lockbox Agent’s charges are subject to change by the Lockbox Agent upon thirty (30) days’ prior written notice to all other parties hereto.

9.2. This Addendum may be executed in counterparts; all such counterparts shall constitute but one and the same agreement.

9.3. The prevailing party shall be entitled to its reasonable attorneys’ fees and other costs and expenses in any action to enforce or interpret this Addendum.

9.4. This Addendum shall be governed by and construed in accordance with the internal laws of the State of Washington.

9.5 PLEASE BE ADVISED THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

9.6 Any notice or other written communication to be given under this Addendum shall be given in the manner set forth in Section 7.2 of the Guarantee and Reimbursement Agreement.

[The Remainder of This Page Is Intentionally Left Blank]

In witness whereof, the parties hereto have executed this Addendum by their duly authorized officers as of the ____ day of _____, 20__.

U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION

By:

Name: _____

Title: _____

(“Lockbox Agent”)

SEATTLE ART MUSEUM

By:

Name: _____

Title: _____

(“the Museum”)

THE MUSEUM DEVELOPMENT AUTHORITY
OF SEATTLE

By:

Name: _____

Title: _____

(“the Authority”)

THE CITY OF SEATTLE

By:

Name: _____

Title: _____

(“the City”)

Schedule 1
to Lockbox Account and Control Addendum
Standard Terms and Conditions

The Lockbox Service involves processing Checks that are received at a Lockbox Address. The tenants under the Office Space Leases have each executed an Office Space Lease containing the Tenant Payment Provisions or a separate Tenant Payment Agreement (as those terms are defined in the Guarantee and Reimbursement Agreement) whereby they have agreed to pay all Office Space Lease Revenues to the Lockbox Account at the Lockbox Address. The Lockbox Agent picks up mail at the Lockbox Address according to its mail pick-up schedule. The Lockbox Agent will have unrestricted and exclusive access to the mail directed to the Lockbox Address. The Lockbox Agent will also provide tenants under the Office Space Leases with the ability to remit Office Space Lease Revenues to the Lockbox Account via wire transfer.

If the Lockbox Agent receives any mail containing the Museum’s lockbox number at Lockbox Agent’s lockbox operations location (instead of the Lockbox Address), Lockbox Agent may handle the mail as if it had been received at the Lockbox Address.

PROCESSING

The Lockbox Agent will handle Checks received at the Lockbox Address according to the applicable deposit account agreement, as if the Checks were delivered by the Museum to Lockbox Agent for deposit to the Lockbox Account, except as modified by these Terms and Conditions.

The Lockbox Agent will open the envelopes picked up from the Lockbox Address and remove the contents. Checks contained in the envelopes will be inspected and handled in the manner specified in this Addendum. Other documents contained in the envelopes will be copied and a copy provided to all parties to this Addendum. Lockbox Agent will endorse all Checks Lockbox Agent processes on the Museum’s behalf.

If the Lockbox Agent processes an unsigned Check, and the check is paid, but the account owner does not authorize payment, the Museum agrees to indemnify the Lockbox Agent, the drawee bank (which may include the Lockbox Agent) and any intervening collecting bank for any liability or expense incurred by such indemnitee due to the payment and collection of the Check.

The Lockbox Agent shall not process any Check bearing a handwritten or typed notation “Payment in Full” or words of similar import on the face of the Check, without the permission of the City. The Lockbox Agent warrants and represents that it has adopted procedures designed to detect Checks bearing such notations.

RETURNED CHECKS

The Lockbox Agent will re-clear a Check once which has been returned and marked “Refer to Maker,” “Not Sufficient Funds” or “Uncollected Funds.” Notwithstanding that the Check has been re-submitted, the Lockbox Agent will notify the parties in accordance with Section 9.6 when the check is first returned. If the Check is returned for any other reason or if the Check is returned a second time, the Lockbox Agent will debit the Lockbox Account and return the Check to the

Museum, with a copy to the other parties hereto, and notify the parties that it has done so in accordance with Section 9.6.

ACCEPTABLE PAYEES

For purposes of processing Checks, Lockbox Agent may treat as an Acceptable Payee any variation of the Museum's name that Lockbox Agent deems to be reasonable.

Schedule 2
to Lockbox Account and Control Agreement Addendum

Lockbox Agent Fee Schedule

[to be inserted]

Exhibit A
to Lockbox Account and Control Agreement Addendum

Form of Monthly Lockbox Agent Report

[to be inserted]

Exhibit K

Procedures for Insurance Arbitration under Section 6.1(c)(1)

The following arbitration procedure is available only as described in §6.1(c)(1) and only if the default does not relate to coverage types and levels, and instead relates only to the form of the policy or the manner in which the parties' insured interests are identified. Cure periods and remedies shall be governed by Sections 6.1 and 6.2 of the Agreement.

1. On or before the last business day prior to the expiration or termination date of the applicable property or liability insurance policy, the Museum or the Authority may call for arbitration by providing notice to the City Finance Director. A call for arbitration shall extend the cure period until 3 business days after the arbitrator issues a written determination, but in no event beyond 30 calendar days after the expiration or termination date of the policy. The arbitration shall be limited to the issue of whether the form of the policy and the manner in which the parties' insured interests are identified therein satisfies the requirements set forth in Exhibit I. Regardless of who prevails, the City shall pay half the cost of the compensation for the arbitrator and the Authority and the Museum shall together pay the other half.
2. Within two business days following the giving of notice calling for arbitration, the Authority or the Museum shall deliver to the City: (A) a package including all materials the Museum and the Authority deem necessary to demonstrate that it has cured the default (the "Museum Materials"); and (B) a list of 3 independent arbitrators acceptable to the Authority and the Museum, who shall have substantial experience in insurance claims handling and/or underwriting, and shall be a practicing or retired commercial insurance broker, attorney, judge or risk manager. The Museum or the Authority shall confirm prior to submission of its list that each proposed arbitrator is available to hear the dispute and make a determination in the timeframe set forth in this Exhibit K.
3. No later than 3 business days following the City Finance Director's receipt of the Museum Materials, the City shall provide to the Authority and the Museum a written response and any other materials the City Finance Director deems necessary to explain why it believes that the requirements of Exhibit I have not been met (the "City Materials"). At the same time, the City Finance Director shall either identify an acceptable arbitrator from the list provided or provide with its response a list of 3 independent arbitrators acceptable to the City Finance Director who possess the above-identified qualifications and are confirmed as available to hear the dispute and make a determination in the timeframe set forth in this Exhibit K. If the City does not choose an arbitrator from the list provided by the Authority and the Museum, then within one business day after the City provides its list to the Museum and the Authority, the City Finance Director and one representative acting on behalf of both the Authority and the Museum shall confer and, if no arbitrator can be agreed upon, the parties' representatives shall flip a coin, and the coin toss winner shall choose from the coin toss loser's list.

4. Immediately upon selection of an arbitrator, that arbitrator shall be contacted by the party that first identified that person as a potential arbitrator. The arbitrator shall hold a hearing within 5 business days of being chosen, at which hearing each side ((a) the City and (b) the Museum and the Authority) shall present its position based on the previously-submitted City Materials and Museum Materials (together, the “Materials”). No additional written materials shall be submitted, no discovery shall be conducted and the formal rules of evidence shall not apply. The arbitrator shall determine such rules of procedure, if any, as are necessary for the conduct of the hearing. The arbitrator shall consider the Materials and the positions as presented at the hearing and shall provide a written determination within 3 business days after the hearing, but in no event more than 25 calendar days after the date of the original notice calling for arbitration. The arbitrator’s determination shall state whether the Materials demonstrate that the form of the policy and the manner in which the parties’ insured interests are named satisfies the requirements of Exhibit I.
5. If the arbitrator concludes that the that the form of the policy or the manner in which the parties’ insured interests are named in the Museum Materials satisfies the requirements of Exhibit I, then the default shall be deemed cured.
6. If the arbitrator concludes that the form of the policy or the manner in which the parties’ insured interests are named in the Museum Materials does not satisfy the requirements of Exhibit I, then the arbitrator shall provide a brief explanation as to his or her conclusion.

1 as permitted by applicable state law; (2) a statement of outstanding general obligation debt of the
2 City; (3) the assessed value of the property within the City subject to ad valorem taxation; and
3 (4) ad valorem tax levy rates and amounts and percentages of taxes collected;

4 (ii) Shall be provided not later than the last day of the ninth month after the end
5 of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year
6 may be changed as required or permitted by State law, commencing with the City’s fiscal year
7 ending December 31, 20__; and

8 (iii) May be provided in a single or multiple documents, and may be
9 incorporated by specific reference to documents available to the public on the Internet website of
10 the MSRB or filed with the SEC.

11 (c) Amendment of Undertaking. The Undertaking is subject to amendment after the
12 primary offering of the Bonds without the consent of any holder of any Bond, or of any broker,
13 dealer, municipal securities dealer, participating underwriter, rating agency or the MSRB, under
14 the circumstances and in the manner permitted by Rule 15c2-12. The City will give notice to the
15 MSRB of the substance (or provide a copy) of any amendment to the Undertaking and a brief
16 statement of the reasons for the amendment. If the amendment changes the type of annual financial
17 information to be provided, the annual financial information containing the amended financial
18 information will include a narrative explanation of the effect of that change on the type of
19 information to be provided.

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

1 (e) Termination of Undertaking. The City’s obligations under this Undertaking shall
2 terminate upon the legal defeasance of all of the Bonds. In addition, the City’s obligations under
3 this Undertaking shall terminate if those provisions of Rule 15c2-12 which require the City to
4 comply with this Undertaking become legally inapplicable in respect of the Bonds for any reason,
5 as confirmed by an opinion of Bond Counsel delivered to the City, and the City provides timely
6 notice of such termination to the MSRB.

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

14 (g) Designation of Official Responsible to Administer Undertaking. The Director of
15 Finance of the City (or such other officer of the City who may in the future perform the duties of
16 that office) or his or her designee is authorized and directed in his or her discretion to take such
17 further actions as may be necessary, appropriate or convenient to carry out the Undertaking in
18 accordance with Rule 15c2-12, including, without limitation, the following actions:

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

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

1 (iii) Effecting any necessary amendment of the Undertaking.

2 Dated _____, 2024.

SUMMARY and FISCAL NOTE

Department:	Dept. Contact:	CBO Contact:
Office of City Finance	Kristi Beattie	Caleb Wagenaar

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to public art museum facilities; authorizing a restatement of a guarantee and reimbursement agreement with the Museum Development Authority of Seattle and other parties that amends the second amended and restated guarantee and reimbursement agreement, as originally authorized by Ordinance 121950, as amended by Ordinance 122458, and as further amended by Ordinance 124429; and ratifying and confirming certain prior acts.

Summary and Background of the Legislation: This legislation authorizes the Director of Finance to approve and sign a Third Amended and Restated Guarantee and Reimbursement Agreement, which amends the Second Amended Guarantee and Reimbursement Agreement among the City, the Museum Development Authority of Seattle (“MDA”), the Seattle Art Museum (the “Museum”), and other parties (as amended and restated, the “Agreement”), as shown in the form of agreement attached as Exhibit A to this ordinance.

The MDA currently has \$22.8 million in outstanding MDA Bonds (defined below) guaranteed by the City that are eligible to be refinanced in 2024. City authorization by ordinance is required to approve revisions to the Agreement to accommodate the refunding (i.e., refinancing). The refinancing is in the City’s interest because it would reduce the annual debt service that is the subject of the City’s guarantee, thus reducing the City’s potential exposure. The refunding is sensitive to market rates and savings resulting from the refunding will be determined at the time the MDA bonds are refunded.

This ordinance authorizes the City’s guarantee of the refunding bonds and provides flexibility to respond to proposals to address future financing needs of SAM and MDA as they arise. Specifically, it:

- Authorizes the City to guarantee the 2024 Refunding Bonds to be issued by the MDA as part of refinancing the MDA’s 2014 Refunding Bonds (the “MDA Bonds”) that are guaranteed by the City’s full faith and credit; and
- Maintains the current legal and financial arrangements that secure the City’s rights to be reimbursed by MDA and/or SAM if the City is required to make any advances to MDA to pay debt service on the MDA Bonds; and
- Provides flexibility for the City to consider, on a case-by-case basis, a request by the MDA or SAM in the future to propose borrowing for operational needs or other purposes approved by Council. If any consent or amendment is requested that would diminish the City’s security for reimbursement of advances made in respect of the MDA Bonds, such request would be subject to future Mayoral approval and Council approval by ordinance.

Additional Background: In 2005, the Museum undertook the simultaneous expansion of its downtown facilities and the Olympic Sculpture Park project. As part of this capital program, the City guaranteed \$61 million in bonds issued by the MDA in 2005. These 2005 Bonds were refinanced by the issuance of the MDA Bonds in 2014. The 2014 Bonds are now eligible for refinancing for additional savings.

The debt service on the MDA Bonds is paid by the MDA consistent with the terms of the Guarantee and Reimbursement Agreement among the City, the MDA, the Museum, and other parties. MDA uses lease revenues received from SAM, which revenues are in turn derived from lease revenues that SAM receives from its tenants in the 8 floors of office space located immediately above the current SAM galleries. The master tenant in the office space is currently Nordstrom, Inc., which replaced Washington Mutual Bank (“WaMu”) as the master tenant following the bank’s collapse in 2008. The lease term currently extends through the maturity of the MDA Bonds in 2031. As required by the City’s Guarantee, the City previously approved Nordstrom’s annual lease payment schedule, which currently exceeds the minimum 1.2x coverage ratio of net annual rent to debt service on the MDA Bonds. As of the time of this ordinance, the debt service on the MDA Bonds is approximately \$3.9 million annually.

The form of the Third Amended and Restated Guarantee and Reimbursement Agreement between the City, the MDA, SAM, and other parties, which is provided as Exhibit A to this ordinance, retains the terms of the City’s guarantee of the MDA Bonds as described in the Agreement as last authorized by Council in Ordinance 124429. Any changes to the security or any other terms of the City’s guarantee of the MDA Bonds would be subject to authorization by separate ordinance in the future.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation have financial impacts to the City? Yes No

Although this legislation does not have a direct financial impact to the City, it does have an indirect impact through the guarantee provided by the City. The principal of and interest then due on guaranteed bonds counts against the City’s general obligation bond debt capacity. This guarantee has been evaluated for consistency with the City’s debt policies regarding City guarantees of public development authority debt, and has been reviewed by DMPAC. The refinancing of the MDA Bonds will provide annual debt service savings for MDA and reduce the amount of the City’s exposure.

4. OTHER IMPLICATIONS

a. Please describe how this legislation may affect any departments besides the originating department.

N/A

- b. Does this legislation affect a piece of property? If yes, please attach a map and explain any impacts on the property. Please attach any Environmental Impact Statements, Determinations of Non-Significance, or other reports generated for this property.**
No City property is affected; this legislation does pertain to property owned by the MDA and other property owned by the nonprofit Seattle Art Museum. The City has rights to exercise interests in both the MDA and SAM properties as security for reimbursement of amounts advanced pursuant to the City’s guarantee of the MDA Bonds.
- c. Please describe any perceived implication for the principles of the Race and Social Justice Initiative.**
- i. How does this legislation impact vulnerable or historically disadvantaged communities? How did you arrive at this conclusion? In your response please consider impacts within City government (employees, internal programs) as well as in the broader community.**
 - ii. Please attach any Racial Equity Toolkits or other racial equity analyses in the development and/or assessment of the legislation.**
 - iii. What is the Language Access Plan for any communications to the public?**
N/A
- d. Climate Change Implications**
- i. Emissions: How is this legislation likely to increase or decrease carbon emissions in a material way? Please attach any studies or other materials that were used to inform this response.**
 - ii. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle’s resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**
N/A
- e. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s)? What mechanisms will be used to measure progress towards meeting those goals?**
N/A

5. CHECKLIST

- Is a public hearing required?**
No

- Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required?**
No

- If this legislation changes spending and/or revenues for a fund, have you reviewed the relevant fund policies and determined that this legislation complies?**
N/A

- Does this legislation create a non-utility CIP project that involves a shared financial commitment with a non-City partner agency or organization?**
No

6. ATTACHMENTS

Summary Attachments:
None



Legislation Text

File #: CB 120775, Version: 2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to app-based worker labor standards; establishing a new compensation scheme for app-based workers with minimum pay requirements and related standards for transparency and flexibility; and amending Sections 8.37.020, 8.37.050, 8.37.060, 8.37.070, 8.37.080, 8.37.100, 8.37.120, 8.37.125, 8.37.165, and 8.37.170 of the Seattle Municipal Code.

WHEREAS, Chapter 8.37 of the Seattle Municipal Code, also known as the App-Based Worker Minimum Payment Ordinance, requires network companies to provide app-based workers with minimum payment, transparent job information and receipts, and flexible terms of work; and

WHEREAS, amending labor standards for app-based workers requires appropriate action by the City Council;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 8.37.020 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.020 Definitions

For purposes of this Chapter 8.37:

* * *

~~((“Adverse action” means reducing compensation; garnishing tips or gratuities; temporarily or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable work; terminating; deactivating; threatening; penalizing; retaliating; engaging in unfair immigration-related practices; filing a false report with a government agency; or otherwise discriminating against any person for any reason~~

~~prohibited by Section 8.37.120. “Adverse action” for an app-based worker may involve any aspect of the app-based worker’s work, including compensation, work hours, volume, and frequency of offers made available, desirability and compensation rates of offers made available, responsibilities, or other material change in the terms and conditions of work or in the ability of an app-based worker to perform work. “Adverse action” also includes any action by the network company or a person acting on the network company’s behalf that would dissuade a reasonable person from exercising any right afforded by this Chapter 8.37.)~~

~~* * *~~

~~(“Associated cost factor” means the additional percentage of the minimum wage equivalent rate that reasonably compensates app-based workers for the non-mileage expenses that are necessary to conduct app-based work, which include but are not limited to the following:~~

- ~~1. Employer-side payroll taxes that app-based workers must pay;~~
- ~~2. Cost of paid family and medical leave insurance;~~
- ~~3. Cost of state-provided unemployment insurance;~~
- ~~4. Cost of workers’ compensation insurance;~~
- ~~5. Business taxes that app-based workers must pay;~~
- ~~6. Business licensing fees that app-based workers must pay; and~~
- ~~7. Cost of miscellaneous expenses such as purchase of cellular phones, data plans, and other~~

~~equipment required for work.~~

~~“Associated mileage factor” means the additional percentage of the mileage rate that reasonably compensates app-based workers for miles traveled without compensation that are necessary to conduct app-based work, which may include but is not limited to the following:~~

- ~~1. Miles traveled after completing performance of an offer, to relocate to locations where additional offers are likely to be available or to return to the starting location; and/or~~
- ~~2. Miles traveled to locations for rest breaks, meal breaks, restroom access, and administrative~~

needs.

~~“Associated time factor” means the additional percentage of the minimum wage equivalent rate that reasonably compensates app-based workers for the time that app-based workers spend working or engaged to wait for work without compensation to perform app-based work, including but not limited to the following:~~

- ~~1. Reviewing offers;~~
- ~~2. Communicating with network companies and customers;~~
- ~~3. Relocating in anticipation of future offers;~~
- ~~4. Conducting administrative tasks; and~~
- ~~5. Taking rest breaks.))~~

* * *

“Eating and drinking establishment” means “eating and drinking establishment” as defined in Section 23.84A.010.

“En route” means traveling to the location or locations where work in furtherance of an accepted offer will occur.

“Engaged miles” means miles traveled during engaged time in a vehicle that the network company does not own and maintain, or miles traveled during engaged time in a vehicle leased by the network company or its agent to the app-based worker.

“Engaged time” means the period of time in which an app-based worker performs services in furtherance of an offer facilitated or presented by a network company (~~or participates in any training program required by a network company~~). Engaged time shall apply as described below:

1. If an offer is being facilitated or presented by an on-demand network company, or is an on-demand offer, “engaged time” begins upon the app-based worker’s acceptance of the offer or, if the app-based worker is not expected to begin performance of the offer upon acceptance, upon receipt of information by the network company that the app-based worker is en route to fulfill the offer. Engaged time ((and)) ends upon: the

app-based worker's completing performance of the offer, cancellation of the offer by the network company or customer, or cancellation with cause of the app-based worker's acceptance of the offer ~~((pursuant to))~~ when the conditions required in subsection 8.37.080.C.1 are met.

2. In all other circumstances, "engaged time" begins when the app-based worker begins performance of the offer or when the app-based worker reports to a location designated in the offer. Engaged time ends upon: the app-based worker's completing performance of the offer, cancellation of the offer by the network company or customer, or cancellation with cause of the app-based worker's acceptance of the offer ~~((pursuant to))~~ when the conditions required in subsection 8.37.080.C.1 are met.

~~((4.))~~ 3. Offers ending in a cancellation ~~((without cause))~~ by an app-based worker shall not incur any engaged time, except for cancellation with cause of the app-based worker's acceptance of the offer when the conditions required in subsection 8.37.080.C.1 are met.

~~((The Director may issue rules on "engaged time" for (a) offers with non-compensable time, such as sleep time or other periods of off-duty time; or (b) offers with periods of time when the worker is not completely relieved of the duty to perform services and cannot use the time effectively for their own purposes. "Eating and drinking establishment" means "eating and drinking establishment" as defined in Section 23.84A.010.))~~

* * *

"Hourly minimum wage" has the same meaning as established for Schedule 1 employers in Chapter 14.19. In 2024, the "hourly minimum wage" established for Schedule 1 employers in Chapter 14.19 is \$19.97.

"Incentive" means a sum of money paid to an app-based worker ~~((in addition to the guaranteed minimum network company payment for an offer,))~~ upon completion of specific tasks presented by the network companies, including but not limited to completing performance of a certain number of offers, completing performance of a certain number of consecutive offers, completing performance of an offer subject to a price multiplier or variable pricing policy, making oneself available to accept offers in a particular geographic

location during a specified period of time, or recruiting new app-based workers.

* * *

~~((“Minimum wage equivalent rate” means the per-minute equivalent of the “hourly minimum wage” established for Schedule 1 employers in Chapter 14.19. In 2022, the “hourly minimum wage” established for Schedule 1 employers in Chapter 14.19 is \$17.27 and the resultant minimum wage equivalent rate is \$0.288.))~~

* * *

“Network company earnings period” means a pay period, set by the network company, not to exceed 14 consecutive calendar days.

“Network company payment” means the amount owed to an app-based worker by the network company by reason of performing services in furtherance of ~~((an offer))~~ offers facilitated or presented by the network company, including but not limited to payment for providing services and/or commissions~~((, or participating in any training program required by a network company))~~. For the purposes of satisfying the minimum network company payment requirements of Section 8.37.050, “network company payment” includes incentives and bonuses.

* * *

“Perform services in Seattle” means activities, conducted by an app-based worker in furtherance of an offer, that occur within the geographic boundaries of Seattle.

1. The term “perform services in Seattle” includes any time spent on a commercial stop in Seattle that is related to the provision of delivery or other services associated with an offer.
2. The term “perform services in Seattle” does not include stopping for refueling, stopping for a personal meal or errands, or time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle with no commercial stops in Seattle.
3. The term “perform services in Seattle” does not include time spent or services performed that the app-based worker voluntarily elects to perform or complete at a location in Seattle where the app-based

worker begins performance of the offer outside Seattle and no portion of the original offer presented to, and accepted by, the app-based worker requires time spent or services to take place in Seattle.

* * *

~~((“Standard mileage rate” means the current standard mileage rate established by the United States Internal Revenue Service (IRS) for calculation of the costs of operating an automobile. This mileage rate is adjusted annually by the IRS. For example, the 2022 mileage rate is \$0.585.))~~

* * *

~~“Unsealed” means loose items or items in packaging that have the potential, under normal conditions of handling, to open, spill, or otherwise expose an app-based worker to its contents((, including but not limited to delivery bags, boxes, or other containers designed to allow customers to transport hot food or groceries to their homes. The term “unsealed” does not include individual items pre-packaged into a bag, box, or other container that is then sealed in a manner designed to keep its contents securely contained, inaccessible, and out of view of the app-based worker)). An item is not unsealed if its packaging meets either of the following conditions:~~

1. The item’s own packaging is designed to prevent leaks or spills under normal conditions of handling (e.g., items in factory-sealed packaging); or
2. The item is packed into a bag, box, or other container that is designed to prevent leakage or breakage and that is securely closed in order to contain items during storage and transport. If an app-based worker handles items that would otherwise be considered unsealed before they are packed, the items are considered unsealed until they are packed.

* * *

Section 2. Section 8.37.050 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.050 Minimum network company payment

A. Requirement

1. For each ((offer)) network company earnings period where the app-based worker performs offers resulting in engaged time or engaged miles, a network company shall compensate app-based workers, and/or ensure app-based workers receive, at least the equivalent of a minimum network company payment that is ((the greater of either:

1. The minimum per-minute amount for engaged time under subsection 8.37.050.B.1 plus the minimum per-mile amount for engaged miles under subsection 8.37.050.B.2; or 2. The minimum per-offer amount under subsection 8.37.050.B.4)) the minimum per-hour amount for engaged time under subsection 8.37.050.B.1 plus the minimum per-mile amount for engaged miles under subsection 8.37.050.B.2.

2. For each network company earnings period, a network company shall compare the total amount of network company payments, including incentive and bonus payments, earned by the app-based worker during the network company earnings period against the minimum network company payment calculation under subsection 8.37.050.B for all engaged time and engaged miles that occurred during that network company earnings period. If the total amount of network company payments earned by that app-based worker is less than the total calculated under subsection 8.37.050.B for that network company earnings period, the network company shall include an additional sum accounting for the difference in the app-based worker's earnings when the network company processes payment for that earnings period.

3. A network company shall not reduce the total amount of network company payments, including incentive and bonus payments, paid to an app-based worker for the network company earnings period if, upon completing the comparison in subsection 8.37.050.A.2, the total amount of network company payments earned by the app-based worker is more than the total calculated under subsection 8.37.050.B for that network company earnings period.

B. ((Minimum network company payment calculation)) Calculation

1. ((Per-minute)) Per-hour amount. For each ((minute)) hour of engaged time, or portion thereof rounded to the nearest minute, a network company shall compensate app-based workers, and/or ensure that app

-based workers receive, at least the equivalent of the total of the hourly minimum wage (~~((equivalent rate multiplied by the associated cost factor multiplied by the associated time factor))~~). In ~~((2022))~~ 2024, the ~~((per minute))~~ per-hour amount is ~~((~~\$0.38~~))~~ \$19.97. On ~~((January 13, 2024, and on))~~ January 1 of each year thereafter, the ~~((per minute))~~ per-hour amount shall be increased to reflect any adjustment(s) to the hourly minimum wage ~~((equivalent rate, associated cost factor, or associated time factor.))~~ The Agency shall determine the ~~((per minute))~~ per-hour amount and file a schedule of such amount with the City Clerk.

~~((a. Associated cost factor. The associated cost factor is 1.12.~~

~~b. Associated time factor. The associated time factor is 1.17.))~~

2. Per-mile amount. For each engaged mile traveled, a network company shall compensate app-based workers, and/or ensure that app-based workers receive, at least the equivalent of the ~~((standard mileage rate multiplied by the associated mileage factor, which is 1.10))~~ per-mile amount, rounded to the nearest tenth of a mile. ~~((In 2022))~~ On the effective date of this ordinance, the per-mile amount is ~~((~~\$0.64~~))~~ \$0.35. On ~~((January 13, 2024, and on))~~ January 1 of each year thereafter, the per-mile amount shall be ~~((increased annually to reflect any adjustment(s) to the standard mileage rate or associated mileage factor))~~ adjusted annually to reflect the rate of inflation and calculated to the nearest cent. The Agency shall determine the per-mile amount and file a schedule of such amount with the City Clerk.

~~((3. The calculations described in this subsection 8.37.050.B are expressed in equation form as:~~

$$\begin{aligned} & \text{(Engaged minutes x minimum wage equivalent rate} \\ & \quad \text{x associated cost factor x associated time factor)} \\ & \pm \text{(engaged miles x standard mileage rate x associated mileage factor} \\ & \quad \text{= minimum network company payment per offer.} \end{aligned}$$

The established current rates and factors result in the following calculation for the required ~~minimum network company payment:~~

$$\begin{aligned} & \text{(Engaged minutes x } \$0.288 \text{ x } 1.12 \text{ x } 1.17) \\ & \quad \text{+ (Engaged miles x } \$0.585 \text{ x } 1.10) \\ & \quad \text{= } \$0.38/\text{minute} \text{ + } \$0.64/\text{mile.} \end{aligned}$$

~~4. Per offer amount. For each offer resulting in engaged time or engaged miles, a network company shall compensate app-based workers a minimum per offer amount of at least \$5. The Director may issue rules excluding certain offers from payment of the minimum per offer amount under subsection 8.37.050.B.4, including but not limited to on-demand offers cancelled by the customer within a grace period of not more than five minutes after acceptance.~~

~~a. Effective January 1, 2024, the minimum per offer amount paid to an app-based worker shall be increased on a percentage basis to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amount and file a schedule of such amount with the City Clerk.~~

~~5. Application of minimum network company payment requirements.~~

~~a. A minimum network company payment shall be provided for any offer resulting in engaged time and engaged miles by the app-based worker, offers cancelled by a customer or the network company, and offers for which acceptance was cancelled with cause by the app-based worker pursuant to subsection 8.37.080.C.~~

~~b.)) 3. If an app-based worker accepts a new offer during performance of a previously accepted offer, and both offers are facilitated or presented by the same network company, engaged time and engaged miles accrued during any period of time in which performance of the offers overlaps shall be subject to the minimum ((compensation)) network company payment requirements as if for a single offer under this subsection 8.37.050.B.~~

~~((C. Adjustment of the associated cost factor, associated time factor, and associated mileage factor~~

~~1. Adjustment of the associated cost factor. Beginning January 13, 2027, the Director by rule may adjust the associated cost factor every three years; provided, that this adjustment shall not result in reduction of the associated cost factor below 1.12. In adjusting the associated cost factor, the Director shall consider relevant and available sources of data, which may include but are not limited to: app-based worker~~

surveys; data provided by network companies; data provided by app-based workers; data provided by customers; data from other jurisdictions; data available through academic, policy, or community-based organizations; public testimony; and stakeholder interviews. The Director may consider the non-exhaustive list of factors that comprise the “associated cost factor” as defined in Section 8.37.020, as well as any other factor the Director determines is necessary to further the purposes of this Chapter 8.37. The Agency shall file a schedule of any adjustment(s) to the associated cost factor with the City Clerk.

2. Adjustment to the associated time factor. Beginning January 13, 2027, the Director by rule may adjust the associated time factor every three years; provided, that this adjustment shall not result in reduction of the associated time factor below 1.17. In adjusting the associated time factor, the Director shall consider relevant and available sources of data, which may include but are not limited to: app-based worker surveys; data provided by network companies; data provided by app-based workers; data provided by customers; data from other jurisdictions; data available through academic, policy, or community-based organizations; public testimony provided; and stakeholder interviews. The Director may consider the non-exhaustive list of factors that comprise the “associated time factor” as defined in Section 8.37.020, as well as any other factor the Director determines is necessary to further the purposes of this Chapter 8.37. The Agency shall file a schedule of any adjustment(s) to the associated time factor with the City Clerk.

3. Adjustment to the associated mileage factor. Beginning January 13, 2027, the Director by rule may adjust the associated mileage factor every three years; provided, that this adjustment shall not result in reduction of the associated mileage factor below 1.10. In adjusting the associated mileage factor, the Director shall consider relevant and available sources of data, which may include but are not limited to: app-based worker surveys; data provided by network companies; data provided by app-based workers; data provided by customers; data from other jurisdictions; data available through academic, policy, or community-based organizations; public testimony provided; and stakeholder interviews. The Director may consider the non-exhaustive list of factors that comprise the “associated mileage factor” as defined in Section 8.37.020, as well

~~as any other factor the Director determines is necessary to further the purposes of this Chapter 8.37. The Agency shall file a schedule of any adjustment(s) to the associated mileage factor with the City Clerk.~~

~~D.))~~ C. Deductions

1. A network company may only deduct compensation when the app-based worker expressly authorizes the deduction in writing and does so in advance for a lawful purpose for the benefit of the app-based worker. Any such authorization by an app-based worker must be voluntary and knowing.

2. Neither the network company nor any person acting in the interest of the network company may derive any financial profit or benefit from any of the deductions under this subsection ~~((8.37.050.D))~~ 8.37.050.C. For the purposes of this subsection ~~((8.37.050.D))~~ 8.37.050.C, reasonable interest charged by the network company, or any person acting in the interest of a network company, for a loan or credit extended to the app-based worker is not considered to be of financial benefit to the network company, or any person acting in the interest of a network company.

3. A fee charged to an app-based worker who elects to access or transfer their earnings prior to the end of the network company earnings period shall be considered a permissible deduction under this subsection 8.37.050.C, provided that the fee does not exceed \$5, adjusted annually to the nearest cent to reflect the rate of inflation.

Section 3. Section 8.37.060 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.060 Tip and incentive compensation

A. ~~((Tips 1.))~~ A network company shall pay to its app-based workers all tips and gratuities.

~~((2.))~~ B. Tips paid to an app-based worker are in addition to, and may not count towards:

~~((a.))~~ 1. The app-based worker's minimum network company payment under Section 8.37.050;

~~((b.))~~ 2. A guaranteed minimum amount of network company payment for an offer, as described in Section 8.37.070, regardless of whether the guaranteed minimum amount exceeds the minimum network

company payment owed to the app-based worker;

~~((e-))~~ 3. Any incentive presented to the app-based worker; or

~~((d-))~~ 4. Any amount of compensation presented to the app-based worker in exchange for the performance of services.

~~((B))~~ C. Incentives and bonuses paid to an app-based worker ~~((are in addition to, and may not))~~ may count towards~~((s))~~ the app-based worker's minimum network company payment under Section 8.37.050.

Section 4. Section 8.37.070 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.070 Network company transparency

A. Right to up-front information regarding offers

1. A network company shall provide, and/or ensure a customer provides, an app-based worker the following information when facilitating or presenting an offer:

a. A reasonable estimate of the engaged time required to complete performance of the offer and, if applicable, the range of time in which the offer can be completed;

b. A reasonable estimate of the engaged miles required to complete performance of the offer and the approximate geographic location or locations where work in furtherance of the offer will occur~~((s including pick-up and drop-off locations for offers involving deliveries))~~;

c. A guaranteed minimum amount of network company payment for the offer; ~~((provided, that it does not fall below the minimum network company payment requirements established in Section 8.37.050 for an offer requiring the amount of engaged time and engaged miles provided in the estimate;~~

~~d. The amount of any tip that each customer has indicated they will provide, if the network company's online-enabled application or platform enables customers to tip in advance of facilitating or presenting the offer to the app-based worker;))~~ ; and

~~((e-))~~ d. When performance of an offer requires ~~((a stop or stops))~~ at least one item to be

picked up at business establishments, the names of such businesses((;)) .

~~((f. To the extent it is reasonably ascertainable, information regarding physical labor required to perform services in furtherance of the offer and accessibility at locations where work will be performed, including but not limited to weights of any goods to be handled; numbers of flights of stairs; and availability of elevators, ramps, and other conditions affecting accessibility. The Director shall issue rules regarding the types of information required to be disclosed, the format of provision of the information, and efforts to ascertain the information that would be considered reasonable; and~~

~~g. To the extent it is reasonably ascertainable, the network company shall make available to the app-based worker information that it has about the unsealed contents of each online order. The Director shall issue rules regarding the types of information required to be disclosed, the format of provision of the information, and efforts to ascertain the information that would be considered reasonable.))~~

2. A network company shall not be held responsible for a violation of subsection 8.37.070.A.1 that is attributable solely to incomplete or inaccurate information provided by another party, provided that the network company made a reasonable effort to obtain complete and accurate information.

3. An on-demand offer shall be made available for at least ~~((two minutes))~~ 45 seconds after the app-based worker has been provided the information described in subsection 8.37.070.A.1.

4. If a network company presents a pre-scheduled offer, or an offer that entails fulfillment of multiple individual online orders, and the network company lacks advance notice of the information in subsection~~((s))~~ 8.37.070.A.1.b~~((;))~~ or 8.37.070.A.1.d ~~((, 8.37.070.A.1.e, 8.37.070.A.1.f and 8.37.070.A.1.g))~~ for that offer, the network company shall provide the app-based worker with such information ~~((prior to assigning them work in furtherance of each online order, to the extent))~~ as soon as it is reasonably ascertainable.

B. Within ~~((24))~~ 48 hours of each offer's performance ~~((or within 72 hours after a cancellation by an app-based worker,))~~ that incurs engaged time, a network company shall ~~((transmit))~~ provide an electronic receipt to the app-based worker that contains the following information for each unique offer covered by this

Chapter 8.37:

1. The app-based worker's total amount of engaged time;
2. The app-based worker's total amount of engaged miles;
3. The app-based worker's compensation, itemized by:

a. Gross network company payment, ~~((as well as the method used to calculate payment, including but not limited to amount per minute or amount per mile;~~

b. Total incentive(s) and the basis for calculating the incentive(s), if applicable;))
including itemized incentive and bonus payments, if applicable;

~~((e))~~ b. Total amount of compensation from tips;

~~((d))~~ c. Total amount of any deductions, itemized by deduction type; and

~~((e))~~ d. Net compensation~~((-))~~ ;

4. Itemized fees collected from the app-based worker to access the network company's online-enabled application or platform; and

5. The approximate geographic location or locations of the app-based worker's engaged time and engaged miles~~((, including pick-up and drop-off locations for offers involving deliveries; and~~

6. Pursuant to rules that the Director may issue, ~~other information that is material and necessary to effectuate the terms of this Chapter 8.37)).~~

C. ~~((On a weekly basis))~~ For each network company earnings period, the network company shall provide written notice to the app-based worker that contains the following information for offers covered by this Chapter 8.37 and that incurred engaged time, ~~((which were performed or cancelled with cause, as well as other engagement with the worker platform,))~~ during the prior week:

1. The app-based worker's total amount of engaged time;
2. The app-based worker's total amount of engaged miles;
3. The app-based worker's compensation, itemized by:

a. Gross network company payment, ~~((as well as the method used to calculate payment, including but not limited to amount per minute or amount per mile))~~ including:

~~((b. Total incentives and the basis for calculating the incentives, if applicable;))~~

i. Itemized incentive and bonus payments, if applicable; and

ii. Payment of an additional sum pursuant to subsection 8.37.050.A.2, if

applicable;

~~((e))~~ b. Total amount of compensation from tips;

~~((d))~~ c. Total amount of any deductions, itemized by deduction type; and

~~((e))~~ d. Net compensation; and

4. Total amount of itemized fees collected from the app-based worker to access the network company's online-enabled application or platform(~~;~~

5. Pursuant to rules that the Director may issue, ~~other information that is material and necessary to effectuate the terms of this Chapter 8.37).~~

~~((D. Within 24 hours of an online order's performance or cancellation with cause, a network company shall transmit an electronic receipt to a paying customer that lists:~~

~~1. The date and time of completion of the online order;~~

~~2. The total amount paid to the network company, itemizing all charges, fees, and customer paid tips. The network company shall clearly designate the amount of tips paid directly to the app-based worker and the amount of charges and fees retained by the company; and~~

~~3. Pursuant to rules that the Director may issue, other information that is material and necessary to effectuate the terms of this Chapter 8.37.))~~

D. A network company may remove approximate geographic location information required under subsection 8.37.070.A and 8.37.070.B or other personally identifiable information from electronic receipts if that information is related to a user account that has been deleted at the request of the account owner. Nothing

in this subsection 8.37.070.D shall be construed to prohibit production of the information pursuant to a court order or the Director's lawful request relating to an enforcement action.

E. A network company shall ensure that its customer-facing websites, applications, and platforms do not describe any fees or non-tip charges in a manner that might be reasonably misconstrued as a tip, gratuity, or other payment to the app-based worker. Any interface for accepting customer orders shall clearly reflect the amount of any tip paid to the app-based worker.

F. A network company shall ensure that all app-based workers have access to the company's tip policy, including but not limited to whether the network company's online-enabled application or platform allows customers to tip in advance of completion of an online order and whether the network company permits customers to modify or remove tips after performance.

~~((G. A network company shall routinely and affirmatively transmit to the Agency such records as required by rules issued by the Director. The Director shall have the authority to require such aggregated or disaggregated records deemed necessary, appropriate, or convenient to administer, evaluate, and enforce the provisions of this Chapter 8.37. The Director may issue rules requiring that aggregated records be produced as a distribution at defined percentiles. The Director may issue data production rules of general applicability as well as rules specific to on-demand companies. In issuing data production rules, the Director shall consider, among other factors, methods to provide workers with information to make informed choices about platforms on which they may seek work and to provide the public with information to assess the impact of network companies.~~

~~1. Records for production may include, but are not limited to:~~

- ~~a. Records regarding the availability of offers facilitated via the network company platform;~~
- ~~b. Records regarding the amount of engaged time and engaged miles;~~
- ~~c. The amount of time that app-based workers must spend working or engaged to wait for work without compensation to perform app-based work;~~

~~d. Records regarding the number of app-based workers who logged onto the worker platform, logged on for the first time in the reporting period, or accepted an offer;~~

~~e. Per offer or aggregated app-based worker compensation, including but not limited to network company payments, bonuses, incentives, and tips earned from customers; and~~

~~f. Any other records that the Director determines are material and necessary to effectuate the purposes of this Chapter 8.37.~~

G. A network company shall affirmatively transmit to the Agency such records as required by this subsection 8.37.070.G, no more than once per quarter. The Director shall have the authority to require such aggregated records deemed necessary to administer, enforce, or evaluate the impact of the provisions of this Chapter 8.37 on app-based worker earnings. The Director may issue rules requiring that aggregated records be produced as a distribution at defined percentiles. The Director may issue data production rules of general applicability as well as rules specific to on-demand network companies.

1. Records for production may only include those related to:

a. The number, type, and origin and destination cities of offers facilitated by a network company;

b. Amount of engaged time and engaged miles completed by app-based workers, and amount of time app-based workers are logged into the app as compared to amount of engaged time;

c. Net earnings of app-based workers, including but not limited to records related to app-based workers' network company payments, bonuses, incentives, tips, and deductions; and

d. The amount and description of network company fees charged to paying customers;

2. A network company shall not transmit to the Agency any personally identifiable app-based worker information, including name, date of birth, home address, social security number, vehicle license plate number, driver's license number, or other similar records, except when related to an enforcement action. The Director shall issue rules governing the submission format, security, and privacy protocols relating to the

submission of network company records, to the extent permitted by law.

H. A network company shall notify app-based workers at least 14 days prior to making a material change to how network company payment will be calculated.

Section 5. Section 8.37.080 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.080 Flexibility

A. ~~((An app-based worker has the right to decide when to make themselves available to work and which offers to accept or reject.))~~ A network company shall not ~~((subject))~~ terminate the contract of an app-based worker ~~((to an adverse action, nor institute a policy subjecting an app-based worker to an adverse action,))~~ for ~~((engaging in the following activities))~~:

1. Limiting hours of availability, including but not limited to being logged into the worker platform for limited hours, only at certain hours of the day, or during certain days of the week~~((-))~~ ; or

2. Accepting or rejecting any individual offer, any types of offers, or any number or proportion of offers. An app-based worker may indicate rejection of an offer by declining to respond to the offer. A network company shall ensure that its worker platform enables an app-based worker to communicate a rejection of each offer.

~~((B. A network company shall allow an app-based worker to be logged into the network company's worker platform at any date, time of day, or for any amount of time, except in the following circumstances:~~

~~1. Certain instances of deactivation as defined in rules, or other applicable law.~~

~~2. Limitations on a maximum amount of consecutive work time to protect worker and public safety.))~~

B. If applicable, a network company shall disclose the reasons that an app-based worker may not be able to log into the network company's worker platform on a particular date or time of day. Examples of reasons include, but are not limited to:

1. The network company uses a system to limit access to the worker platform in periods of low demand in a specified geographic area;

2. The network company provides app-based workers with the opportunity to identify periods of time to receive offers to perform services and no such periods are available; and

3. The network company imposes limitations on the maximum amount of consecutive work time to protect worker and public safety.

C. A network company shall not ~~((subject))~~ terminate the contract of an app-based worker ~~((to an adverse action, nor institute a policy subjecting an app-based worker to an adverse action,))~~ for cancelling their acceptance of an offer with cause. An app-based worker may cancel their acceptance of an offer with cause (i.e., “cancellation with cause”) when ~~((any of the following conditions occur))~~:

~~((1. Information provided pursuant to subsection 8.37.070.A.1 was substantially inaccurate; provided, that a customer’s alteration of a tip amount shall not constitute grounds for cancellation with cause;~~

~~2. The app-based worker cannot complete performance of the offer because the customer is not present or fails to respond to communications from the app-based worker, the customer’s presence or response is required for the app-based work to complete performance of the offer, and the app-based worker has made attempts to contact and/or wait for the customer in accordance with an applicable network company policy, provided that the no-contact or limited-contact deliveries are not considered to require the end customer’s presence;~~

~~3. Timely completion of the offer has become impracticable due to an unforeseen obstacle or occurrence;))~~ 1. The app-based worker has picked up items from a pickup location, and the customer changes the dropoff location such that the estimated engaged time to complete performance of the offer, as disclosed to the app-based worker pursuant to subsection 8.37.070.A.1, increases by five minutes or more.

2. The app-based worker experiences a vehicle incident or malfunction that prevents the app-based worker from completing performance of the offer;

3. The app-based worker experiences a medical emergency that prevents the app-based worker from completing performance of the offer;

4. The app-based worker is providing delivery services and all of the items have already been picked up from the pickup location;

5. Completing the offer requires transporting an item weighing more than 50 pounds, unless the network company discloses that the offer contained an item weighing more than 50 pounds prior to the handling of said item;

6. Completing the offer requires transporting an item more than 63 linear inches in length, unless the network company discloses that the offer contained an item more than 63 linear inches in length prior to the handling of said item;

7. Completing the offer requires handling an unsealed container whose contents pose a health risk to the app-based worker, unless the network company discloses that the offer contained the item prior to the app-based worker's acceptance or handling the item should have been reasonably expected based on other information provided about the offer; or

~~((4.))~~ 8. The app-based worker makes a good faith complaint regarding sexual harassment or discrimination that is alleged to have occurred during performance of the offer.

D. For all cancelled offers, network companies shall allow the app-based worker to communicate the reason for cancellation, including but not limited to reasons included in subsection 8.37.080.C, and any additional information or documentation to support or corroborate a reason for cancellation via the worker platform, email, phone, or other channel provided by the network company. ~~((The network company shall review the stated reason for cancellation for a reasonable time of no less than 72 hours before determining, based on clear and convincing evidence, whether an app-based worker cancelled an offer without cause.))~~

E. Nothing in this Section 8.37.080 shall prohibit a network company from taking action based on a pattern of behavior that a reasonable person would conclude constitutes abuse, including where an app-based

worker repeatedly cancels offers without providing or submitting to the network company any additional information or documentation to verify or corroborate a reason listed under subsection 8.37.080.C.

Section 6. Section 8.37.100 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.100 Notice of rights

* * *

B. The notice of rights shall provide information on:

1. The right to the applicable minimum (~~((per minute))~~) per-hour amount(~~(;))~~ and per-mile amount for each network company earnings period(~~(, and per offer amount))~~ guaranteed by this Chapter 8.37, including a clear statement of the current applicable amounts;

2. A clear statement as to whether the network company identifies as an on-demand network company, a marketplace network company, or neither, and the corresponding timeframe when engaged time and engaged miles apply for a typical offer from that network company (e.g. upon acceptance and/or upon beginning en route by the app-based worker, a reasonable estimate of engaged time mutually agreed upon, or when the app-based worker begins performance), pursuant to Section 8.37.020;

3. The right to receive the information required to be disclosed by this Chapter 8.37 before accepting an offer and performing services in furtherance of an offer;

4. The right to flexibility in making themselves available for work and accepting, rejecting, or cancelling offers under this Chapter 8.37;

5. The right to be protected from retaliation for exercising in good faith the rights protected by this Chapter 8.37; and

6. The right to file a complaint with the Agency or bring a civil action for violation of the requirements of this Chapter 8.37, including but not limited to a network company's or any person's failure to pay the minimum (~~((per minute))~~) per-hour amount (~~(, or per offer amount and))~~ or per-mile amount, or a

network company's or other person's retaliation against an app-based worker or other person for engaging in an activity protected by this Chapter 8.37.

7. The right to a clear statement of the network company's tip policy, including but not limited to whether the network company's online-enabled application or platform allows customers to tip in advance of completion of an online order and whether the network company permits customers to modify or remove tips after performance.

8. The right to a clear statement of the network company's fraudulent use policy pursuant to Section 8.37.090, including where the app-based worker can locate that policy.

C. Network companies shall provide the notice of rights required by subsection 8.37.100.B in an electronic format that is readily accessible to the app-based worker. The notice of rights shall be made available to the app-based worker via smartphone application, email, or online web portal, in English and any language (~~that the network company knows or has reason to know is the primary language of the app-based worker~~) in which the Director issues the model notice of rights required by subsection 8.37.100.A. The Director may issue rules governing the form and content of the notice of rights (~~(, the manner of its distribution,)~~) and required languages for its translation.

* * *

Section 7. Section 8.37.120 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.120 Retaliation prohibited

* * *

B. No network company or any other person shall (~~take any adverse action~~) retaliate against any person because the person has exercised in good faith the rights protected under this Chapter 8.37. Such rights include, but are not limited to, the right to make inquiries about the rights protected under this Chapter 8.37; the right to inform others about their rights under this Chapter 8.37; the right to inform the person's network

company, the person's legal counsel, a union or similar organization, or any other person about an alleged violation of this Chapter 8.37; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this Chapter 8.37; the right to cooperate with the Agency in its investigations of this Chapter 8.37; the right to testify in a proceeding under or related to this Chapter 8.37; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this Chapter 8.37.

* * *

~~((D. It shall be a rebuttable presumption of retaliation if a network company or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 8.37.120. The network company may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.~~

~~E. Proof of retaliation under this Section 8.37.120 shall be sufficient upon a showing that a network company or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 8.37.120 was a motivating factor in the adverse action, unless the network company can prove that the action would have been taken in the absence of such protected activity.~~

~~F.))~~ D. The protections afforded under this Section 8.37.120 shall apply to any person who mistakenly but in good faith alleges violations of this Chapter 8.37.

~~((G.))~~ E. A complaint or other communication by any person triggers the protections of this Section 8.37.120 regardless of whether the complaint or communication is in writing or makes explicit reference to this Chapter 8.37.

Section 8. Section 8.37.125 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.125 Rulemaking authority

The Director is authorized to administer and enforce this Chapter 8.37. The Director is authorized to

promulgate, revise, or rescind rules and regulations deemed necessary(~~(, appropriate, or convenient)~~) to administer, evaluate and enforce the provisions of this Chapter 8.37 pursuant to Chapter 3.02, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 8.37. Any rules promulgated by the Director shall have the force and effect of law and may be relied on by network companies, app-based workers, and other parties to determine their rights and responsibilities under this Chapter 8.37. No rule or regulation promulgated by the Director regarding this Chapter 8.37 shall:

A. Expand the requirements of this Chapter 8.37;

B. Impose additional requirements in excess of those expressly set forth in this Chapter 8.37; or

C. Outside of an enforcement action, or the requirements of subsection 8.37.070.G, require the disclosure of confidential, sensitive, or proprietary business information or trade secrets, or personally identifiable information of a customer or worker.

Section 9. Section 8.37.165 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.165 Complaint procedure

* * *

D. The Agency may send notices to the network company and complainant, including but not limited to:

1. Notice of the alleged violation(s). The Agency may send notice to the network company of the alleged violation(s) of this Chapter 8.37. The Agency shall bear any cost of sending such notice by certified mail or by other means incurring a cost to the Agency. This notice may include but not be limited to:

a. Statement of the alleged violation(s) of this Chapter 8.37; and

b. Description of the remedies available to an app-based worker for violation(s) of this

Chapter 8.37;

2. Response from the network company. The Agency may request the network company to send the Agency relevant information to respond to the alleged violation(s) within an identified timeframe.

3. Notice to the complainant of the response from the network company. The Agency may send a notice to the complainant of the response from the network company. This notice to the complainant may include but not be limited to:

- a. The response from the network company, including any enclosures;
- b. Information on the right to bring a civil action in a court of competent jurisdiction;
- c. Any other information about the status of the complaint; and
- d. Information about the navigation program pursuant to Section 8.37.167.

4. Notice of no response. If the Agency receives no response from the network company within the identified timeframe pursuant to subsection 8.37.165.D.2, the Agency may send a notice of no response to the complainant and the network company and may include proof that the Agency previously sent notice of the alleged violation(s) to the network company.

5. Notice of closure. The Agency may send the complainant and network company notice of the Agency’s completion of the complaint procedure and/or closure of the case.

* * *

Section 10. Section 8.37.170 of the Seattle Municipal Code, enacted by Ordinance 126595, is amended as follows:

8.37.170 Remedies

* * *

E. The Director is authorized to assess fines for a violation of this Chapter 8.37 and may specify that fines are due to the aggrieved party rather than due to the Agency. The Director is authorized to assess fines as follows:

Violation	Fine
Failure to provide app-based worker with up-front information regarding offers under subsection 8.37.070.A	Up to \$575.31 per aggrieved party

Failure to provide app-based worker with electronic receipts within ((24)) 48 hours of each offer's performance ((or cancellation with cause)) that incurs engaged time under subsection 8.37.070.B	Up to \$575.31 per aggrieved party
Failure to provide app-based worker with weekly statements under subsection 8.37.070.C	Up to \$575.31 per aggrieved party
Failure to provide the Agency with records required under subsection 8.37.070.G	Up to \$575.31 per missing record
Failure to provide app-based worker with at least 14 days of notice of a material change to the network company payment calculation under subsection 8.37.070.H	Up to \$575.31 per aggrieved party
Failure to comply with requirements for app-based worker's right to decide when to work and which offers to accept or reject under subsection 8.37.080.A	Up to \$575.31 per aggrieved party
((Failure to comply with requirements for app-based worker's right to be logged into the network company's worker platform under subsection 8.37.080.B	Up to \$575.31 per aggrieved party))
Failure to comply with requirements for app-based worker's cancellation of acceptance of an offer with cause under subsection 8.37.080.C	Up to \$575.31 per aggrieved party
Failure to provide written notice of rights under Section 8.37.100	Up to \$575.31 per aggrieved party
Failure to retain network company records for three years under subsections 8.37.110.A and 8.37.110.B	Up to \$575.31 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 8.37.120	Up to \$1,150.63 per aggrieved party
Failure to provide notice of investigation to app-based workers under subsection 8.37.150.B.2	Up to \$575.31 per aggrieved party
Failure to post or distribute public notice of failure to comply with final order under subsection 8.37.210.A.1	Up to \$575.31 per aggrieved party

For each app-based worker who performs services in Seattle for the network company and for each missing record, the maximum amount that may be imposed in fines in a one-year period for each type of violation for each app-based worker listed above is \$5,755.31. For each app-based worker who performs services in Seattle for the network company, if a fine for retaliation is issued, the maximum amount that may be imposed for each app-based worker in a one-year period is \$23,020.

* * *

I. For non-willful violations that do not result in unpaid compensation and are not based on retaliation, if the network company is in substantial compliance with this Chapter 8.37, the Director shall provide the

network company notice of an alleged violation and a reasonable time period, not fewer than 30 calendar days, to cure the violation and shall not impose any civil penalties, fines, or costs if the network company cures the violation in the reasonable time period. A network company may request additional time to cure for good cause. If the network company fails to cure within the time period allotted, the Director may impose civil penalties, fines, or costs against the network company up to the applicable limit as part of a settlement agreement, Director’s Order, or other enforcement action. This subsection 8.37.170.I shall apply retroactively beginning January 13, 2024, and terminate on January 13, 2025, applying to violations during this time period regardless of when the investigation begins (subject to the applicable statute of limitations under subsection 8.37.150.C).

Section 11. The Council requests the City Auditor, in collaboration with the Office of Labor Standards, to contract with academic researchers who have a proven track record of rigorous analysis of the impacts of network companies and/or labor standards regulations to conduct an evaluation of the impacts of this ordinance for the baseline, one-year, and two-year periods following implementation, to the extent reasonably ascertainable. Areas of evaluation shall include, but not be limited to, the impacts of the requirements of Chapter 8.37 of the Seattle Municipal Code to app-based workers, network companies, restaurants, small businesses, and customers. The Council shall use the results of the evaluation to identify possible areas for revision to accomplish the goals of this ordinance.

Section 12. This ordinance shall take effect as provided by Seattle Municipal Code Sections 1.04.020 and 1.04.070.

Passed by the City Council the _____ day of _____, 2024, and signed by me in open session in authentication of its passage this _____ day of _____, 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this ____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)

SUMMARY and FISCAL NOTE

Department:	Dept. Contact:	CBO Contact:
LEG	Jasmine Marwaha, Karina Bull	N/A

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to app-based worker labor standards; establishing a new compensation scheme for app-based workers with minimum pay requirements and related standards for transparency and flexibility; and amending Sections 8.37.020, 8.37.050, 8.37.060, 8.37.070, 8.37.080, 8.37.100, 8.37.120, 8.37.125, 8.37.165, and 8.37.170 of the Seattle Municipal Code.

Summary and Background of the Legislation: Network companies use online-enabled applications or platforms to connect customers with workers, present offers to workers, and/or facilitate the provision of services by workers. Network companies rely on business models that treat app-based workers as independent contractors who are not classified as employees and therefore are not covered by labor standards established by federal, state, and local laws. In 2022, Council passed the App-Based Worker Minimum Payment Ordinance, which established minimum payment, transparency, and flexibility protections for app-based workers who work for network companies.

The ordinance went into effect on January 13, 2024 and is implemented by the Office of Labor Standards (OLS). In response to increased labor costs associated with the new labor standard, some network companies subsequently increased consumer fees. Council has heard from workers, customers, restaurants, and network companies (through public testimony, written correspondence, and other communications) on the immediate impacts of the new requirements, including but not limited to (1) the increased cost of food delivery, (2) fewer orders, (3) longer wait times for workers between orders, and (4) overall reduced earnings by both restaurants and workers. Some workers also reported steady earnings, but with fewer offers.

This legislation would amend the App-Based Worker Minimum Payment Ordinance with the intention of reducing labor costs for network companies, while still guaranteeing a minimum earnings standard for app-based workers (albeit reduced). The list of changes would include, but are not limited to:

1. Pay Standard

- Remove minimum wage adjustments (associated cost factor, associated time factor)
- Reduce per-mile rate and remove the mileage factor
- Resulting minimum payment standard of \$19.97/hour + \$0.35/mile for engaged time while a worker is performing an offer
- Engaged time (paid time) for on-demand offers would be calculated when worker is “en route” instead of upon acceptance, if performance is not expected immediately upon acceptance

- No payment for offers cancelled with cause, unless a customer changes drop-off location after item is picked up, resulting in five or more minutes of additional engaged time
 - Pay would be calculated over a network company earnings period, instead of per-offer
 - Incentives and bonuses would count toward minimum earnings standard
 - Prohibit the network company from reducing the total amount paid to an app-based worker for performing offers during a network company earnings period if the network company determines that the app-based worker earned *more* than the minimum payment standard
2. Transparency
- Remove certain requirements from up-front disclosure: delivery locations, accessibility, unsealed contents, and customer tip
 - Reduce time to review offer from two minutes to 45 seconds
 - Extend time to provide worker receipt from 24 hours to 48 hours after incurring engaged time
 - Remove certain requirements from worker receipt: method used to calculate payment and pick-up/drop-off locations for deliveries
 - Eliminate requirements for receipts to customer
 - Amend OLS’s ability to require affirmative records production from companies for purposes of administration, evaluation, and enforcement
3. Flexibility
- Remove prohibition on a network company taking “adverse action” against a worker for lower offer acceptance rate or limited availability, and permit other actions up to termination of the worker’s contract for such reasons.
 - Allow the network company to limit worker access to the app, if the network company discloses the reason
 - Narrow and specify the list of reasons a worker can cancel an offer with cause (and therefore not be terminated from the app for cancellation)
4. Enforcement Provisions
- Modify anti-retaliation protections, eliminating presumptions that would otherwise establish retaliation
 - Modify OLS rulemaking authority, clarifying scope of permissible rules
 - Establish a cure period for certain “non-willful” violations, which would prevent OLS from assessing penalties, fines, or other costs for those violations, for the first year of implementation (i.e., January 13, 2024 through January 13, 2025).

The legislation also requests the City Auditor, in collaboration with OLS, to contract with academic researchers to evaluate the impacts of this ordinance for the baseline, one-year, and two-year periods following implementation, to the extent reasonably ascertainable. Areas of evaluation shall include, but not be limited to, the impacts of the requirements of Chapter 8.37 of the Seattle Municipal Code to app-based workers, network companies, restaurants, small businesses, and customers.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation have financial impacts to the City? Yes No

Amending the App-Based Worker Minimum Payment Ordinance would likely have financial impacts for OLS, as the office could incur additional costs to revise rules, outreach materials, and enforcement procedures. To a lesser extent, there could be impacts on the City Attorney’s Office for advising OLS on revised rules and enforcement procedures. There will also likely be financial impacts for the City Auditor contracting with academic researchers to evaluate the impact of the ordinance, but the specific costs are unknown at this time, and will depend on the scope of the evaluation.

Central Staff is prepared to work with OLS and the City Budget Office to develop estimates of these costs, including the impact of additional work on OLS’s existing programs and priorities, whether the costs are short- or long-term, and whether the costs could be absorbed within OLS’s existing budget authority.

In the 2024 Adopted Budget, OLS received about \$493,000 to implement the existing App-Based Worker Minimum Payment Ordinance. Of this amount, \$50,000 was intended to support an outreach campaign, including ad placements, translated informational materials, trainings, and contracted partnerships with local organizations to reach community members with culturally competent and linguistically appropriate services. The remaining amount, \$443,000, continued funding for three positions that were added in the 2023 Adopted Budget: (1) Administrative Staff Assistant; (2) Data Analyst; and (3) Policy Analyst.

To better understand financial implications, Central Staff will request information on the status of outreach campaign expenditures to determine the amount of funds that have already been spent or obligated under contract(s) and the extent to which OLS could reshape the outreach campaign within their existing budget authority to address amended requirements. Central Staff will also request information on the body of work for the three positions to get a better understanding of whether the positions could absorb additional work associated with the proposed amendments. However, it is unclear whether there will be time for Central Staff to receive and analyze this information prior to Council voting on this legislation.

Financial impacts are not yet known; Central Staff is prepared to work with OLS and CBO to develop estimates on potential costs and position changes to complete the below chart.

Expenditure Change (\$); General Fund	2024	2025 est.	2026 est.	2027 est.	2028 est.
Expenditure Change (\$); Other Funds	2024	2025 est.	2026 est.	2027 est.	2028 est.

Revenue Change (\$); General Fund	2024	2025 est.	2026 est.	2027 est.	2028 est.

Revenue Change (\$); Other Funds	2024	2025 est.	2026 est.	2027 est.	2028 est.

Number of Positions	2024	2025 est.	2026 est.	2027 est.	2028 est.

Total FTE Change	2024	2025 est.	2026 est.	2027 est.	2028 est.

3.d. Other Impacts

Does the legislation have other financial impacts to The City of Seattle, including direct or indirect, one-time or ongoing costs, that are not included in Sections 3.a through 3.c? If so, please describe these financial impacts. N/A

If the legislation has costs, but they can be absorbed within existing operations, please describe how those costs can be absorbed. The description should clearly describe if the absorbed costs are achievable because the department had excess resources within their existing budget or if by absorbing these costs the department is deprioritizing other work that would have used these resources.

Central Staff is prepared to work with OLS and CBO to understand if/how any additional costs could be absorbed within existing operations.

Please describe any financial costs or other impacts of *not* implementing the legislation. If this legislation is not implemented, OLS will continue to administer the App-Based Worker Minimum Payment Ordinance as enacted and within the office’s existing operations. Notably, this legislation is intended to address the reported negative impacts of such requirements on workers, restaurants, customers, and network companies. More information is necessary for Central Staff to forecast the implications of *not* implementing the legislation on these entities.

4. OTHER IMPLICATIONS

a. Please describe how this legislation may affect any departments besides the originating department.

This legislation is Council-generated. Impacts on other departments include: OLS’s implementation of amendments; the City Attorney Office’s responses to legal referrals from OLS; and the Hearing Examiner’s responses to requests for hearings on appeals from respondents and aggrieved parties.

b. Does this legislation affect a piece of property? If yes, please attach a map and explain any impacts on the property. Please attach any Environmental Impact Statements, Determinations of Non-Significance, or other reports generated for this property.

No.

c. Please describe any perceived implication for the principles of the Race and Social Justice Initiative.

i. How does this legislation impact vulnerable or historically disadvantaged communities? How did you arrive at this conclusion? In your response please consider impacts within City government (employees, internal programs) as well as in the broader community.

The City's Race and Social Justice Initiative works toward eliminating racial disparities and achieving racial equity in Seattle. Black, Indigenous, and other People of Color face unique barriers to economic insecurity and disproportionately work in low-wage jobs with insecure working conditions. Black and Latinx workers are overrepresented among app-based workers, comprising almost 42 percent of app-based workers but less than 29 percent of the overall labor force. Many restaurants using app-based delivery services are small businesses owned by individuals or families in low-income and historically disenfranchised communities. Customers, including those with disabilities, may depend on app-based workers to provide essential services, such as delivery of prepared food and groceries.

This legislation intends to address reports of negative impacts of the App-Based Worker Minimum Payment Ordinance, a labor standard covering 40,000 app-based workers that was approved by Council in 2022 and became effective on January 13, 2024.

This legislation includes agreed-upon amendments advanced by [Drive Forward](#) (gig worker organization) and several covered network companies. The intention of these amendments is to reduce costs for customers, increase orders to restaurants, and improve pay for a growing workforce that is disproportionately comprised of BIPOC workers.

More information is necessary for Central Staff to understand the current impacts of the App-Based Worker Minimum Payment Ordinance and forecast implications of the proposed amendments.

ii. Please attach any Racial Equity Toolkits or other racial equity analyses in the development and/or assessment of the legislation.

N/A

iii. What is the Language Access Plan for any communications to the public?

OLS would create and distribute model notices of rights in English and other languages. Network companies would provide workers with a notice of rights (via smartphone application, email, or online web portal) in English and any language included in the OLS model notices.

Additionally, OLS has existing contracts with community and business organizations to provide culturally competent and language-specific outreach on the City’s labor standards to low-income workers and small businesses. While there is not an established language access plan for informing the public about this legislation, Central Staff is prepared to work with OLS to determine if existing contracts, or the funds dedicated for the outreach campaign, could be used for such purposes.

d. Climate Change Implications

i. Emissions: How is this legislation likely to increase or decrease carbon emissions in a material way? Please attach any studies or other materials that were used to inform this response.

N/A

ii. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle’s resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

N/A

e. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s)? What mechanisms will be used to measure progress towards meeting those goals?

During enforcement actions, OLS would have authority to require network company records and could use these records to determine whether individual companies are complying with the ordinance and evaluate progress toward meeting the ordinance’s policy goals.

OLS posts information on outreach and enforcement efforts on its [on-line, interactive dashboard](#). OLS could use the same metrics publicized for other labor standards (e.g., number of inquiries, number of investigations, and amounts of remedies) for this legislation.

5. CHECKLIST

Please click the appropriate box if any of these questions apply to this legislation.

- Is a public hearing required?**
- Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required?**
- If this legislation changes spending and/or revenues for a fund, have you reviewed the relevant fund policies and determined that this legislation complies?**
- Does this legislation create a non-utility CIP project that involves a shared financial commitment with a non-City partner agency or organization?**

If yes, please review requirements in Resolution 31203 for applicability and complete and attach “Additional risk analysis and fiscal analysis for non-utility partner projects” form.

6. ATTACHMENTS

List Summary Attachments (if any):

Summary Attachment 1 – Ordinance 126595 – App-Based Worker Minimum Payment Ordinance

1
2
3 **CITY OF SEATTLE**
4 **ORDINANCE 126595**
5 **COUNCIL BILL 120294**

6 AN ORDINANCE relating to app-based worker labor standards; establishing a compensation
7 scheme for app-based workers with minimum pay requirements and related standards for
8 transparency and flexibility; amending Sections 3.02.125, 3.15.000, and 6.208.020 of the
9 Seattle Municipal Code; and adding a new Title 8 and Chapter 8.37 to the Seattle
10 Municipal Code.

11
12 WHEREAS, an estimated 40,000 app-based workers work in Seattle, including those who are
13 Black, Indigenous, and other People of Color (BIPOC), immigrants, workers with
14 disabilities, LGBTQ+ workers, and single parents; and

15 WHEREAS, the community depends on app-based workers to provide valuable services, but
16 network companies often pay app-based workers subminimum wages despite the promise
17 of good wages, flexibility, and accessibility; and

18 WHEREAS, the definitions of “employee” and “employer” in local, state, and federal laws are
19 broad, but network companies rely on business models that treat app-based workers as
20 “independent contractors,” thereby creating barriers for app-based workers to access
21 employee protections such as minimum wage, unemployment benefits, workers’
22 compensation, and paid family and medical leave; and

23 WHEREAS, the U.S. Bureau of Labor Statistics (BLS) data show that Black workers account for
24 23 percent of app-based workers performing in-person work, higher than their overall
25 share of employment (12 percent), and Latinx workers account for 19 percent of app-
26 based workers performing in-person work, higher than their overall share of employment
27 (17 percent); and

1 WHEREAS, Black and Latinx workers are overrepresented among app-based workers,
2 comprising almost 42 percent of app-based workers but less than 29 percent of the overall
3 labor force, and are disproportionately deprived of core employee protections when
4 network companies treat them as independent contractors; and

5 WHEREAS, BIPOC workers face unique barriers to economic insecurity and disproportionately
6 must accept low-wage, unsafe, and insecure working conditions; and

7 WHEREAS, BIPOC workers have long been heavily concentrated in exploitative industries; and

8 WHEREAS, the City is committed to ending racial disparities and achieving racial equity in
9 Seattle; and

10 WHEREAS, the City intends to address the inequities of app-based work by ensuring that such
11 workers earn at least the City’s minimum wage plus reasonable expenses, receive
12 transparent information on job offers and pay, and exercise the flexibility promised by
13 network companies; and

14 WHEREAS, the City intends to retain the current definitions of worker classification under
15 Seattle’s labor standards and does not intend to create a new classification of workers
16 distinct from employees or independent contractors; and

17 WHEREAS, the City intends to ensure that all workers can benefit from the protections of
18 Seattle’s labor standards; and

19 WHEREAS, the City is a leader on wage, labor, and workforce practices that improve workers’
20 lives, support economic security, and contribute to a fair, healthy, and vibrant economy;
21 and

1 WHEREAS, the Office of Labor Standards will consult with and consider input from
2 stakeholders, including network companies, app-based workers, and worker
3 organizations in the rulemaking process.; and

4 WHEREAS, establishing labor standards for app-based workers requires appropriate action by
5 the City Council; NOW, THEREFORE,

6 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

7 Section 1. The City Council (“Council”) finds and declares that:

8 A. App-based work is a growing source of income for workers in Seattle and across the
9 country.

10 B. In the exercise of The City of Seattle’s police powers, the City is granted authority to
11 pass regulations designed to protect and promote public health, safety, and welfare.

12 C. This ordinance protects and promotes public health, safety, and welfare by
13 establishing a compensation scheme for app-based workers with minimum pay requirements and
14 related standards for transparency and flexibility.

15 D. Numerous studies, including but not limited to studies by the Economic Policy
16 Institute, Center for American Progress, and the Brookings Institution, show that minimum
17 payment and other labor standards benefit employers and hiring entities by improving worker
18 performance, reducing worker turnover, and thereby improving productivity and the quality of
19 the services provided by workers, including app-based workers.

20 E. Many Seattle workers, including app-based workers, cannot fully participate in the
21 community’s dynamic civic life or pursue its myriad educational, cultural, and recreational
22 opportunities because they struggle to meet their households’ most basic needs.

1 F. The National Employment Law Project reports that instituting minimum pay
2 requirements can confer critical income gains for workers and begin to reverse decades of
3 growing pay inequality between the most underpaid workers and workers receiving close to the
4 median wage, particularly along racial and gender lines.

5 G. Transparent information on job opportunities, along with the flexibility to determine
6 hours of availability and which offers to accept, reject, or cancel with cause, allows workers to
7 make informed decisions on how and when to earn their income without fear of financial penalty
8 or other adverse actions.

9 H. Requiring disclosure of information and records on worker compensation and the
10 nature of network company charges supports efforts to verify compliance with pay requirements.

11 I. Establishing minimum pay and pay-related labor standards promotes the general
12 welfare, health, and prosperity of Seattle by ensuring that workers have stable incomes and can
13 better support and care for their families and fully participate in Seattle’s civic, cultural, and
14 economic life.

15 J. These labor standards also benefit the Seattle economy by increasing app-based worker
16 earnings and thereby boosting consumer spending in Seattle and benefiting the economy overall.

17 Section 2. A new Title 8 is added to the Seattle Municipal Code as follows:

18 **TITLE 8 LABOR STANDARDS**

19 Section 3. A new Chapter 8.37 is added to the Seattle Municipal Code as follows:

20 **Chapter 8.37 APP-BASED WORKER MINIMUM PAYMENT**

21 **8.37.010 Short title**

22 This Chapter 8.37 shall constitute the “App-Based Worker Minimum Payment Ordinance” and
23 may be cited as such.

1 **8.37.020 Definitions**

2 For purposes of this Chapter 8.37:

3 “Acceptance” means the initial communication from an app-based worker to a network
4 company that the app-based worker intends to perform services in furtherance of an offer,
5 including but not limited to indicating acceptance through the worker platform.

6 “Adverse action” means reducing compensation; garnishing tips or gratuities; temporarily
7 or permanently denying or limiting access to work, incentives, or bonuses; offering less desirable
8 work; terminating; deactivating; threatening; penalizing; retaliating; engaging in unfair
9 immigration-related practices; filing a false report with a government agency; or otherwise
10 discriminating against any person for any reason prohibited by Section 8.37.120. “Adverse
11 action” for an app-based worker may involve any aspect of the app-based worker’s work,
12 including compensation, work hours, volume, and frequency of offers made available,
13 desirability and compensation rates of offers made available, responsibilities, or other material
14 change in the terms and conditions of work or in the ability of an app-based worker to perform
15 work. “Adverse action” also includes any action by the network company or a person acting on
16 the network company’s behalf that would dissuade a reasonable person from exercising any right
17 afforded by this Chapter 8.37.

18 “Agency” means the Office of Labor Standards and any division therein.

19 “Aggrieved party” means an app-based worker or other person who suffers tangible or
20 intangible harm due to a network company’s or other person’s violation of this Chapter 8.37.

21 “App-based worker” means a person who has entered into an agreement with a network
22 company governing the terms and conditions of use of the network company’s worker platform
23 or a person affiliated with and accepting offers to perform services for compensation via a

1 network company’s worker platform. For purposes of this Chapter 8.37, at any time, but not
2 limited to, when an app-based worker is logged into the network company’s worker platform, the
3 worker is considered an app-based worker.

4 “Application dispatch” means technology that allows customers to directly request
5 dispatch of app-based workers for provision of services and/or allows app-based workers or
6 network companies to accept offers to perform services for compensation and payments for
7 services via the internet using interfaces, including but not limited to website, smartphone, and
8 tablet applications.

9 “Associated cost factor” means the additional percentage of the minimum wage
10 equivalent rate that reasonably compensates app-based workers for the non-mileage expenses
11 that are necessary to conduct app-based work, which include but are not limited to the following:

- 12 1. Employer-side payroll taxes that app-based workers must pay;
- 13 2. Cost of paid family and medical leave insurance;
- 14 3. Cost of state-provided unemployment insurance;
- 15 4. Cost of workers’ compensation insurance;
- 16 5. Business taxes that app-based workers must pay;
- 17 6. Business licensing fees that app-based workers must pay; and
- 18 7. Cost of miscellaneous expenses such as purchase of cellular phones, data plans,

19 and other equipment required for work.

20 “Associated mileage factor” means the additional percentage of the mileage rate that
21 reasonably compensates app-based workers for miles traveled without compensation that are
22 necessary to conduct app-based work, which may include but is not limited to the following:

1 1. Miles traveled after completing performance of an offer, to relocate to locations
2 where additional offers are likely to be available or to return to the starting location; and/or

3 2. Miles traveled to locations for rest breaks, meal breaks, restroom access, and
4 administrative needs.

5 “Associated time factor” means the additional percentage of the minimum wage
6 equivalent rate that reasonably compensates app-based workers for the time that app-based
7 workers spend working or engaged to wait for work without compensation to perform app-based
8 work, including but not limited to the following:

- 9 1. Reviewing offers;
- 10 2. Communicating with network companies and customers;
- 11 3. Relocating in anticipation of future offers;
- 12 4. Conducting administrative tasks; and
- 13 5. Taking rest breaks.

14 “Cancellation with cause” means cancellation of a previously accepted offer by an app-
15 based worker for reasons identified in subsection 8.37.080.C.

16 “Cancellation without cause” means cancellation or incomplete performance of a
17 previously accepted offer by an app-based worker without a given reason, or for a reason not
18 listed in subsection 8.37.080.C.

19 “City” means The City of Seattle.

20 “Compensation” means the total amount of payment owed to an app-based worker by
21 reason of performing work facilitated or presented by the network company, including but not
22 limited to network company payments, bonuses, incentives, and tips earned from customers.

1 “Creative services or works” means labor that results in or contributes to the creation of
2 original works, as well as the works resulting from such labor. The term “creative services or
3 works” includes but is not limited to fiction and non-fiction writing, art, photography, graphic
4 design, marketing, and related consulting services.

5 “Customer” means a paying customer and/or recipient of an online order.

6 “Director” means the Director of the Office of Labor Standards or the Director’s
7 designee.

8 “Engaged miles” means miles traveled during engaged time in a vehicle that the network
9 company does not own and maintain, or miles traveled during engaged time in a vehicle leased
10 by the network company or its agent to the app-based worker.

11 “Engaged time” means the period of time in which an app-based worker performs
12 services in furtherance of an offer facilitated or presented by a network company or participates
13 in any training program required by a network company. Engaged time shall apply as described
14 below:

15 1. If an offer is being facilitated or presented by an on-demand network company,
16 or is an on-demand offer, “engaged time” begins upon the app-based worker’s acceptance of the
17 offer and ends upon the app-based worker’s completing performance of the offer, cancellation of
18 the offer by the network company or customer, or cancellation with cause of the app-based
19 worker’s acceptance of the offer pursuant to subsection 8.37.080.C.

20 2. In all other circumstances, “engaged time” begins when the app-based worker
21 begins performance of the offer or when the app-based worker reports to a location designated in
22 the offer. Engaged time ends upon the app-based worker’s completing performance of the offer,

1 cancellation of the offer by the network company or customer, or cancellation with cause of the
2 app-based worker's acceptance of the offer pursuant to subsection 8.37.080.C.

3 4. Offers ending in a cancellation without cause by an app-based worker shall not
4 incur any engaged time.

5 The Director may issue rules on "engaged time" for (a) offers with non-compensable
6 time, such as sleep time or other periods of off-duty time; or (b) offers with periods of time when
7 the worker is not completely relieved of the duty to perform services and cannot use the time
8 effectively for their own purposes.

9 "Eating and drinking establishment" means "eating and drinking establishment" as
10 defined in Section 23.84A.010.

11 "Food processing" means "food processing" as defined in Section 23.84A.012.

12 "Franchise" means an agreement by which:

13 1. A person is granted the right to engage in the business of offering, selling, or
14 distributing goods or services under a marketing plan prescribed or suggested in substantial part
15 by the grantor or its affiliate;

16 2. The operation of the business is substantially associated with a trademark,
17 service mark, trade name, advertising, or other commercial symbol designated, owned by, or
18 licensed by the grantor or its affiliate; and

19 3. The person pays, agrees to pay, or is required to pay, directly or indirectly, a
20 franchise fee.

21 "Front pay" means the compensation an app-based worker would earn or would have
22 earned if reinstated to their former position.

1 “Hearing Examiner” means the official appointed by the City Council and designated as
2 the Hearing Examiner under Chapter 3.02 or that person’s designee (e.g., Deputy Hearing
3 Examiner or Hearing Examiner Pro Tem).

4 “Incentive” means a sum of money paid to an app-based worker in addition to the
5 guaranteed minimum network company payment for an offer, upon completion of specific tasks
6 presented by the network companies, including but not limited to completing performance of a
7 certain number of offers, completing performance of a certain number of consecutive offers,
8 completing performance of an offer subject to a price multiplier or variable pricing policy,
9 making oneself available to accept offers in a particular geographic location during a specified
10 period of time, or recruiting new app-based workers.

11 “Marketplace network company” means a network company primarily engaged in
12 facilitating or presenting pre-scheduled offers in which (a) the application or platform
13 enables the prospective customer and app-based worker to exchange information about the
14 scope and details of services to be performed, prior to the customer placing the online order
15 for those services or the app-based worker accepting the offer; (b) the app-based worker sets
16 their own rates; and (c) the network company does not monitor offers by mileage or time.
17 On-demand network companies and companies that primarily provide delivery services are
18 not marketplace network companies.

19 When determining whether a network company is “primarily engaged in facilitating or
20 presenting pre-scheduled offers in which (a) the application or platform enables the prospective
21 customer and app-based worker to exchange information about the scope and details of services
22 to be performed, prior to the customer placing the online order for those services or the app-
23 based worker accepting the offer; (b) the app-based worker sets their own rates; and (c) the
24 network company does not monitor offers by mileage or time” the Agency may consider any

1 number of factors, including but not limited to the following examples: number of pre-scheduled
2 offers relative to the network company’s overall offers; how app-based worker rates are set; what
3 information regarding offer mileage or offer time a network company knows before, during, or
4 after performance of an offer; information from app-based workers performing offers through the
5 application or platform; marketing or promotional materials from the network company; or other
6 public statements from representatives of the network company.

7 “Minimum wage equivalent rate” means the per-minute equivalent of the “hourly
8 minimum wage” established for Schedule 1 employers in Chapter 14.19. In 2022, the “hourly
9 minimum wage” established for Schedule 1 employers in Chapter 14.19 is \$17.27 and the
10 resultant minimum wage equivalent rate is \$0.288.

11 “Network company” means an organization, whether a corporation, partnership, sole
12 proprietor, or other form, operating in Seattle, that uses an online-enabled application or
13 platform, such as an application dispatch system, to connect customers with app-based workers,
14 present offers to app-based workers through a worker platform, and/or facilitate the provision of
15 services for compensation by app-based workers.

16 1. The term “network company” includes any such entity or person acting directly
17 or indirectly in the interest of a network company in relation to the app-based worker.

18 2. The term “network company” excludes:

19 a. An entity offering services that enable individuals to schedule
20 appointments with and/or process payments to users, when the entity neither engages in
21 additional intermediation of the relationships between parties to such transactions nor engages in
22 any oversight of service provision; or

1 b. An entity operating digital advertising and/or messaging platforms,
2 when the entity neither engages in intermediation of the payments or relationships between
3 parties to resulting transactions nor engages in any oversight of service provision.

4 c. An entity that meets the definition of “transportation network company”
5 as defined by RCW 46.04.652.

6 d. An entity that meets the definition of “for hire vehicle company” or
7 “taxicab association” as defined in Section 6.310.110.

8 A company that meets the definition of network company in this subsection and
9 does not fall within any of the exclusions contained in this subsection is subject to this Chapter
10 8.37.

11 “Network company payment” means the amount owed to an app-based worker by reason
12 of performing services in furtherance of an offer facilitated or presented by the network
13 company, including but not limited to payment for providing services and/or commissions, or
14 participating in any training program required by a network company.

15 “Offer” means one or more online orders presented to an app-based worker as one
16 opportunity to perform services for compensation that the app-based worker may accept or
17 reject.

18 1. An opportunity to perform services for compensation includes but is not limited
19 to an opportunity described via a worker platform as a shift, a period of time to be spent engaged
20 in service provision, a continuous period of time in which the app-based worker must make
21 themselves available to perform services, or any other continuous period of time when the worker
22 is not completely relieved of the duty to perform the service(s), and such a period of time shall
23 be considered as one offer.

1 2. The term “offer” includes pre-scheduled offers and on-demand offers.

2 “On-demand network company” means a network company that is primarily engaged in
3 facilitating or presenting on-demand offers to app-based workers.

4 1. The term “on-demand network company” includes but is not limited to a
5 network company operating in Seattle that is primarily engaged in facilitating or presenting on-
6 demand offers to app-based workers for delivery services from one or more of the following: (a)
7 eating and drinking establishments, (b) food processing establishments, (c) grocery stores, or (d)
8 any facility supplying groceries or prepared food and beverages for an online order.

9 2. When determining whether a network company is “primarily engaged in
10 facilitating or presenting on-demand offers to app-based workers,” the Agency may consider any
11 number of factors, including but not limited to the following examples: number of on-demand
12 offers relative to the network company’s overall offers; information from app-based workers;
13 marketing or promotional materials from the network company; or other public statements from
14 representatives of the network company.

15 “On-demand offer” means an offer facilitated or presented by a network company to an
16 app-based worker that requires performance to be initiated within two hours of acceptance (i.e.,
17 an offer that is not a prescheduled offer).

18 “Online order” means an order for services that is placed through an online-enabled
19 application or platform, such as an application dispatch system, and that is facilitated by a
20 network company or presented by a network company for its own benefit. The Director may
21 issue rules further defining the definition of “online order” and the types of transactions excluded
22 from this definition. The term “online order” does not include the following transactions:

23 1. Sale or rental of products or real estate;

1 2. Payment in exchange for a service subject to professional licensure that has
2 been listed by the Director pursuant to this Section 8.37.020;

3 3. Payment in exchange for services wholly provided digitally;

4 4. Payment in exchange for creative services or works;

5 5. Transportation Network Company (TNC) dispatched trips. For purposes of this
6 subsection, “TNC dispatched trips” mean the provision of transportation by a driver for a
7 passenger through the use of a transportation network company's application dispatch system ;
8 and

9 6. Transportation provided by taxicabs or for-hire vehicles, as defined in Chapter
10 6.310.

11 “Operating in Seattle” means, with respect to a network company, facilitating or
12 presenting offers to provide services for compensation using an online-enabled application or
13 platform, such as an application dispatch system, to any app-based worker, where such services
14 are performed in Seattle.

15 “Paying customer” means a person or entity placing an online order via a network
16 company’s online-enabled application or platform.

17 “Perform services in Seattle” means activities, conducted by an app-based worker in
18 furtherance of an offer, that occur within the geographic boundaries of Seattle.

19 1. The term “perform services in Seattle” includes any time spent on a
20 commercial stop in Seattle that is related to the provision of delivery or other services associated
21 with an offer.

22 2. The term “perform services in Seattle” does not include stopping for refueling,
23 stopping for a personal meal or errands, or time spent in Seattle solely for the purpose of

1 travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle
2 with no commercial stops in Seattle.

3 “Pre-scheduled offer” means an offer that is facilitated or presented by a network
4 company to an app-based worker at least two hours prior to when the app-based worker is
5 required to initiate performance.

6 “Rate of inflation” means 100 percent of the annual average growth rate of the bi-
7 monthly Seattle-Tacoma-Bellevue Area Consumer Price Index for Urban Wage Earners and
8 Clerical Workers, termed CPI-W, for the 12-month period ending in August; provided that the
9 percentage increase shall not be less than zero.

10 “Respondent” means the network company or any person who is alleged or found to have
11 committed a violation of this Chapter 8.37.

12 “Service subject to professional licensure” means a service that legally requires
13 authorization or certification for a regulatory purpose for an individual to engage in the service
14 as an occupation, trade, or business. The Director shall issue rules that establish a list of
15 professional licenses indicative of occupations or trades in which workers possess significant
16 bargaining power and influence over their compensation and conditions of work. In establishing
17 this list, the Director shall consider, at a minimum, the licensing requirements of the Washington
18 State Department of Licensing, the Washington State Bar Association, and the Washington
19 Medical Commission.

20 “Standard mileage rate” means the current standard mileage rate established by the
21 United States Internal Revenue Service (IRS) for calculation of the costs of operating an
22 automobile. This mileage rate is adjusted annually by the IRS. For example, the 2022 mileage
23 rate is \$0.585.

1 “Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in
2 recognition of some service performed for the customer by the app-based worker receiving the
3 tip.

4 “Unsealed” means loose items or items in packaging that have the potential to open, spill,
5 or otherwise expose an app-based worker to its contents, including but not limited to delivery
6 bags, boxes, or other containers designed to allow customers to transport hot food or groceries to
7 their homes. The term “unsealed” does not include individual items pre-packaged into a bag,
8 box, or other container that is then sealed in a manner designed to keep its contents securely
9 contained, inaccessible, and out of view of the app-based worker.

10 “Worker platform” means the worker-facing application dispatch system software or any
11 online-enabled application service, website, or system, used by an app-based worker, that
12 enables the arrangement of services for compensation.

13 “Written” or “in writing” means a printed or printable communication in physical or
14 electronic format including a communication that is transmitted through email, text message, or a
15 computer system, or is otherwise sent or maintained electronically, including via the worker
16 platform.

17 **8.37.030 App-based worker coverage**

18 A. An app-based worker is covered by this Chapter 8.37 if the app-based worker
19 performs services in Seattle facilitated or presented by a network company covered by this
20 Chapter 8.37.

21 1. If an app-based worker begins engaged time in Seattle, the requirements of this
22 Chapter 8.37 apply, regardless of where the app-based worker terminates performance of the
23 offer.

1 2. If an app-based worker begins engaged time outside of Seattle, the
2 requirements of this Chapter 8.37 apply only for the portion of services that occur within Seattle.

3 B. An app-based worker who is a covered employee under Chapter 14.19 for a covered
4 network company, or a covered employee under Chapter 14.19 for a customer of an online order,
5 is not a covered app-based worker under this Chapter 8.37.

6 **8.37.040 Network company coverage**

7 A. For the purposes of this Chapter 8.37, covered network companies are limited to those
8 that facilitate work performed by 250 or more app-based workers worldwide regardless of where
9 those workers perform work, including but not limited to chains, integrated enterprises, or
10 franchises associated with a franchise or network of franchises that facilitate work performed by
11 250 or more app-based workers worldwide in aggregate.

12 B. To determine the number of app-based workers performing work for the current
13 calendar year:

14 1. The calculation is based upon the average number per calendar week of app-
15 based workers who worked for compensation during the preceding calendar year for any and all
16 weeks during which at least one app-based worker worked for compensation. For network
17 companies that did not have any app-based workers during the preceding calendar year, the
18 number of app-based workers counted for the current calendar year is calculated based upon the
19 average number per calendar week of app-based workers who worked for compensation during
20 the first 90 calendar days of the current year in which the network company engaged in business.

21 2. All app-based workers who worked for compensation shall be counted,
22 including but not limited to:

23 a. App-based workers who are not covered by this Chapter 8.37;

1 b. App-based workers who worked in Seattle; and

2 c. App-based workers who worked outside Seattle.

3 C. Separate entities that form an integrated enterprise shall be considered a single
4 network company under this Chapter 8.37. Separate entities will be considered an integrated
5 enterprise and a single network company under this Chapter 8.37 where a separate entity controls
6 the operation of another entity. The factors to consider in making this assessment include but are
7 not limited to:

8 1. Degree of interrelation between the operations of multiple entities;

9 2. Degree to which the entities share common management;

10 3. Centralized control of labor relations;

11 4. Degree of common ownership or financial control over the entities; and

12 5. Use of a common brand, trade, business, or operating name.

13 D. For the purposes of this Chapter 8.37, covered network companies do not include any
14 company that meets the definition of a marketplace network company.

15 **8.37.050 Minimum network company payment**

16 A. For each offer resulting in engaged time or engaged miles, a network company shall
17 compensate app-based workers, and/or ensure app-based workers receive, at least the equivalent
18 of a minimum network company payment that is the greater of either:

19 1. The minimum per-minute amount for engaged time under subsection
20 8.37.050.B.1 plus the minimum per-mile amount for engaged miles under subsection
21 8.37.050.B.2; or

22 2. The minimum per-offer amount under subsection 8.37.050.B.4.

23 B. Minimum network company payment calculation

1 1. Per-minute amount. For each minute of engaged time, a network company
2 shall compensate app-based workers, and/or ensure that app-based workers receive, at least the
3 equivalent of the total of the minimum wage equivalent rate multiplied by the associated cost
4 factor multiplied by the associated time factor. In 2022, the per-minute amount is \$0.38. On the
5 effective date of this Chapter 8.37, and on January 1 of each year thereafter, the per-minute
6 amount shall be increased to reflect any adjustment(s) to the minimum wage equivalent rate,
7 associated cost factor, or associated time factor. The Agency shall determine the per-minute
8 amount and file a schedule of such amount with the City Clerk.

9 a. Associated cost factor. The associated cost factor is 1.12.

10 b. Associated time factor. The associated time factor is 1.17.

11 2. Per-mile amount. For each engaged mile traveled, a network company shall
12 compensate app-based workers, and/or ensure that app-based workers receive, at least the
13 equivalent of the standard mileage rate multiplied by the associated mileage factor, which is
14 1.10. In 2022, the per-mile amount is \$0.64. On the effective date of this Chapter 8.37, and on
15 January 1 of each year thereafter, the per-mile amount shall be increased annually to reflect any
16 adjustment(s) to the standard mileage rate or associated mileage factor. The Agency shall
17 determine the per-mile amount and file a schedule of such amount with the City Clerk.

18 3. The calculations described in this subsection 8.37.050.B are expressed in
19 equation form as:

$$\begin{aligned} & \text{(Engaged minutes x minimum wage equivalent rate} \\ & \quad \text{x associated cost factor x associated time factor)} \\ & + \text{(engaged miles x standard mileage rate x associated mileage factor)} \\ & = \text{minimum network company payment per offer.} \end{aligned}$$

24 The established current rates and factors result in the following calculation for the
25 required minimum network company payment:

$$\begin{aligned} & (\text{Engaged minutes} \times \$0.288 \times 1.12 \times 1.17) \\ & + (\text{Engaged miles} \times \$0.585 \times 1.10) \\ & = \$0.38/\text{minute} + \$0.64/\text{mile}. \end{aligned}$$

4 4. Per-offer amount. For each offer resulting in engaged time or engaged miles, a
5 network company shall compensate app-based workers a minimum per-offer amount of at least
6 \$5. The Director may issue rules excluding certain offers from payment of the minimum per-
7 offer amount under subsection 8.37.050.B.4, including but not limited to on-demand offers
8 cancelled by the customer within a grace period of not more than five minutes after acceptance.

9 a. Effective January 1, 2024, the minimum per-offer amount paid to an
10 app-based worker shall be increased on a percentage basis to reflect the rate of inflation and
11 calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine
12 the amount and file a schedule of such amount with the City Clerk.

13 5. Application of minimum network company payment requirements.

14 a. A minimum network company payment shall be provided for any offer
15 resulting in engaged time and engaged miles by the app-based worker, offers cancelled by a
16 customer or the network company, and offers for which acceptance was cancelled with cause by
17 the app-based worker pursuant to subsection 8.37.080.C.

18 b. If an app-based worker accepts a new offer during performance of a
19 previously accepted offer, and both offers are facilitated or presented by the same network
20 company, engaged time and engaged miles accrued during any period of time in which
21 performance of the offers overlaps shall be subject to the minimum compensation requirements
22 for a single offer under this subsection 8.37.050.B.

23 C. Adjustment of the associated cost factor, associated time factor, and associated
24 mileage factor

1 1. Adjustment of the associated cost factor. Beginning three years after the
2 effective date of this Chapter 8.37, the Director by rule may adjust the associated cost factor
3 every three years; provided, that this adjustment shall not result in reduction of the associated
4 cost factor below 1.12. In adjusting the associated cost factor, the Director shall consider relevant
5 and available sources of data, which may include but are not limited to: app-based worker
6 surveys; data provided by network companies; data provided by app-based workers; data
7 provided by customers; data from other jurisdictions; data available through academic, policy, or
8 community-based organizations; public testimony; and stakeholder interviews. The Director may
9 consider the non-exhaustive list of factors that comprise the “associated cost factor” as defined in
10 Section 8.37.020, as well as any other factor the Director determines is necessary to further the
11 purposes of this Chapter 8.37. The Agency shall file a schedule of any adjustment(s) to the
12 associated cost factor with the City Clerk.

13 2. Adjustment to the associated time factor. Beginning three years after the
14 effective date of this Chapter 8.37, the Director by rule may adjust the associated time factor
15 every three years; provided, that this adjustment shall not result in reduction of the associated
16 time factor below 1.17. In adjusting the associated time factor, the Director shall consider
17 relevant and available sources of data, which may include but are not limited to: app-based
18 worker surveys; data provided by network companies; data provided by app-based workers; data
19 provided by customers; data from other jurisdictions; data available through academic, policy, or
20 community-based organizations; public testimony provided; and stakeholder interviews. The
21 Director may consider the non-exhaustive list of factors that comprise the “associated time
22 factor” as defined in Section 8.37.020, as well as any other factor the Director determines is

1 necessary to further the purposes of this Chapter 8.37. The Agency shall file a schedule of any
2 adjustment(s) to the associated time factor with the City Clerk.

3 3. Adjustment to the associated mileage factor. Beginning three years after the
4 effective date of this Chapter 8.37, the Director by rule may adjust the associated mileage factor
5 every three years; provided, that this adjustment shall not result in reduction of the associated
6 mileage factor below 1.10. In adjusting the associated mileage factor, the Director shall consider
7 relevant and available sources of data, which may include but are not limited to: app-based
8 worker surveys; data provided by network companies; data provided by app-based workers; data
9 provided by customers; data from other jurisdictions; data available through academic, policy, or
10 community-based organizations; public testimony provided; and stakeholder interviews. The
11 Director may consider the non-exhaustive list of factors that comprise the “associated mileage
12 factor” as defined in Section 8.37.020, as well as any other factor the Director determines is
13 necessary to further the purposes of this Chapter 8.37. The Agency shall file a schedule of any
14 adjustment(s) to the associated mileage factor with the City Clerk.

15 D. Deductions

16 1. A network company may only deduct compensation when the app-based
17 worker expressly authorizes the deduction in writing and does so in advance for a lawful purpose
18 for the benefit of the app-based worker. Any such authorization by an app-based worker must be
19 voluntary and knowing.

20 2. Neither the network company nor any person acting in the interest of the
21 network company may derive any financial profit or benefit from any of the deductions under
22 this subsection 8.37.050.D. For the purposes of this subsection 8.37.050.D, reasonable interest
23 charged by the network company, or any person acting in the interest of a network company, for

1 a loan or credit extended to the app-based worker is not considered to be of financial benefit to
2 the network company, or any person acting in the interest of a network company.

3 **8.37.060 Tip and incentive compensation**

4 A. Tips

5 1. A network company shall pay to its app-based workers all tips and gratuities.

6 2. Tips paid to an app-based worker are in addition to, and may not count
7 towards:

8 a. The app-based worker's minimum network company payment under
9 Section 8.37.050;

10 b. A guaranteed minimum amount of network company payment for an
11 offer, as described in Section 8.37.070, regardless of whether the guaranteed minimum amount
12 exceeds the minimum network company payment owed to the app-based worker;

13 c. Any incentive presented to the app-based worker; or

14 d. Any amount of compensation presented to the app-based worker in
15 exchange for the performance of services.

16 B. Incentives paid to an app-based worker are in addition to, and may not count towards,
17 the app-based worker's minimum network company payment under Section 8.37.050.

18 **8.37.070 Network company transparency**

19 A. Right to up-front information regarding offers

20 1. A network company shall provide, and/or ensure a customer provides, an app-
21 based worker the following information when facilitating or presenting an offer:

1 a. A reasonable estimate of the engaged time required to complete
2 performance of the offer and, if applicable, the range of time in which the offer can be
3 completed;

4 b. A reasonable estimate of the engaged miles required to complete
5 performance of the offer and the approximate geographic location or locations where work in
6 furtherance of the offer will occur, including pick-up and drop-off locations for offers involving
7 deliveries;

8 c. A guaranteed minimum amount of network company payment for the
9 offer; provided, that it does not fall below the minimum network company payment requirements
10 established in Section 8.37.050 for an offer requiring the amount of engaged time and engaged
11 miles provided in the estimate;

12 d. The amount of any tip that each customer has indicated they will
13 provide, if the network company's online-enabled application or platform enables customers to
14 tip in advance of facilitating or presenting the offer to the app-based worker;

15 e. When performance of an offer requires a stop or stops at business
16 establishments, the names of such businesses;

17 f. To the extent it is reasonably ascertainable, information regarding
18 physical labor required to perform services in furtherance of the offer and accessibility at
19 locations where work will be performed, including but not limited to weights of any goods to be
20 handled; numbers of flights of stairs; and availability of elevators, ramps, and other conditions
21 affecting accessibility. The Director shall issue rules regarding the types of information required
22 to be disclosed, the format of provision of the information, and efforts to ascertain the
23 information that would be considered reasonable; and

1 g. To the extent it is reasonably ascertainable, the network company shall
2 make available to the app-based worker information that it has about the unsealed contents of
3 each online order. The Director shall issue rules regarding the types of information required to be
4 disclosed, the format of provision of the information, and efforts to ascertain the information that
5 would be considered reasonable.

6 2. A network company shall not be held responsible for a violation of subsection
7 8.37.070.A.1 that is attributable solely to incomplete or inaccurate information provided by
8 another party, provided that the network company made a reasonable effort to obtain complete
9 and accurate information.

10 3. An on-demand offer shall be made available for at least two minutes after the
11 app-based worker has been provided the information described in subsection 8.37.070.A.1.

12 4. If a network company presents a pre-scheduled offer, or an offer that entails
13 fulfillment of multiple individual online orders, and the network company lacks advance notice
14 of the information in subsections 8.37.070.A.1.b, 8.37.070.A.1.d, 8.37.070.A.1.e, 8.37.070.A.1.f
15 and 8.37.070.A.1.g for that offer, the network company shall provide the app-based worker with
16 such information prior to assigning them work in furtherance of each online order, to the extent it
17 is reasonably ascertainable.

18 B. Within 24 hours of each offer's performance, or within 72 hours after a cancellation
19 by an app-based worker, a network company shall transmit an electronic receipt to the app-based
20 worker that contains the following information for each unique offer covered by this Chapter
21 8.37:

- 22 1. The app-based worker's total amount of engaged time;
- 23 2. The app-based worker's total amount of engaged miles;

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3. The app-based worker’s compensation, itemized by:

a. Gross network company payment, as well as the method used to calculate payment, including but not limited to amount per minute or amount per mile;

b. Total incentive(s) and the basis for calculating the incentive(s), if applicable;

c. Total amount of compensation from tips;

d. Total amount of any deductions, itemized by deduction type; and

e. Net compensation.

4. Itemized fees collected from the app-based worker to access the network company’s online-enabled application or platform;

5. The approximate geographic location or locations of the app-based worker’s engaged time and engaged miles, including pick-up and drop-off locations for offers involving deliveries; and

6. Pursuant to rules that the Director may issue, other information that is material and necessary to effectuate the terms of this Chapter 8.37.

C. On a weekly basis, the network company shall provide written notice to the app-based worker that contains the following information for offers covered by this Chapter 8.37 and which were performed or cancelled with cause, as well as other engagement with the worker platform, during the prior week:

1. The app-based worker’s total amount of engaged time;

2. The app-based worker’s total amount of engaged miles;

3. The app-based worker’s compensation, itemized by:

1 a. Gross network company payment, as well as the method used to
2 calculate payment, including but not limited to amount per minute or amount per mile;

3 b. Total incentives and the basis for calculating the incentives, if
4 applicable;

5 c. Total amount of compensation from tips;

6 d. Total amount of any deductions, itemized by deduction type;

7 e. Net compensation

8 4. Total amount of itemized fees collected from the app-based worker to access
9 the network company's online-enabled application or platform;

10 5. Pursuant to rules that the Director may issue, other information that is material
11 and necessary to effectuate the terms of this Chapter 8.37.

12 D. Within 24 hours of an online order's performance or cancellation with cause, a
13 network company shall transmit an electronic receipt to a paying customer that lists:

14 1. The date and time of completion of the online order;

15 2. The total amount paid to the network company, itemizing all charges, fees, and
16 customer-paid tips. The network company shall clearly designate the amount of tips paid directly
17 to the app-based worker and the amount of charges and fees retained by the company; and

18 3. Pursuant to rules that the Director may issue, other information that is material
19 and necessary to effectuate the terms of this Chapter 8.37.

20 E. A network company shall ensure that its customer-facing websites, applications, and
21 platforms do not describe any fees or non-tip charges in a manner that might be reasonably
22 misconstrued as a tip, gratuity, or other payment to the app-based worker. Any interface for

1 accepting customer orders shall clearly reflect the amount of any tip paid to the app-based
2 worker.

3 F. A network company shall ensure that all app-based workers have access to the
4 company's tip policy, including but not limited to whether the network company's online-
5 enabled application or platform allows customers to tip in advance of completion of an online
6 order and whether the network company permits customers to modify or remove tips after
7 performance.

8 G. A network company shall routinely and affirmatively transmit to the Agency such
9 records as required by rules issued by the Director. The Director shall have the authority to
10 require such aggregated or disaggregated records deemed necessary, appropriate, or convenient
11 to administer, evaluate, and enforce the provisions of this Chapter 8.37. The Director may issue
12 rules requiring that aggregated records be produced as a distribution at defined percentiles. The
13 Director may issue data production rules of general applicability as well as rules specific to on-
14 demand companies. In issuing data production rules, the Director shall consider, among other
15 factors, methods to provide workers with information to make informed choices about platforms
16 on which they may seek work and to provide the public with information to assess the impact of
17 network companies.

18 1. Records for production may include, but are not limited to:

19 a. Records regarding the availability of offers facilitated via the network
20 company platform;

21 b. Records regarding the amount of engaged time and engaged miles;

22 c. The amount of time that app-based workers must spend working or
23 engaged to wait for work without compensation to perform app-based work;

1 d. Records regarding the number of app-based workers who logged onto
2 the worker platform, logged on for the first time in the reporting period, or accepted an offer;

3 e. Per-offer or aggregated app-based worker compensation, including but
4 not limited to network company payments, bonuses, incentives, and tips earned from customers;
5 and

6 f. Any other records that the Director determines are material and
7 necessary to effectuate the purposes of this Chapter 8.37.

8 2. The Director shall issue rules governing the submission format, security, and
9 privacy protocols relating to the submission of network company records, to the extent
10 permitted by law.

11 H. A network company shall notify app-based workers at least 14 days prior to making a
12 material change to how network company payment will be calculated.

13 **8.37.080 Flexibility**

14 A. An app-based worker has the right to decide when to make themselves available to
15 work and which offers to accept or reject. A network company shall not subject an app-based
16 worker to an adverse action, nor institute a policy subjecting an app-based worker to an adverse
17 action, for engaging in the following activities:

18 1. Limiting hours of availability, including but not limited to being logged into the
19 worker platform for limited hours, only at certain hours of the day, or during certain days of the
20 week.

21 2. Accepting or rejecting any individual offer, any types of offers, or any number
22 or proportion of offers. An app-based worker may indicate rejection of an offer by declining to

1 respond to the offer. A network company shall ensure that its worker platform enables an app-
2 based worker to communicate a rejection of each offer.

3 B. A network company shall allow an app-based worker to be logged into the network
4 company's worker platform at any date, time of day, or for any amount of time, except in the
5 following circumstances:

6 1. Certain instances of deactivation as defined in rules, or other applicable law.

7 2. Limitations on a maximum amount of consecutive work time to protect worker
8 and public safety.

9 C. A network company shall not subject an app-based worker to an adverse action, nor
10 institute a policy subjecting an app-based worker to an adverse action, for cancelling their
11 acceptance of an offer with cause. An app-based worker may cancel their acceptance of an offer
12 with cause (i.e., "cancellation with cause") when any of the following conditions occur:

13 1. Information provided pursuant to subsection 8.37.070.A.1 was substantially
14 inaccurate; provided, that a customer's alteration of a tip amount shall not constitute grounds for
15 cancellation with cause;

16 2. The app-based worker cannot complete performance of the offer because the
17 customer is not present or fails to respond to communications from the app-based worker, the
18 customer's presence or response is required for the app-based work to complete performance of
19 the offer, and the app-based worker has made attempts to contact and/or wait for the customer in
20 accordance with an applicable network company policy, provided that the no-contact or limited-
21 contact deliveries are not considered to require the end customer's presence;

22 3. Timely completion of the offer has become impracticable due to an unforeseen
23 obstacle or occurrence; or

1 4. The app-based worker makes a good faith complaint regarding sexual
2 harassment or discrimination that is alleged to have occurred during performance of the offer.

3 D. For all cancelled offers, network companies shall allow the app-based worker to
4 communicate the reason for cancellation, including but not limited to reasons included in
5 subsection 8.37.080.C, via the worker platform. The network company shall review the stated
6 reason for cancellation for a reasonable time of no less than 72 hours before determining, based
7 on clear and convincing evidence, whether an app-based worker cancelled an offer without
8 cause.

9 **8.37.090 Fraudulent use policy**

10 A. A network company may take actions not expressly prohibited in this Chapter 8.37 or
11 other applicable law, which are reasonably necessary to remedy or prevent fraudulent use of the
12 network company’s application or platform. A network company shall provide an app-based
13 worker a written policy and procedure for remedying or preventing fraudulent use (“fraudulent
14 use policy”). The network company’s fraudulent use policy shall include, but not be limited to:

15 1. A description of what actions undertaken by the app-based worker constitute
16 fraudulent use, which may include but not be limited to cancellations without cause;

17 2. The consequences to an app-based worker who is determined to have
18 committed a fraudulent use of the of the network company’s online enabled application or
19 platform;

20 3. The method of notification to the app-based worker that the app-based worker
21 is suspected of committing a fraudulent use of the network company’s online enabled application
22 or platform;

1 4. An opportunity, process, and timeline for an app-based worker to appeal a
2 finding of fraudulent use; and

3 5. Pursuant to rules that the Director may issue, other information that is material
4 and necessary to effectuate the terms of this Section 8.37.090.

5 **8.37.100 Notice of rights**

6 A. Network companies shall provide each app-based worker with a written notice of
7 rights established by this Chapter 8.37. The Agency shall create and distribute a model notice of
8 rights in English and other languages.

9 B. The notice of rights shall provide information on:

10 1. The right to the applicable minimum per-minute amount, per-mile amount, and
11 per-offer amount guaranteed by this Chapter 8.37, including a clear statement of the current
12 applicable amounts;

13 2. A clear statement as to whether the network company identifies as an on-
14 demand network company, a marketplace network company, or neither, and the corresponding
15 timeframe when engaged time and engaged miles apply for a typical offer from that network
16 company (e.g. upon acceptance by the app-based worker, a reasonable estimate of engaged time
17 mutually agreed upon, or when the app-based worker begins performance), pursuant to Section
18 8.37.020;

19 3. The right to receive the information required to be disclosed by this Chapter
20 8.37 before accepting an offer and performing services in furtherance of an offer;

21 4. The right to flexibility in making themselves available for work and accepting,
22 rejecting, or cancelling offers under this Chapter 8.37;

1 5. The right to be protected from retaliation for exercising in good faith the rights
2 protected by this Chapter 8.37; and

3 6. The right to file a complaint with the Agency or bring a civil action for
4 violation of the requirements of this Chapter 8.37, including but not limited to a network
5 company's or any person's failure to pay the minimum per-minute amount, per-mile amount, or
6 per-offer amount, and a network company's or other person's retaliation against an app-based
7 worker or other person for engaging in an activity protected by this Chapter 8.37.

8 7. The right to a clear statement of the network company's tip policy, including
9 but not limited to whether the network company's online-enabled application or platform allows
10 customers to tip in advance of completion of an online order and whether the network company
11 permits customers to modify or remove tips after performance.

12 8. The right to a clear statement of the network company's fraudulent use policy
13 pursuant to Section 8.37.090, including where the app-based worker can locate that policy.

14 C. Network companies shall provide the notice of rights required by subsection
15 8.37.100.B in an electronic format that is readily accessible to the app-based worker. The notice
16 of rights shall be made available to the app-based worker via smartphone application, email, or
17 online web portal, in English and any language that the network company knows or has reason to
18 know is the primary language of the app-based worker. The Director may issue rules governing
19 the form and content of the notice of rights, the manner of its distribution, and required
20 languages for its translation.

21 D. Network companies shall file their notice of rights in a written format with the Agency
22 no later than 60 days after the effective date of this Chapter 8.37. The information must also
23 include the registered legal name and trade name of the hiring entity as listed on the hiring

1 entity's Seattle business license tax certificate, and a contact name and information for that
2 hiring entity.

3 **8.37.110 Network company records**

4 A. Network companies shall retain records that document compliance with this Chapter
5 8.37 for each app-based worker.

6 B. Network companies shall retain the records required by subsection 8.37.110.A for a
7 period of three years.

8 C. If a network company fails to retain adequate records required under subsection
9 8.37.110.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the
10 network company violated this Chapter 8.37 for the relevant periods and for each app-based
11 worker for whom records were not retained.

12 **8.37.120 Retaliation prohibited**

13 A. No network company or any other person shall interfere with, restrain, or deny the
14 exercise of, or the attempt to exercise, any right protected under this Chapter 8.37.

15 B. No network company or any other person shall take any adverse action against any
16 person because the person has exercised in good faith the rights protected under this Chapter
17 8.37. Such rights include, but are not limited to, the right to make inquiries about the rights
18 protected under this Chapter 8.37; the right to inform others about their rights under this Chapter
19 8.37; the right to inform the person's network company, the person's legal counsel, a union or
20 similar organization, or any other person about an alleged violation of this Chapter 8.37; the right
21 to file an oral or written complaint with the Agency or bring a civil action for an alleged
22 violation of this Chapter 8.37; the right to cooperate with the Agency in its investigations of this
23 Chapter 8.37; the right to testify in a proceeding under or related to this Chapter 8.37; the right to

1 refuse to participate in an activity that would result in a violation of city, state, or federal law;
2 and the right to oppose any policy, practice, or act that is unlawful under this Chapter 8.37.

3 C. No network company or any other person shall communicate to a person exercising
4 rights protected in this Section 8.37.120, directly or indirectly, the willingness to inform a
5 government worker that the person is not lawfully in the United States, or to report, or to make
6 an implied or express assertion of a willingness to report, suspected citizenship or immigration
7 status of an app-based worker or family member of an app-based worker to a federal, state, or
8 local agency because the app-based worker has exercised a right under this Chapter 8.37.

9 D. It shall be a rebuttable presumption of retaliation if a network company or any other
10 person takes an adverse action against a person within 90 days of the person's exercise of rights
11 protected in this Section 8.37.120. The network company may rebut the presumption with clear
12 and convincing evidence that the adverse action was taken for a permissible purpose.

13 E. Proof of retaliation under this Section 8.37.120 shall be sufficient upon a showing that
14 a network company or any other person has taken an adverse action against a person and the
15 person's exercise of rights protected in this Section 8.37.120 was a motivating factor in the
16 adverse action, unless the network company can prove that the action would have been taken in
17 the absence of such protected activity.

18 F. The protections afforded under this Section 8.37.120 shall apply to any person who
19 mistakenly but in good faith alleges violations of this Chapter 8.37.

20 G. A complaint or other communication by any person triggers the protections of this
21 Section 8.37.120 regardless of whether the complaint or communication is in writing or makes
22 explicit reference to this Chapter 8.37.

1 **8.37.125 Rulemaking authority**

2 The Director is authorized to administer and enforce this Chapter 8.37. The Director is
3 authorized to promulgate, revise, or rescind rules and regulations deemed necessary,
4 appropriate, or convenient to administer, evaluate and enforce the provisions of this Chapter
5 8.37 pursuant to Chapter 3.02, providing affected entities with due process of law and in
6 conformity with the intent and purpose of this Chapter 8.37. Any rules promulgated by the
7 Director shall have the force and effect of law and may be relied on by network companies, app-
8 based workers, and other parties to determine their rights and responsibilities under this Chapter
9 8.37.

10 **8.37.130 Enforcement power and duties**

11 The Agency shall have the power to administer and enforce this Chapter 8.37 and shall have
12 such powers and duties in the performance of these functions as are defined in this Chapter 8.37
13 and otherwise necessary and proper in the performance of the same and provided for by law.

14 **8.37.140 Violation**

15 The failure of any respondent to comply with any requirement imposed on the respondent under
16 this Chapter 8.37 is a violation.

17 **8.37.150 Investigation**

18 A. The Agency shall have the power to investigate any violations of this Chapter 8.37 by
19 any respondent. The Agency may prioritize investigations of workforces that are vulnerable to
20 violations of this Chapter 8.37. The Agency may initiate an investigation pursuant to Director's
21 Rules, including but not limited to situations when the Director has reason to believe that a
22 violation has occurred or will occur, or when circumstances show that violations are likely to
23 occur within a class of network companies or businesses because the workforce contains

1 significant numbers of app-based workers who are vulnerable to violations of this Chapter 8.37
2 or the workforce is unlikely to volunteer information regarding such violations. An investigation
3 may also be initiated through the receipt by the Agency of a report or complaint filed by an app-
4 based worker or other person.

5 B. An app-based worker or other person may report to the Agency any suspected
6 violation of this Chapter 8.37. The Agency shall encourage reporting pursuant to this Section
7 8.37.150 by taking the following measures:

8 1. The Agency shall keep confidential, to the maximum extent permitted by
9 applicable laws, the name and other identifying information of the app-based worker or person
10 reporting the violation. However, with the authorization of such person, the Agency may disclose
11 the app-based worker's or person's name and identifying information as necessary to enforce this
12 Chapter 8.37 or for other appropriate purposes.

13 2. The Agency may require the network company to post or otherwise notify other
14 app-based workers working for the network company that the Agency is conducting an
15 investigation. The network company shall provide the notice of investigation in a form, place,
16 and manner designated by the Agency. The Agency shall create the notice of investigation in
17 English and other languages.

18 3. The Agency may certify the eligibility of eligible persons for "U" Visas under
19 the provisions of 8 U.S.C. § 1184(p) and 8 U.S.C. § 1101(a)(15)(U). This certification is subject
20 to applicable federal law and regulations, and Director's Rules.

21 C. The Agency's investigation shall commence within three years of the alleged
22 violation. To the extent permitted by law, the applicable statute of limitations for civil actions is

1 tolled during any investigation under this Chapter 8.37 and any administrative enforcement
2 proceeding under this Chapter 8.37 based upon the same facts. For purposes of this Chapter 8.37:

3 1. The Agency’s investigation begins on the earlier date of when the Agency
4 receives a complaint from a person under this Chapter 8.37, or when the Agency provides notice
5 to the respondent that an investigation has commenced under this Chapter 8.37.

6 2. The Agency’s investigation ends when the Agency issues a final order
7 concluding the matter and any appeals have been exhausted; the time to file any appeal has
8 expired; or the Agency notifies the respondent in writing that the investigation has been
9 otherwise resolved.

10 D. The Agency’s investigation shall be conducted in an objective and impartial manner.

11 E. The Director may apply by affidavit or declaration in the form allowed under RCW
12 5.50.050 to the Hearing Examiner for the issuance of subpoenas requiring a network company to
13 produce the records required by Section 8.37.110, or for the attendance and testimony of
14 witnesses, or for the production of documents required to be retained under Section 8.37.110, or
15 any other document relevant to the issue of whether any app-based worker or group of app-based
16 workers received the information or other benefits required by this Chapter 8.37, and/or to
17 whether a network company has violated any provision of this Chapter 8.37. The Hearing
18 Examiner shall conduct the review without hearing as soon as practicable and shall issue
19 subpoenas upon a showing that there is reason to believe that: a violation has occurred; a
20 complaint has been filed with the Agency; or circumstances show that violations are likely to
21 occur within a class of businesses because the workforce contains significant numbers of app-
22 based workers who are vulnerable to violations of this Chapter 8.37, the workforce is unlikely to

1 volunteer information regarding such violations, or the Agency has gathered preliminary
2 information indicating that a violation may have occurred.

3 F. A network company that fails to comply with the terms of any subpoena issued under
4 subsection 8.37.150.E in an investigation by the Agency under this Chapter 8.37 before the
5 issuance of a Director’s Order issued pursuant to subsection 8.37.160.C may not use such
6 records in any appeal to challenge the correctness of any determination by the Agency of
7 liability, damages owed, or penalties assessed.

8 G. In addition to other remedies, the Director may refer any subpoena issued under
9 subsection 8.37.150.E to the City Attorney to seek a court order to enforce any subpoena.

10 H. Where the Director has reason to believe that a violation has occurred, the Director
11 may order any appropriate temporary or interim relief to mitigate the violation or maintain the
12 status quo pending completion of a full investigation or hearing, including but not limited to a
13 deposit of funds or bond sufficient to satisfy a good faith estimate of compensation, interest,
14 damages, and penalties due. A respondent may appeal any such order in accordance with Section
15 8.37.180.

16 **8.37.160 Findings of fact and determination**

17 A. Except when there is an agreed-upon settlement, the Director shall issue a written
18 determination with findings of fact resulting from the investigation and statement of whether a
19 violation of this Chapter 8.37 has or has not occurred based on a preponderance of the evidence
20 before the Director.

21 B. If the Director determines that there is no violation of this Chapter 8.37, the Director
22 shall issue a “Determination of No Violation” with notice of an app-based worker’s or other
23 person’s right to appeal the decision, pursuant to Director’s Rules.

1 C. If the Director determines that a violation of this Chapter 8.37 has occurred, the
2 Director shall issue a “Director’s Order” that shall include a notice of violation identifying the
3 violation or violations.

4 1. The Director’s Order shall state with specificity the amounts due under this
5 Chapter 8.37 for each violation, including payment of unpaid compensation, liquidated damages,
6 civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section
7 8.37.170.

8 2. The Director’s Order may specify that civil penalties and fines due to the
9 Agency can be mitigated for respondent’s timely payment of remedy due to an aggrieved party
10 pursuant to subsection 8.37.170.A.4.

11 3. The Director’s Order may specify that civil penalties and fines are due to the
12 aggrieved party rather than due to the Agency.

13 4. The Director’s Order may direct the respondent to take such corrective action
14 as is necessary to comply with the requirements of this Chapter 8.37, including but not limited to
15 monitored compliance for a reasonable time period.

16 5. The Director’s Order shall include notice of the respondent’s right to appeal the
17 decision pursuant to Section 8.37.180.

18 **8.37.165 Complaint procedure**

19 A. The Agency shall have the power to respond to any violations of this Chapter 8.37
20 with a complaint procedure.

21 B. The Agency may initiate a complaint procedure as an alternative enforcement method
22 to an investigation for responding to a report or complaint by any person of a violation of this
23 Chapter 8.37. The Director may issue rules for the complaint procedure, including but not

1 limited to rules to establish the timeline for sending the information required by subsection
2 8.37.165.D, determine the nature and content of information requested from the complainant and
3 network company, and indicate when the Agency may prioritize use of a complaint procedure
4 prior to an investigation or in lieu of an investigation. The Director may also establish other
5 enforcement methods to efficiently resolve violations of this Chapter 8.37.

6 C. The Agency may request the complainant to provide information pursuant to the
7 complaint procedure, including but not limited to:

- 8 1. Contact information for the app-based worker and network company; and
- 9 2. A statement describing the alleged violations of this Chapter 8.37.

10 D. The Agency may send notices to the network company and complainant, including but
11 not limited to:

12 1. Notice of the alleged violation(s). The Agency may send notice to the network
13 company of the alleged violation(s) of this Chapter 8.37. The Agency shall bear any cost of
14 sending such notice by certified mail or by other means incurring a cost to the Agency. This
15 notice may include but not be limited to:

- 16 a. Statement of the alleged violation(s) of this Chapter 8.37; and
- 17 b. Description of the remedies available to an app-based worker for
18 violation(s) of this Chapter 8.37;

19 2. Response from the network company. The Agency may request the network
20 company to send the Agency relevant information to respond to the alleged violation(s) within an
21 identified timeframe.

1 3. Notice to the complainant of the response from the network company. The
2 Agency may send a notice to the complainant of the response from the network company. This
3 notice to the complainant may include but not be limited to:

- 4 a. The response from the network company, including any enclosures;
- 5 b. Information on the right to bring a civil action in a court of competent
6 jurisdiction;
- 7 c. Any other information about the status of the complaint; and
- 8 d. Information about the navigation program pursuant to Section 8.37.167.

9 4. Notice of no response. If the Agency receives no response from the network
10 company within the identified timeframe pursuant to subsection 8.37.165.D.2, the Agency may
11 send a notice of no response to the complainant and the network company and may include proof
12 that the Agency previously sent notice of the alleged violation(s) to the network company.

13 5. Notice of closure. The Agency may send the complainant and network
14 company notice of the Agency's completion of the complaint procedure and/or closure of the
15 case.

16 E. Upon satisfying the requirements of subsections 8.37.165.C and 8.37.165.D, the
17 Agency may close the case.

18 **8.37.167 Navigation program**

19 A. The Agency may establish a navigation program that provides intake and information
20 relating to the provisions of this Chapter 8.37.

21 1. The navigation program may provide a range of information, including but not
22 limited to:

- 23 a. Information on the provisions and procedures of this Chapter 8.37;

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b. General court information, including but not limited to:

1) Information on court procedures for filing civil actions in small claims, district court, and superior court; and

2) Information on obtaining translation and interpretation services, and other courtroom services;

c. A list of organizations that can be used to identify attorneys;

d. Organizations providing outreach and education, and/or legal assistance, to app-based workers;

e. Information about classifying workers as employees or independent contractors; and

f. As determined by the Director, additional information related to the provisions of this Chapter 8.37, other workplace protections, or other resources for resolving workplace issues.

2. The navigation program may include outreach and education to the public on the provisions and procedures of this Chapter 8.37.

3. The navigation program shall not include legal advice from the Agency. However, if the Agency provides information to an app-based worker about a community organization through the navigation program, the community organization is not precluded from providing legal advice.

8.37.170 Remedies

A. The payment of unpaid compensation, liquidated damages of up to twice the amount of unpaid compensation, civil penalties, penalties payable to aggrieved parties, fines, and interest

1 provided under this Chapter 8.37 is cumulative and is not intended to be exclusive of any other
2 available remedies, penalties, fines, and procedures.

3 1. The amounts of all civil penalties, penalties payable to aggrieved parties, and
4 fines contained in this Section 8.37.170 shall be increased annually to reflect the rate of inflation
5 and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall
6 determine the amounts and file a schedule of such amounts with the City Clerk.

7 2. If a violation is ongoing when the Agency receives a complaint or opens an
8 investigation, the Director may order payment of unpaid compensation plus interest that accrues
9 after receipt of the complaint or after the investigation opens and before the date of the Director's
10 Order.

11 3. Interest shall accrue from the date the unpaid compensation was first due at 12
12 percent annum, or the maximum rate permitted under RCW 19.52.020.

13 4. If there is a remedy due to an aggrieved party, the Director may waive part or
14 all civil penalties and fines due to the Agency based on timely payment of the full remedy due to
15 the aggrieved party.

16 a. The Director may waive the total amount of civil penalties and fines due
17 to the Agency if the Director determines that the respondent paid the full remedy due to the
18 aggrieved party within ten days of service of the Director's Order.

19 b. The Director may waive half the amount of civil penalties and fines due
20 to the Agency if the Director determines that the respondent paid the full remedy due to the
21 aggrieved party within 15 days of service of the Director's Order.

1 c. The Director shall not waive any amount of civil penalties and fines due
2 to the Agency if the Director determines that the respondent has not paid the full remedy due to
3 the aggrieved party after 15 days of service of the Director's Order.

4 5. When determining the amount of liquidated damages, civil penalties, penalties
5 payable to aggrieved parties, and fines due under this Section 8.37.170 for a settlement
6 agreement or Director's Order, including but not limited to the mitigation of civil penalties and
7 fines due to the Agency for timely payment of remedy due to an aggrieved party under
8 subsection 8.37.170.A.4, the Director may consider:

9 a. The total amount of unpaid compensation, liquidated damages,
10 penalties, fines, and interest due;

11 b. The nature and persistence of the violations;

12 c. The extent of the respondent's culpability;

13 d. The substantive or technical nature of the violations;

14 e. The size, revenue, and human resources capacity of the respondent;

15 f. The circumstances of each situation;

16 g. The amount of penalties in similar situations; and

17 h. Pursuant to rules that the Director may issue, other factors that are
18 material and necessary to effectuate the terms of this Chapter 8.37.

19 B. A respondent found to be in violation of this Chapter 8.37 shall be liable for full
20 payment of unpaid compensation due plus interest in favor of the aggrieved party under the
21 terms of this Chapter 8.37, and other equitable relief. If the precise amount of unpaid
22 compensation cannot be determined due to a respondent's failure to produce records or if a
23 respondent produces records in a manner or form which makes timely determination of the

1 amount of unpaid compensation impracticable, the Director may designate a daily amount for
2 unpaid compensation plus interest in favor of the aggrieved party. The daily amount of unpaid
3 compensation shall be at least the equivalent of payment for eight hours of work at the “hourly
4 minimum wage” rate for Schedule 1 employers under Chapter 14.19. For any violation of this
5 Chapter 8.37, the Director may assess liquidated damages in an additional amount of up to twice
6 the unpaid compensation.

7 C. A respondent found to be in violation of this Chapter 8.37 for retaliation under Section
8 8.37.120 shall be subject to any appropriate relief at law or equity including, but not limited to,
9 reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of
10 unpaid compensation plus interest in favor of the aggrieved party under the terms of this Chapter
11 8.37, and liquidated damages in an additional amount of up to twice the unpaid compensation.
12 The Director also shall order the imposition of a penalty payable to the aggrieved party of up to
13 \$5,755.31.

14 D. The Director is authorized to assess civil penalties for a violation of this Chapter 8.37
15 and may specify that civil penalties are due to the aggrieved party rather than due to the Agency.

16 1. For a first violation of this Chapter 8.37, the Director may assess a civil penalty
17 of up to \$575.31 per aggrieved party.

18 2. For a second violation of this Chapter 8.37, the Director shall assess a civil
19 penalty of up to \$1,150.63 per aggrieved party, or an amount equal to ten percent of the total
20 amount of unpaid compensation, whichever is greater.

21 3. For a third or any subsequent violation of this Chapter 8.37, the Director shall
22 assess a civil penalty of up to \$5,755.31 per aggrieved party, or an amount equal to ten percent of
23 the total amount of unpaid compensation, whichever is greater.

1 4. For purposes of this subsection 8.37.170.D, a violation is a second, third, or
 2 subsequent violation if the respondent has been a party to one, two, or more than two settlement
 3 agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than
 4 two Director’s Orders, respectively, have issued against the respondent in the ten years preceding
 5 the date of the violation; otherwise, it is a first violation.

6 E. The Director is authorized to assess fines for a violation of this Chapter 8.37 and may
 7 specify that fines are due to the aggrieved party rather than due to the Agency. The Director is
 8 authorized to assess fines as follows:

Violation	Fine
Failure to provide app-based worker with up-front information regarding offers under subsection 8.37.070.A	Up to \$575.31 per aggrieved party
Failure to provide app-based worker with electronic receipts within 24 hours of each offer’s performance or cancellation with cause under subsection 8.37.070.B	Up to \$575.31 per aggrieved party
Failure to provide app-based worker with weekly statements under subsection 8.37.070.C	Up to \$575.31 per aggrieved party
Failure to provide the Agency with records required under subsection 8.37.070.G	Up to \$575.31 per missing record
Failure to provide app-based worker with at least 14 days of notice of a material change to the network company payment calculation under subsection 8.37.070.H	Up to \$575.31 per aggrieved party
Failure to comply with requirements for app-based worker’s right to decide when to work and which offers to accept or reject under subsection 8.37.080.A	Up to \$575.31 per aggrieved party
Failure to comply with requirements for app-based worker’s right to be logged into the network company’s worker platform under subsection 8.37.080.B	Up to \$575.31 per aggrieved party
Failure to comply with requirements for app-based worker’s cancellation of acceptance of an offer with cause under subsection 8.37.080.C	Up to \$575.31 per aggrieved party
Failure to provide written notice of rights under Section 8.37.100	Up to \$575.31 per aggrieved party
Failure to retain network company records for three years under subsections 8.37.110.A and 8.37.110.B	Up to \$575.31 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 8.37.120	Up to \$1,150.63 per aggrieved party

Violation	Fine
Failure to provide notice of investigation to app-based workers under subsection 8.37.150.B.2	Up to \$575.31 per aggrieved party
Failure to post or distribute public notice of failure to comply with final order under subsection 8.37.210.A.1	Up to \$575.31 per aggrieved party

1 For each app-based worker who performs services in Seattle for the network company and for
2 each missing record, the maximum amount that may be imposed in fines in a one-year period for
3 each type of violation for each app-based worker listed above is \$5,755.31. For each app-based
4 worker who performs services in Seattle for the network company, if a fine for retaliation is
5 issued, the maximum amount that may be imposed for each app-based worker in a one-year
6 period is \$23,020.

7 F. A respondent that willfully hinders, prevents, impedes, or interferes with the Director
8 or Hearing Examiner in the performance of their duties under this Chapter 8.37 shall be subject
9 to a civil penalty of not less than \$1,150.63 and not more than \$5,755.31.

10 G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and
11 interest, the Agency may assess against the respondent in favor of the City the reasonable costs
12 incurred in enforcing this Chapter 8.37, including but not limited to reasonable investigation
13 costs and attorneys' fees. The Director may issue rules on the amounts and contributing factors
14 for assessing reasonable investigation costs and is strongly encouraged to assess such costs in
15 favor of the City to support the Agency's implementation of this Chapter 8.37.

16 H. A respondent that is the subject of a settlement agreement stipulating that a violation
17 has occurred shall count for debarment, or a final order for which all appeal rights have been
18 exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such
19 amounts due under the final order have been paid in full to the Director. If the respondent is the
20 subject of a final order two times or more within a five-year period, the network company shall

1 not be allowed to bid on any City contract for two years. This subsection 8.37.170.H shall be
2 construed to provide grounds for debarment separate from, and in addition to, those contained in
3 Chapter 20.70 and shall not be governed by that chapter; provided, that nothing in this subsection
4 8.37.170.H shall be construed to limit the application of Chapter 20.70. The Director shall notify
5 the Director of Finance and Administrative Services of all respondents subject to debarment
6 under this subsection 8.37.170.H.

7 **8.37.180 Appeal period and failure to respond**

8 A. An app-based worker or other person who claims an injury as a result of an alleged
9 violation of this Chapter 8.37 may appeal the Determination of No Violation, pursuant to
10 Director's Rules.

11 B. A respondent may appeal the Director's Order, including all remedies issued pursuant
12 to Section 8.37.170, by requesting a contested hearing before the Hearing Examiner in writing
13 within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's
14 Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal
15 period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run
16 until 5 p.m. on the next business day.

17 **8.37.190 Appeal procedure and failure to appear**

18 A. Contested hearings shall be conducted pursuant to the procedures for hearing
19 contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for
20 hearing contested cases. The hearing shall be conducted de novo and the Director shall have the
21 burden of proving by a preponderance of the evidence that the violation or violations occurred.
22 Upon establishing such proof, the remedies and penalties imposed by the Director shall be
23 upheld unless it is shown that the Director abused discretion. Failure to appear for a contested

1 hearing shall result in an order being entered finding that the respondent committed the violation
2 stated in the Director's Order. For good cause shown and upon terms the Hearing Examiner
3 deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

4 B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying,
5 or reversing the Director's Order, consistent with Ordinance 126068.

6 **8.37.200 Appeal from Hearing Examiner order**

7 A. The respondent may obtain judicial review of the decision of the Hearing Examiner by
8 applying for a Writ of Review in the King County Superior Court within 30 days from the date
9 of the decision in accordance with the procedure set forth in chapter 7.16 RCW, other applicable
10 law, and court rules.

11 B. The decision of the Hearing Examiner shall be final and conclusive unless review is
12 sought in compliance with this Section 8.37.200.

13 **8.37.210 Failure to comply with final order**

14 A. If a respondent fails to comply within 30 days of service of any settlement agreement
15 with the Agency, or with any final order issued by the Director or the Hearing Examiner for which
16 all appeal rights have been exhausted, the Agency may pursue, but is not limited to, the following
17 measures to secure compliance:

18 1. The Director may require the respondent to post or distribute public notice of
19 the respondent's failure to comply in a form and manner determined by the Agency.

20 2. The Director may refer the matter to a collection agency. The cost to the City
21 for the collection services will be assessed as costs, at the rate agreed to between the City and the
22 collection agency, and added to the amounts due.

1 3. The Director may refer the matter to the City Attorney for the filing of a civil
2 action in King County Superior Court, the Seattle Municipal Court, or any other court of
3 competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the
4 Director may seek to enforce a Director's Order or a final order of the Hearing Examiner under
5 Section 8.37.190.

6 4. The Director may request that the City's Department of Finance and
7 Administrative Services deny, suspend, refuse to renew, or revoke any business license held or
8 requested by the network company or person until such time as the network company complies
9 with the remedy as defined in the settlement agreement or final order. The City's Department of
10 Finance and Administrative Services shall have the authority to deny, refuse to renew, or revoke
11 any business license in accordance with this subsection 8.37.210.A.4.

12 B. No respondent that is the subject of a final order issued under this Chapter 8.37 shall
13 quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or
14 stock of goods without first notifying the Agency and without first notifying the respondent's
15 successor of the amounts owed under the final order at least three business days before such
16 transaction. At the time the respondent quits business, or sells out, exchanges, or otherwise
17 disposes of the respondent's business or stock of goods, the full amount of the remedy, as
18 defined in a final order issued by the Director or the Hearing Examiner, shall become
19 immediately due and payable. If the amount due under the final order is not paid by respondent
20 within ten days from the date of such sale, exchange, conveyance, or disposal, the successor shall
21 become liable for the payment of the amount due; provided, that the successor has actual
22 knowledge of the order and the amounts due or has prompt, reasonable, and effective means of
23 accessing and verifying the fact and amount of the order and the amounts due. The successor

1 shall withhold from the purchase price a sum sufficient to pay the amount of the full remedy.
2 When the successor makes such payment, that payment shall be deemed a payment upon the
3 purchase price in the amount paid, and if such payment is greater in amount than the purchase
4 price the amount of the difference shall become a debt due such successor from the network
5 company.

6 **8.37.220 Debt owed The City of Seattle**

7 A. All monetary amounts due under the Director's Order shall be a debt owed to the City
8 and may be collected in the same manner as any other debt in like amount, which remedy shall
9 be in addition to all other existing remedies; provided, that amounts collected by the City for
10 unpaid compensation, liquidated damages, penalties payable to aggrieved parties, or front pay
11 shall be held in trust by the City for the aggrieved party and, once collected by the City, shall be
12 paid by the City to the aggrieved party.

13 B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the
14 time period set forth in subsection 8.37.180.B, the Director's Order shall be final, and the
15 Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, to
16 enforce the Director's Order by entering judgment in favor of the City finding that the
17 respondent has failed to exhaust its administrative remedies and that all amounts and relief
18 contained in the order are due. The Director's Order shall constitute prima facie evidence that a
19 violation occurred and shall be admissible without further evidentiary foundation. Any
20 certifications or declarations authorized under RCW 5.50.050 containing evidence that the
21 respondent has failed to comply with the order or any parts thereof, and is therefore in default, or
22 that the respondent has failed to appeal the Director's Order to the Hearing Examiner within the
23 time period set forth in subsection 8.37.180.B, and therefore has failed to exhaust the

1 respondent's administrative remedies, shall also be admissible without further evidentiary
2 foundation.

3 C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner
4 within the time period set forth in subsection 8.37.200.A, the order of the Hearing Examiner
5 shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's
6 Order by entering judgment in favor of the City for all amounts and relief due under the order of
7 the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence
8 that the violations contained therein occurred and shall be admissible without further evidentiary
9 foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing
10 evidence that the respondent has failed to comply with the order or any parts thereof, and is
11 therefore in default, or that the respondent has failed to avail itself of judicial review in
12 accordance with subsection 8.37.200.A, shall also be admissible without further evidentiary
13 foundation.

14 D. In considering matters brought under subsections 8.37.220.B and 8.37.220.C, the
15 Seattle Municipal Court may include within its judgment all terms, conditions, and remedies
16 contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable,
17 that are consistent with the provisions of this Chapter 8.37.

18 **8.37.230 Private right of action**

19 A. Any person or class of persons that suffers an injury as a result of a violation of this
20 Chapter 8.37, or is the subject of prohibited retaliation under Section 8.37.120, may bring a civil
21 action in a court of competent jurisdiction against the network company or other person violating
22 this Chapter 8.37 and, upon prevailing, may be awarded reasonable attorney fees and costs and
23 such legal or equitable relief as may be appropriate to remedy the violation including, without

1 limitation: the payment of any unpaid compensation plus interest due to the person and
2 liquidated damages in an additional amount of up to twice the unpaid compensation; and a
3 penalty payable to any aggrieved party of up to \$5,755.31 if the aggrieved party was subject to
4 prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due
5 at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

6 B. For purposes of this Section 8.37.230, “person” includes any entity a member of which
7 has suffered an injury or retaliation, or any other individual or entity acting on behalf of an
8 aggrieved party that has suffered an injury or retaliation.

9 C. For purposes of determining membership within a class of persons entitled to bring an
10 action under this Section 8.37.230, two or more app-based workers are similarly situated if they:

11 1. Performed services in Seattle for the same network company or network
12 companies, whether concurrently or otherwise, at some point during the applicable statute of
13 limitations period,

14 2. Allege one or more violations that raise similar questions as to liability, and

15 3. Seek similar forms of relief.

16 D. For purposes of subsection 8.37.230.C, app-based workers shall not be considered
17 dissimilar solely because:

18 1. The app-based workers’ claims seek damages that differ in amount, or

19 2. The job titles of or other means of classifying the app-based workers differ in
20 ways that are unrelated to their claims.

21 E. An order issued by the court may include a requirement for a network company to
22 submit a compliance report to the court and to the Agency.

23 **8.37.233 Waiver**

1 Any waiver by an individual of any provisions of this Chapter 8.37 shall be deemed contrary to
2 public policy and shall be void and unenforceable.

3 **8.37.235 Encouragement of more generous policies**

4 A. Nothing in this Chapter 8.37 shall be construed to discourage or prohibit a network
5 company from the adoption or retention of minimum labor and compensation standards more
6 generous than the one required by this Chapter 8.37.

7 B. Nothing in this Chapter 8.37 shall be construed as diminishing the obligation of the
8 network company to comply with any contract, or other agreement providing more generous
9 minimum labor and compensation standards to an app-based worker than required by this
10 Chapter 8.37.

11 **8.37.240 Other legal requirements—Effect on other laws**

12 A. The provisions of this Chapter 8.37:

13 1. Supplement and do not diminish or replace any other basis of liability or
14 requirement established by statute or common law;

15 2. Shall not be construed to preempt, limit, or otherwise affect the applicability of
16 any other law, regulation, requirement, policy, or standard for minimum labor and compensation
17 requirements, or which extends other protections to app-based workers; and

18 3. Shall not be interpreted or applied so as to create any power or duty in conflict
19 with federal or state law.

20 B. This Chapter 8.37 shall not be construed to preclude any person aggrieved from
21 seeking judicial review of any final administrative decision or order made under this Chapter
22 8.37 affecting such person. Nothing in this Section 8.37.240 shall be construed as restricting an

1 app-based worker’s right to pursue any other remedies at law or equity for violation of the
2 contractor’s rights.

3 C. A network company’s failure to comply with the provisions of this Chapter 8.37 shall
4 not render any contract between the network company and an app-based worker void or
5 voidable.

6 D. No provision of this Chapter 8.37 shall be construed as providing a determination
7 about the legal classification of any individual as an employee or independent contractor.

8 **8.37.250 Severability**

9 The provisions of this Chapter 8.37 are declared to be separate and severable. If any clause,
10 sentence, paragraph, subdivision, section, subsection, or portion of this Chapter 8.37, or the
11 application thereof to any network company, app-based worker, person, or circumstance, is held
12 to be invalid, it shall not affect the validity of the remainder of this Chapter 8.37, or the validity
13 of its application to other persons or circumstances.

14 Section 4. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance
15 126283, is amended as follows:

16 **3.02.125 Hearing Examiner filing fees**

17 A. The filing fee for a case before the City Hearing Examiner is \$85, with the following
18 exceptions:

Basis for Case	Fee in dollars
* * *	
All_Gender Restroom Notice of Violation (Section 14.07.040)	No fee
App-Based Worker Minimum Payment Ordinance (Chapter 8.37)	No fee
Cable Communications (Chapter 21.60)	No fee
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19 * * *

1 Section 5. Section 3.15.000 of the Seattle Municipal Code, last amended by Ordinance
2 126189, is amended as follows:

3 **3.15.000 Office of Labor Standards created—Functions**

4 There is created within the Executive Department an Office of Labor Standards, under the
5 direction of the Mayor. The mission of the Office of Labor Standards is to advance labor
6 standards through thoughtful community and business engagement, strategic enforcement, and
7 innovative policy development, with a commitment to race and social justice. The Office of
8 Labor Standards seeks to promote greater economic opportunity and further the health, safety,
9 and welfare of employees; support employers in their implementation of labor standards
10 requirements; and end barriers to workplace equity for women, communities of color,
11 immigrants and refugees, and other vulnerable workers.

12 The functions of the Office of Labor Standards are as follows:

13 A. Promoting labor standards through outreach, education, technical assistance, and
14 training for employees and employers;

15 B. Collecting and analyzing data on labor standards enforcement;

16 C. Partnering with community, businesses, and workers for stakeholder input and
17 collaboration;

18 D. Developing innovative labor standards policy;

19 E. Administering and enforcing labor standards (Title 8), City of Seattle ordinances
20 relating to paid sick and safe time (Chapter 14.16), use of criminal history in employment
21 decisions (Chapter 14.17), minimum wage and minimum compensation (Chapter 14.19), wage
22 and tip compensation requirements (Chapter 14.20), secure scheduling (Chapter 14.22), domestic
23 workers (Chapter 14.23), hotel employees safety protections (Chapter 14.26), protecting hotel

1 employees from injury (Chapter 14.27), improving access to medical care for hotel employees
2 (Chapter 14.28), hotel employees job retention (Chapter 14.29), commuter benefits (Chapter
3 14.30), transportation network company driver deactivation protections (Chapter 14.32),
4 transportation network company driver minimum compensation (Chapter 14.33), and other labor
5 standards ordinances that may be enacted in the future.

6 Section 6. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last
7 amended by Ordinance 126274, is amended as follows:

8 **6.208.020 Denial, revocation of, or refusal to renew business license**

9 A. In addition to any other powers and authority provided under this Title 6, the Director,
10 or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any
11 business license issued under the provisions of this Chapter 6.208. The Director, or the
12 Director's designee, shall notify such applicant or licensee in writing by mail of the denial,
13 revocation of, or refusal to renew the license and on what grounds such a decision was based.
14 The Director may deny, revoke, or refuse to renew any license issued under this Chapter 6.208
15 on one or more of the following grounds:

- 16 1. The license was procured by fraud or false representation of fact.
- 17 2. The licensee has failed to comply with any provisions of this Chapter 6.208.
- 18 3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35,
19 5.38, 5.39, 5.40, 5.45, 5.46, 5.47, 5.48, 5.50, or 5.52.
- 20 4. The licensee is in default in any payment of any license fee or tax under Title 5
21 or Title 6.
- 22 5. The property at which the business is located has been determined by a court to
23 be a chronic nuisance property as provided in Chapter 10.09.

1 6. The applicant or licensee has been convicted of theft under subsection
2 12A.08.060.A.4 within the last ten years.

3 7. The applicant or licensee is a person subject within the last ten years to a court
4 order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29
5 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of
6 either:

7 a. The expiration of the time for filing an appeal from the final judgment
8 order under the court rules in effect at the time of the final judgment order; or

9 b. If a timely appeal is made, the date of the final resolution of that appeal
10 and any subsequent appeals resulting in final judicial affirmation of the findings of violations of
11 chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.

12 8. The applicant or licensee is a person subject within the last ten years to a final
13 and binding citation and notice of assessment from the Washington Department of Labor and
14 Industries for violations of chapters 49.46, 49.48, or 49.52 RCW, and the citation amount and
15 penalties assessed therewith were not satisfied within 30 days of the date the citation became
16 final and binding.

17 9. Pursuant to relevant provisions in Title 8, subsections 14.16.100.A.4,
18 14.17.075.A, 14.19.100.A.4, 14.20.080.A.4, 14.22.115.A.4, 14.23.115.A.4, 14.26.210.A.4,
19 14.27.210.A.4, 14.28.210.A.4, 14.30.180.A.4, and 14.33.210.A.4, subsection 100.240.A.4 of
20 Ordinance 126091, subsection 100.240.A.4 of Ordinance 126094, and subsection 100.240.A.4 of
21 Ordinance 126274, the applicant or licensee has failed to comply, within 30 days of service of
22 any settlement agreement, with any final order issued by the Director of the Office of Labor
23 Standards, or any final order issued by the Hearing Examiner under Title 8, Chapters 14.16,

1 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, 14.30, and 14.33, Ordinance
2 126091, Ordinance 126094, and Ordinance 126274 for which all appeal rights have been
3 exhausted, and the Director of the Office of Labor Standards has requested that the Director
4 deny, refuse to renew, or revoke any business license held or requested by the applicant or
5 licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as the
6 violation(s) under Title 8, Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28,
7 14.29, 14.30, and 14.33, Ordinance 126091, Ordinance 126094, and Ordinance 126274 are
8 remedied.

9 10. The business is one that requires an additional license under this Title 6 and
10 the business does not hold that license.

11 11. The business has been determined under a separate enforcement process to be
12 operating in violation of law.

13 Section 7. The City Council requests that the Office of Labor Standards report back to
14 Council if it has information indicating that network companies are modifying their business
15 operations after the effective date of this ordinance in order to be classified as a “marketplace
16 network company” and, if significant changes occur, submit to the Public Safety and Human
17 Services Committee, or the Council committee with oversight of the Office of Labor Standards
18 and/or app-based workers, the following:

19 A. any information they have regarding companies modifying their business operations to
20 be classified as a “marketplace network company” and

21 B. recommendations for an accurate definition and regulations for marketplace network
22 companies.

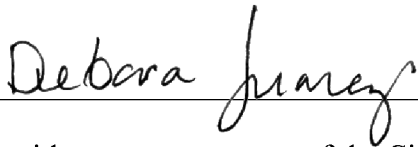
1 Section 8. The City Council intends to consider regulations for minimum payment,
2 transparency, and flexibility for marketplace network companies no later than August 1, 2023.

3 Section 9. Section 3 of this ordinance shall take effect 18 months after the effective date
4 of this ordinance.


5 Section 10. This ordinance shall take effect and be in force 30 days after its approval by
6 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
7 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

8


1 Passed by the City Council the 31st day of May, 2022,
2 and signed by me in open session in authentication of its passage this 31st day of
3 May, 2022.

4 
5 President _____ of the City Council

6 Approved / returned unsigned / vetoed this 13th day of June, 2022.

7 
8 Bruce A. Harrell, Mayor

9 Filed by me this 13th day of June, 2022.

10 
11 Monica Martinez Simmons, City Clerk

12 (Seal)

Amendment A Version 1 to CB 120775 - App-based Worker Minimum Payment Revisions
Ordinance

Sponsor: Councilmember Kettle

Affirmative production of records

Effect: This amendment would add some additional affirmative data production requirements for network companies, by requiring network companies to report the amount of time app-based workers are eligible to receive offers, the zip codes of offers facilitated by a network company, and the production of a limited sample set of disaggregated data in order to verify data quality and/or accuracy.

This amendment also clarifies that OLS may request records related to the amount of time logged into the worker platform for on-demand network companies only.

These additions are intended to further the purpose of affirmative records collection described in subsection 8.37.070.G, to “administer, enforce, or evaluate the impact of the provisions of this Chapter 8.37 on app-based worker earnings.”

This amendment also adds that a network company shall not transmit to OLS any personally identifiable information of customers, in addition to app-based workers.

Finally, this amendment also prohibits the Director from publishing records pursuant to SMC 8.37.070.G that could be attributed to specific network companies, except as required by law.

Note: a double underline indicates material that this amendment would add to CB 120775; a ~~double strikethrough~~ indicates material that is in the current version of CB 120775, but this amendment would remove from CB 120775.

Amend Section 4 of CB 120775 as follows:

8.37.070 Network company transparency

* * *

G. A network company shall affirmatively transmit to the Agency such records as required by this subsection 8.37.070.G, no more than once per quarter. The Director shall have the authority to require such aggregated records deemed necessary to administer, enforce, or

evaluate the impact of the provisions of this Chapter 8.37 on app-based worker earnings. The Director may issue rules requiring that aggregated records be produced as a distribution at defined percentiles. The Director may issue data production rules of general applicability as well as rules specific to on-demand network companies. ~~The Director may require limited sample sets of disaggregated records to verify the quality and/or accuracy of the aggregated records, provided that the requested sample sets do not amount to more than four weeks' worth of records in a calendar year.~~

1. Records for production may only include those related to:

a. The number, type, and origin and destination ~~cities~~ ZIP codes of offers facilitated by a network company;

b. Amount of engaged time and engaged miles completed by app-based workers, ~~amount of time app-based workers are eligible to receive offers, and for on-demand network companies the amount of time app-based workers are logged into the worker platform app as compared to amount of engaged time;~~

c. Net earnings of app-based workers, including but not limited to records related to app-based workers' network company payments, bonuses, incentives, tips, and deductions; and

d. The amount and description of network company fees charged to paying customers~~;~~ .

2. A network company shall not transmit to the Agency any personally identifiable ~~customer or~~ app-based worker information, including name, date of birth, home address, social security number, vehicle license plate number, driver's license number, or other similar records, except when related to an enforcement action. The Director shall issue rules

Jasmine Marwaha
Full Council
May 28, 2024
D3c

governing the submission format, security, and privacy protocols relating to the submission of network company records, to the extent permitted by law. The Director shall not, in documents made available to the public, attribute network company records produced pursuant to this subsection 8.37.070.G to specific network companies, except as required by law.



Legislation Text

File #: CB 120774, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE amending Ordinance 126955, which adopted the 2024 Budget, including the 2024-2029 Capital Improvement Program (CIP); changing appropriations to various departments and budget control levels, and from various funds in the Budget; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. In order to pay for necessary costs and expenses incurred or to be incurred, but for which insufficient appropriations were made due to causes that could not reasonably have been foreseen at the time of making the 2024 Budget, appropriations for the following items in the 2024 Budget are increased from the funds shown, as follows:

Item	Department	Fund	Budget Summary Level/ BCL Code	Amount
1.1	Community Assisted Response and Engagement	General Fund (00100)	911 Call Response (00100-BO-CS-10000)	\$1,461,965
1.2	Community Assisted Response and Engagement	General Fund (00100)	Community Assisted Response and Engagement (00100-BO-CS-40000)	\$394,462
1.3	Community Assisted Response and Engagement	General Fund (00100)	911 Call Response (00100-BO-CS-10000)	\$169,123
1.4	Community Assisted Response and Engagement	General Fund (00100)	911 Call Response (00100-BO-CS-10000)	\$31,182
1.5	Department of Education and Early Learning	Families Education Preschool Promise Levy (17871)	K-12 Programs (17871-BO-EE-IL200)	\$594,446

1.6	Department of Finance and Administrative Services	Judgment/Claims Fund (00126)	Judgment & Claims Claims (00126-BO-FA-CJ000)	\$4,097,621
			Judgment & Claims Litigation (00126-BO-FA-JR000)	\$5,165,335
			Judgment & Claims Police Action (00126-BO-FA-JR020)	\$749,098
1.7	Department of Finance and Administrative Services	Finance and Administrative Services Fund (50300)	Citywide Admin Services (50300-BO-FA-0002)	\$479,309
1.8	Employees' Retirement System	Employees' Retirement Fund (61030)	Employee Benefit Management (61030-BO-RE-R1E00)	\$531,000
1.9	Finance General	2021 Multipurpose LTGO Bond Fund (36800)	Appropriation to Special Funds (36800-BO-FG-2QA00)	\$558,046
		2023 Multipurpose LTGO Bond Fund (37100)	Appropriation to Special Funds (37100-BO-FG-2QA00)	\$749,913
1.10	Finance General	General Fund (00100)	General Purpose (00100-BO-FG-2QD00)	\$27,250,000
1.11	Human Services Department	General Fund (00100)	Supporting Affordability and Livability (00100-BO-HS-H1000)	\$1,500,000
1.12	Human Services Department	Human Services Fund (16200)	Supporting Affordability and Livability (16200-BO-HS-H1000)	\$5,000,000
1.13	Human Services Department	Payroll Expense Tax (14500)	Supporting Affordability and Livability (14500-BO-HS-H1000)	\$5,000,000
1.14	Human Services Department	Opioid Settlement Proceed Fund (14510)	Promoting Public Health (14510-BO-HS-H7000)	\$289,209
1.15	Executive (Office of Arts and Culture)	Arts and Culture Fund (12400)	Cultural Space (12400-BO-AR-VA170)	\$950,000

1.16	Executive (Office of Arts and Culture)	Arts and Culture Fund (12400)	Arts and Cultural Programs (12400-BO-AR-VA160)	\$70,000
1.17	Executive (Office of Arts and Culture)	Arts and Culture Fund (12400)	Arts and Cultural Programs (12400-BO-AR-VA160)	\$310,000
1.18	Executive (Office of Housing)	Payroll Expense Tax (14500)	Homeownership & Sustainability (14500-BO-HU-2000)	\$842,262
			Multifamily Housing (14500-BO-HU-3000)	\$70,624,628
1.19	Executive (Office of Housing)	Office of Housing Fund (16600)	Leadership and Administration (16600-BO-HU-1000)	\$485,178
1.20	Executive (Office of Planning and Community Development)	General Fund (00100)	Equitable Development Initiative (00100-BO-PC-X2P40)	\$19,539,606
		Payroll Expense Tax (14500)	Equitable Development Initiative (14500-BO-PC-X2P40)	\$24,405,263
		Short-Term Rental Tax Fund (12200)	Equitable Development Initiative (12200-BO-PC-X2P40)	\$7,437,666
1.21	Executive (Office of Planning and Community Development)	Payroll Expense Tax (14500)	Planning and Community Development (14500-BO-PC-X2P00)	\$1,854,880
1.22	Executive (Office of Planning and Community Development)	Payroll Expense Tax (14500)	Planning and Community Development (14500-BO-PC-X2P00)	\$44,895
1.23	Executive (Office of Planning and Community Development)	General Fund (00100)	Planning and Community Development (00100-BO-PC-X2P00)	\$180,493
1.24	Executive (Office of Sustainability and Environment)	Payroll Expense Tax (14500)	Office of Sustainability and Environment (14500-BO-SE-X1000)	\$1,000,000
1.25	Executive (Office of Sustainability and Environment)	Payroll Expense Tax (14500)	Office of Sustainability and Environment (14500-BO-SE-X1000)	\$84,320

1.26	Executive (Office of Sustainability and Environment)	Payroll Expense Tax (14500)	Office of Sustainability and Environment (14500-BO-SE-X1000)	\$359,070
1.27	Executive (Office of Sustainability and Environment)	Payroll Expense Tax (14500)	Office of Sustainability and Environment (14500-BO-SE-X1000)	\$150,000
1.28	Executive (Office of Sustainability and Environment)	Payroll Expense Tax (14500)	Office of Sustainability and Environment (14500-BO-SE-X1000)	\$1,500,000
1.29	Seattle Center	Seattle Park District Fund (19710)	Waterfront (19710-BO-SC-61000)	\$1,701,222
1.30	Seattle City Light	Light Fund (41000)	Customer Care (41000-BO-CL-CUSTCARE)	\$776,156
1.31	Seattle Department of Construction and Inspections	Construction and Inspections (48100)	Process Improvements & Technology (48100-BO-CI-U2800)	\$1,681,008
1.32	Seattle Department of Transportation	Transportation Fund (13000)	Leadership and Administration (13000-BO-TR-18001)	\$2,015,000
1.33	Seattle Department of Transportation	Transportation Fund (13000)	Leadership and Administration (13000-BO-TR-18001)	\$1,000,000
1.34	Seattle Fire Department	General Fund (00100)	Leadership and Administration (00100-BO-FD-F1000)	\$127,616
1.35	Seattle Information Technology Department	Information Technology Fund (50410)	Applications (50410-BO-IT-D0600)	\$359,070
1.36	Seattle Information Technology Department	Information Technology Fund (50410)	Applications (50410-BO-IT-D0600)	\$127,616
1.37	Seattle Information Technology Department	Information Technology Fund (50410)	Technology Infrastructure (50410-BO-IT-D0300)	\$600,000
1.38	Seattle Information Technology Department	Information Technology Fund (50410)	Applications (50410-BO-IT-D0600)	\$31,182

1.39	Seattle Information Technology Department	Information Technology Fund (50410)	Applications (50410-BO-IT-D0600)	\$1,461,965
1.40	Seattle Information Technology Department	Information Technology Fund (50410)	Applications (50410-BO-IT-D0600)	\$479,309
1.41	Seattle Information Technology Department	Information Technology Fund (50410)	Applications (50410-BO-IT-D0600)	\$1,485,178
1.42	Seattle Information Technology Department	Information Technology Fund (50410)	Frontline Services and Workplace (50410-BO-IT-D0400)	\$217,000
1.43	Seattle Information Technology Department	Payroll Expense Tax (14500)	Applications (14500-BO-IT-D0600)	\$222,260
1.44	Seattle Municipal Court	General Fund (00100)	Court Operations (00100-BO-MC-2000)	\$82,600
1.45	Seattle Public Utilities	General Fund (00100)	Utility Service and Operations (00100-BO-SU-N200B)	\$352,108
1.46	Department of Neighborhoods	Payroll Expense Tax (14500)	Community Building (14500-BO-DN-I3300)	\$1,560,351
			Leadership and Administration (14500-BO-DN-I3100)	\$20,754
1.47	Executive (Office of Economic Development)	Payroll Expense Tax (14500)	Leadership and Administration (14500-BO-ED-ADMIN)	\$315,000
1.48	Civil Service Commissions	General Fund (00100)	Civil Service Commissions (00100-BO-VC-V1CIV)	\$95,000
1.49	Law Department	General Fund (00100)	Criminal (00100-BO-LW-J1500)	\$70,000
1.50	Firefighter's Pension	Fireman's Pension Fund (61040)	Firefighters Pension (61040-BO-FP-R2F01)	\$860,000
1.51	Seattle Public Library	Library Fund (10410)	The Seattle Public Library (10410-BO-SPL)	\$108,000
1.52	Human Services Department	General Fund (00100)	Supporting Affordability and Livability (00100-BO-HS-H1000)	\$800,000

1.53	Human Services Department	General Fund (00100)	Promoting Public Health (00100-BO-HS-H7000)	\$1,000,000
Total				\$201,407,365

Section 2. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 3. This ordinance shall take effect as provided by Seattle Municipal Code Sections 1.04.020 and 1.04.070.

Passed by a 3/4 vote of all the members of the City Council the _____ day of _____, 2024, and signed by me in open session in authentication of its passage this _____ day of _____, 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)

SUMMARY and FISCAL NOTE

Department:	Dept. Contact:	CBO Contact:
City Budget Office	Caleb Wagenaar	Caleb Wagenaar

1. BILL SUMMARY

Legislation Title: AN ORDINANCE amending Ordinance 126955, which adopted the 2024 Budget, including the 2024-2029 Capital Improvement Program (CIP); changing appropriations to various departments and budget control levels, and from various funds in the Budget; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

Summary and Background of the Legislation: This legislation appropriates unexpended non-capital appropriations from the 2023 Budget to the 2024 Budget.

RCW 35.32A.080 states: “The whole or any part of any appropriation provided in the budget for operating and maintenance expenses remaining unexpended or unencumbered at the close of the fiscal year shall automatically lapse, except any such appropriation as the city council shall continue by ordinance.” This legislation requests continuances for unexpended 2023 appropriations for non-capital purposes in the amount of \$201.6 million. Appropriations were made in the 2023 Budget for these expenditures but for various reasons, spending was not initiated or completed during the 2023 fiscal year. This ordinance re-appropriates these funds, which lapsed at the end of 2023, in most cases for the same purposes that the funds were dedicated to in 2023.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation have financial impacts to the City? Yes No

Expenditure Change (\$);	2024	2025 est.	2026 est.	2027 est.	2028 est.
General Fund	\$53,054,155				
Expenditure Change (\$);	2024	2025 est.	2026 est.	2027 est.	2028 est.
Other Funds	\$148,353,210				

Revenue Change (\$);	2024	2025 est.	2026 est.	2027 est.	2028 est.
General Fund	\$0				
Revenue Change (\$);	2024	2025 est.	2026 est.	2027 est.	2028 est.
Other Funds	\$0				

3.a. Appropriations

This legislation adds, changes, or deletes appropriations.

Appropriations Notes: See Summary Attachment A for details.

3.d. Other Impacts

Does the legislation have other financial impacts to The City of Seattle, including direct or indirect, one-time or ongoing costs, that are not included in Sections 3.a through 3.c? If so, please describe these financial impacts.

No. Please see Summary Attachment A for details.

If the legislation has costs, but they can be absorbed within existing operations, please describe how those costs can be absorbed. The description should clearly describe if the absorbed costs are achievable because the department had excess resources within their existing budget or if by absorbing these costs the department is deprioritizing other work that would have used these resources.

Please see Summary Attachment A for details.

Please describe any financial costs or other impacts of *not* implementing the legislation. The objectives supported by these resources could not be achieved without this legislation.

4. OTHER IMPLICATIONS

a. Please describe how this legislation may affect any departments besides the originating department.

Yes, this legislation impacts most departments' 2024 budgets. The budget appropriation contained in this legislation provides appropriation authority to cover unanticipated spending above previously authorized during 2023.

b. Does this legislation affect a piece of property? If yes, please attach a map and explain any impacts on the property. Please attach any Environmental Impact Statements, Determinations of Non-Significance, or other reports generated for this property.

No

c. Please describe any perceived implication for the principles of the Race and Social Justice Initiative.

i. How does this legislation impact vulnerable or historically disadvantaged communities? How did you arrive at this conclusion? In your response please consider impacts within City government (employees, internal programs) as well as in the broader community.

ii. Please attach any Racial Equity Toolkits or other racial equity analyses in the development and/or assessment of the legislation.

iii. What is the Language Access Plan for any communications to the public?

See Summary Attachment A for any associated implications.

d. Climate Change Implications

i. Emissions: How is this legislation likely to increase or decrease carbon emissions in a material way? Please attach any studies or other materials that were used to inform this response.

ii. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle’s resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

See Summary Attachment A for any associated implications.

e. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s)? What mechanisms will be used to measure progress towards meeting those goals?

See Summary Attachment A for any associated implications.

5. CHECKLIST

Is a public hearing required?

Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required?

If this legislation changes spending and/or revenues for a fund, have you reviewed the relevant fund policies and determined that this legislation complies?

Does this legislation create a non-utility CIP project that involves a shared financial commitment with a non-City partner agency or organization?

6. ATTACHMENTS

Summary Attachments: Summary Attachment A – 2023 Budget Carry Forward Ordinance
Summary Detail Table

2023 Budget Carry Forward Ordinance Summary Detail Table

Item #	Title	Description	Amount/FTE
Section 1 – Appropriation Increases			
1.1	911 Call Data Recorder (Community Assisted Response and Engagement)	This item increases appropriation authority by \$1,461,965 in the General Fund, BO-CS-10000 Budget Control Level and provides resources to the CARE department to provide users with search capabilities for 9-1-1 related audio recordings by integrating the NICE Call-Data Logging and Recording System with the CARE Versaterm Computer Aided Dispatch system. This program will allow the analyst to find recordings in one system rather than searching different databases (CAD, RMS, etc). This work was to begin in 2023 but was delayed to 2024 due to the Versaterm CAD 7.6 upgrade which needs to be completed before this integration work can begin.	\$1,461,965
1.2	Dual Dispatch Program Vehicles and Equipment (Community Assisted Response and Engagement)	This item increases appropriation authority by \$394,462 in General Fund, BO-CS-40000 Budget Control Level and provides resources to CARE for procuring vehicles and equipment not completed in 2023. This funding covers 3 additional vehicles along with equipment for the vehicles such as radios, AEDs and other necessary items for the CARE teams. This additional appropriation cannot be absorbed within the current 2024 Adopted Budget.	\$394,462
1.3	Dual Dispatch - Strategic Advisor position (Community Assisted Response and Engagement)	This item increases appropriate authority by \$169,123 to General Fund, BO-CS-10000 Budget Control Level and provides resources to CARE for the Dual Dispatch program. This appropriation supports a term-limited Strategic Advisor position that is working on setting up dual dispatch protocol and community outreach to educate organizations/constituents about the CARE team. This additional appropriation cannot be absorbed within the current 2024 Adopted Budget.	\$169,123

Item #	Title	Description	Amount/FTE
1.4	Criteria Based Dispatch System (Community Assisted Response and Engagement)	This item increases appropriation authority by \$31,182 to General Fund, BO-CS-10000 Budget Control Level and provides resources to CARE and ITD for completing work on the Criteria Based Dispatch System. This additional appropriation is for the Corti project that will finish in 2024. The Corti project will reduce variances that might occur between call takers in CARE 911 center and improve quality assurance by transcribing all the calls. This will result in searchable data to ensure proper procedures were followed in certain situations and scenarios. This additional appropriation cannot be absorbed within the current 2024 Adopted Budget.	\$31,182
1.5	K-12 Families, Education, Preschool, and Promise (FEPP) Levy Carryforward (Department of Education and Early Learning)	This item increases appropriation authority by \$594,446 to the Department of Education and Early Learning (DEEL) in the FEPP Levy Fund, K-12 Budget Control Level (17871-BO-EE-IL200). This item provides resources for DEEL to support the 2023-24 school year Memorandum of Agreement (MOA) with Seattle Parks and Recreation (Parks) for Sports and Transportation and multi-year contracts which could not be encumbered by the end of 2023. \$337,000 of this amount is for the MOA with Parks; MOA funding is not encumbered in PeopleSoft and requires legislated carryforward. \$257,446 of this funding also supports multi-year contracts awarded in 2023 through RFIs for Opportunities & Access, Youth Leadership, and Educator Diversity.	\$594,446
1.6	Judgment & Claims Carryforward (Department of Finance and Administrative Services)	This item increases appropriation authority by \$5,165,335 to the Judgement and Claims Litigation Budget Control Level (BO-FA-JR000), \$4,097,621 to the Claims Budget Control Level (BO-FA-CJ000), and \$749,098 to the Police Action Budget Control Level (BO-FA-JR020) - a total of \$10,012,054 - to provide resources to the City to cover known settlements that must be paid in 2024 as well as anticipated settlements and legal expenses that will likely continue to be higher than the historical norm.	\$10,012,054

Item #	Title	Description	Amount/FTE
1.7	Online Business Directory and E-Procurement (Department of Finance and Administrative Services)	This item increases appropriation authority by \$479,309 to the Department of Finance and Administrative Services (FAS) Citywide Admin Services Budget Control Level (50300-BO-FA-0002). The request is to support the needed spending authority for a Citywide enterprise electronic procurement system for all goods, services and consultant contracts as well as a replacement online business registration for firms that want to do business with the City. The project was expected to complete in 2023 but had a delayed start and now expected to complete in 2024. This appropriation is needed as a companion to Seattle IT's carryforward request for the project.	\$479,309
1.8	Carryforward Unexpended 2023 (Employees' Retirement System)	This item increases appropriation authority by \$531,000 in the Employees' Retirement Fund Employee Benefit Management Budget Control Level (61030-BO-RE-R1E00) to allow for 2024 expensing of service hours already paid for in 2023. Hours are expensed as used.	\$531,000
1.9	LTGO Bond Carryforward for ITD Projects (Finance General) (Finance General)	This item increases appropriation authority by \$558,046 in the 2021 Multipurpose LTGO Bond Fund's Appropriation to Special Funds BCL (36800-BO-FG-2QA00) and by \$749,913 in the 2023 Multipurpose LGTO Bond Fund's Appropriation to Special Funds BCL (37100-BO-FG-2QA00) in Finance General to carry forward funds for the Seattle Information Technology Department (ITD). Finance General occasionally holds bond proceeds on behalf of ITD and the department bills the bond fund as costs are incurred. These funds support projects that are still in process for Seattle Municipal Court and the Law Department.	\$1,307,959

Item #	Title	Description	Amount/FTE
1.10	Participatory Budgeting (Finance General) (Finance General)	This item increases appropriation authority by \$27,250,000 in Finance General's General Fund (00100) Reserves Budget Summary Level (BO-FG-2QD00) to carry forward funding for Participatory Budgeting. Recommendations for using this funding were not completed in 2023. They are expected to be completed in the Spring of 2024.	\$27,250,000
1.11	AiPACE Carryforward (Human Services Department)	This item increases appropriation authority by \$1,500,000 in the General Fund Supporting Affordability & Livability Budget Control Level (00100-BO-HS-H1000) and provides resources for the Human Services Department to fund the AiPACE community facility project. This budget was initially added in the 2022 Adopted Budget and was not implemented due to project delays. Carryforward budget is required to provide funding in 2024. The funding is for constructing a new senior care facility named “AiPACE” that expands International Community Health Services’ (ICHS) PACE program and increases capacity to serve seniors. PACE (Program of All-Inclusive Care for the Elderly) is a nationally-recognized model of care that enables low-income, nursing-home eligible adults to live independently at home or in the community. ICHS is a non-profit federally qualified community health center that provides culturally- and linguistically-appropriate health and wellness services to people of all ages. ICHS signed a purchase and sale agreement with Seattle Chinatown International District Preservation and Development Authority (SCIDpda) and acquired a 25,000 square-foot space in SCIDpda’s Beacon Pacific Village.	\$1,500,000

Item #	Title	Description	Amount/FTE
1.12	Childcare Bonus Fund Carryforward (Human Services Department)	This item increases appropriation authority by \$5,000,000 in the Human Services Fund Supporting Affordability & Livability Budget Control Level (16200-BO-HS-H1000) and provides resources for the Human Services Department to fund childcare facility development. This budget backed by Childcare Bonus revenue was initially added in 2023 and was not implemented due to project delays. Carryforward budget is required to provide funding in 2024.	\$5,000,000
1.13	Rainier Valley Early Learning Campus Carryforward (Human Services Department)	This item increases appropriation authority by \$5,000,000 in the Payroll Tax Fund Supporting Affordability & Livability Budget Control Level (14500-BO-HS-H1000) and provides resources for the Human Services Department to fund the Rainier Valley Early Learning Center. This budget was initially added in the 2023 adopted budget and was not implemented due to project delays. Carryforward budget is required to provide funding in 2024.	\$5,000,000
1.14	Opioid Settlement Fund Drug User Health Program (Human Services Department)	This item increases appropriation authority by \$289,209 in the Opioid Settlement Fund Promoting Public Health Budget Control Level (14510-BO-HS-H7000) and provides resources for the Human Services Department to provide funding for drug user health programs. This budget was originally added the year-end supplemental is implemented in HSD's contract with King County Public Health in 2024.	\$289,209

Item #	Title	Description	Amount/FTE
1.15	Seattle International Film Festival Cinerama Grant (Office of Arts and Culture)	This item increases appropriation authority by \$950,000 to the Office of Arts & Culture in the Arts and Culture Fund, Cultural Space Budget Control Level (12400-BO-AR-VA170) to provide one-time funding to the Seattle International Film Festival (SIFF). The public benefits package required to purchase SIFF was not negotiated in time and the funds could not be encumbered before the end of the year. The appropriation which was initially included in the 2023 mid-year supplemental budget will provide a grant to the Seattle International Film Festival (SIFF) for the purchase of a building in Belltown which housed the former Cinerama movie theatre and to support SIFF’s programs and services intended to contribute to building community through the arts.	\$950,000
1.16	Event Booking Software Purchase (Office of Arts and Culture)	This item increases appropriation authority by \$70,000 to the Office of Arts & Culture in the Arts and Culture Fund, Arts and Cultural Programs Budget Control Level (12400-BO-AR-VA160). ARTS will use the funds to purchase an event booking software for their two cultural facilities, Langston Hughes Performing Arts Institute (LHPAI) and ARTS at King Street Station (KSS). ARTS has begun this work and identified a proposed vendor, however, was not able to sign the contract before the end of 2023. The software will allow the facilities to book events electronically and accept payments by credit or debit cards, which currently they are not able to, increasing the rentability and usability of the space.	\$70,000

Item #	Title	Description	Amount/FTE
1.17	Langston Hughes Performing Arts Institute Equipment Updates (Office of Arts and Culture)	This item increases appropriation authority by \$310,000 to the Office of Arts & Culture in the Arts and Culture Fund, Arts and Cultural Programs Budget Control Level (12400-BO-AR-VA160) for equipment upgrades at the Langston Hughes Performing Arts Institute. The systems upgrades started last year but were delayed due to staffing levels and interrelated system dependencies. These system updates will reduce electrical grid burden, improve ability to rent and activate the space, and ensure the facility can continue to serve Seattle as a leading cultural arts center, elevating and celebrating local African American culture.	\$310,000
1.18	PET Capital Carryforward (Office of Housing)	This item increases appropriation authority in the Office of Housing by \$70,624,628 in the Payroll Expense Tax Fund Multifamily Housing Budget Control Level (14500-BO-HU-3000) and by \$842,262 in the Payroll Expense Tax Fund Homeownership & Sustainability Budget Control Level (14500-BO-HU-2000). This request is necessary to support capital awards and investments in agency services that have been awarded or otherwise committed but have not yet been encumbered in the City's accounting system.	\$71,466,890
1.19	OH Data Management Carryforward (Office of Housing)	This item increases appropriation authority in the Office of House by \$485,178 in the Office of Housing Fund Leadership & Administration Budget Control Level (16600-BO-HU-1000) and provides resources necessary for continued implementation of the Office of Housing's Data Management Upgrade project in partnership with Seattle IT. The total budget for this project in 2024 is \$1,485,178 and the Office of Housing Fund has adequate balance to cover this amount and specific reserves for this project. However, due to technical accounting issues the full amount was not available to carryforward into 2024. The remaining \$1,000,000 in appropriation authority will be provided to the Office of Housing as part of a future supplemental budget action.	\$485,178

Item #	Title	Description	Amount/FTE
1.20	Equitable Development Initiative Awards (Office of Planning and Community Development)	This item increases appropriation authority by \$51,382,535 to the Office of Planning and Community Development in the Equitable Development Initiative BCL (BO-PC-X2P40) and provides resources for Equitable Development Initiative (EDI) projects that have been awarded to organizations but have not yet been contracted. Of the total amount, \$19.5 million is from the General Fund (00100) including \$16.8 million from the Mercer Megablock and \$1.7 million from the Civic Square Block. \$7.4 million is from Short-Term Rental Tax (Fund 12200), and \$24.4 million is from Payroll Expense Tax (Fund 14500). While these funds have all been committed to community-based organizations, the contracting process for these long-term projects often takes multiple years and funds do not always get contracted within the year of the associated EDI RFP and budget.	\$51,382,535
1.21	Duwamish Valley Program (Office of Planning and Community Development)	This item increases appropriation authority by \$1,854,880 to the Office of Planning and Community Development in the Payroll Expense Tax Fund Planning and Community Development BCL (14500-BO-PC-X2P00) and provides resources to continue the department's Duwamish Valley Program work. This work includes investments in community assets such as the South Park Community Center, South Park Neighborhood Center, Georgetown gathering spaces, and community-supported development at the Unity Electric site. Funding for this work was appropriated in the 2022 Adopted Budget as part of the Green New Deal funding package.	\$1,854,880

Item #	Title	Description	Amount/FTE
1.22	Regional Subarea Growth Planning (Office of Planning and Community Development)	This item increases appropriation authority by \$44,895 to the Office of Planning and Community Development in the Payroll Expense Tax Planning and Community Development Budget Control Level (14500-BO-PC-X2P00) and provides resources to continue a multi-year planning effort for regional growth center subarea plans. This item carries forward funding from the 2023 Adopted Budget and is part of a four-year funding plan for the subarea planning work required by the Puget Sound Regional Council.	\$44,895
1.23	Comprehensive Plan Major Update (Office of Planning and Community Development)	This item increases appropriation authority by \$180,493 to the Office of Planning and Community Development in the General Fund Planning and Community Development Budget Control Level (00100-BO-PC-X2P00) and provides resources to continue a multi-year update to the City's One Seattle Comprehensive Plan Major Update as well as the associated implementation work. Combined with \$130,000 in the 2024 Adopted Budget, the carry-forward funding will support the EIS appeal contingency; the online digital engagement platform; draft plan workshops; outreach and engagement expenses such as designing materials and conducting public meetings; and printing and production expenses.	\$180,493

Item #	Title	Description	Amount/FTE
1.24	Clean Energy Apprenticeship Funding Carryforward (Office of Sustainability and Environment)	This item increases appropriation authority by \$1,000,000 to 14500 Office of Sustainability & Environment Budget Control Level (BO-SE-X1000) and provides resources to the Office of Sustainability & Environment to carryforward funding provided in the 2023 Adopted budget to invest in Clean Energy Pre-Apprenticeship Scholarships for clean energy workforce job training program. The Office of Sustainability & Environment (OSE) contributes funding to support two RFP’s administered by the Department of Finance and Administrative Services (FAS) to support pre-apprenticeship and job readiness training for clean and renewable energy trades. Due to the timing of staff onboarding and delayed BEPS legislation, this work was underway, but not encumbered before year end; the RFP’s to award the funds was published in 2023 and contracts will be awarded in Q2 2024 to utilize 2023 and 2024 budget allocations.	\$1,000,000
1.25	BEPS Rulemaking Temporary Assignment Carryforward (Office of Sustainability and Environment)	This item increases appropriation authority by \$84,320 to 14500 Office of Sustainability & Environment Budget Control Level (BO-SE-X1000) and provides resources to the Office of Sustainability & Environment to carryforward funding for a temporary position to support the rulemaking process for the new Building Emissions Performance Standards policy passed in December 2023. This budget authority for this 12 month position was appropriated in the 2023 and 2023 Adopted Budget with 9 months of funding in 2023 and 3 months in 2024. Due to the delayed passage of legislation, this position instead started in January 2024 and this request will carryforward the unused budget from 2023 to cover the remaining duration of the assignment in 2024.	\$84,320

Item #	Title	Description	Amount/FTE
1.26	BEPS Technology Application Carryforward (Office of Sustainability and Environment)	This item increases appropriation authority by \$359,070 to 14500 Office of Sustainability & Environment Budget Control Level (BO-SE-X1000) and provides resources to the Office of Sustainability & Environment and the Information Technology Department to carryforward budget for a technology solution for Building Emissions Performance Standards (BEPS) compliance. The work originally planned for 2023 started late due to policy legislation delays, but is now underway with a target go-live date in 2026.	\$359,070
1.27	Tree Canopy Equity and Resilience Plan Carryforward (Office of Sustainability and Environment)	This item increases appropriation authority by \$150,000 to 14500 Office of Sustainability & Environment Budget Control Level (BO-SE-X1000) and provides resources to the Office of Sustainability & Environment to carryforward one-time funding to support a canopy equity and resilience assessment and plan. This work was delayed in 2023 due to consultant delays in delivering the now published Canopy Cover Assessment but is now underway. The budget authority for this project was added as a one-time appropriation in the 2023 Adopted Budget.	\$150,000
1.28	Carryforward for Climate Resilience Hubs (Office of Sustainability and Environment)	This item increases appropriation authority by \$1,500,000 to 14500 Office of Sustainability & Environment Budget Control Level (BO-SE-X1000) and provides resources to the Office of Sustainability & Environment to carryforward one-time funding to support community-led efforts to develop resilience hubs. This funding supports the creation of a Citywide Resilience Hub Plan and will also fund early implementation actions as well as funding for a South Beacon Hill Resilience Hub.	\$1,500,000

Item #	Title	Description	Amount/FTE
1.29	Waterfront MPD Fund Carryover (Seattle Center)	This item increases appropriation authority by \$1,701,222 to MPD Waterfront Budget Control Level (19710-BO-SC-61000) and provides resources to Seattle Center for operations and maintenance of the Waterfront. The waterfront operations transferred from Seattle Parks and Recreation to CEN in July 2023; projects for Waterfront Operations Facilities were not able to be completed in 2023, including development of the SR99/Atlantic storage space, the Overlook Walk maintenance space, water fountains, and electrical capacity change orders. A portion will also be used to hire security staff needed for Overlook Walk and vehicle purchases.	\$1,701,222
1.30	GreenUp Renewable Energy Credits (Seattle City Light)	This item increases appropriation authority by \$776,156 in Seattle City Light, in the Light Fund, Customer Care Budget Control Level (41000-BO-CL-CUSTCARE).The increase is a carryforward of 2023 funds for the RCW-mandated voluntary green power program. It is self-funded and dedicated to the purchase of Renewable Energy Credits on behalf of program participants. Of the 18 GreenUp community projects expected to be completed in 2023, seven projects totaling \$776,156 were delayed due to supply chain backlog for solar projects throughout the state. The carryforward funds will be used to complete payments in 2024 for the seven local solar projects and acquire Renewable Energy Credits for use by the Green Up program. If not approved, the program will be left underfunded, unable to meet its obligations, and unable to purchase the related Renewable Energy Credits. GreenUp Community Solar Projects were not budgeted in 2024 as these projects were expected to be completed in 2023.	\$776,156

Item #	Title	Description	Amount/FTE
1.31	Process Improvement & Technology Projects (Seattle Department of Construction and Inspections)	This item increases appropriation authority by \$1,681,008 to the Seattle Department of Construction and Inspections in the Construction and Inspections Fund Process Improvement & Technology Budget Control Level (48100-BO-CI-U2800) and provides resources to complete projects that were budgeted in 2023 but were not completed due to other priorities, scope increases, legacy server upgrades, limited availability of Seattle IT developers, Accela SaaS migration, and the opening of walk-in services at the Seattle Municipal Tower. Projects that were delayed include Customer Support Modernization, Permit History Research, Accela/PeopleSoft Integration (APSI), and Accela Enhancements.	\$1,681,008
1.32	Transportation Funding Plan Carryforward (Seattle Department of Transportation)	This item increases the appropriation authority by \$2,015,000 in the Seattle Department of Transportation in the Transportation Fund Leadership and Administration Budget Control Level (13000-BO-TR-18001) and provides carry forward funding for the Transportation Funding Plan. This work is a multi-year effort, with a multi-year funding plan, to update the City's transportation plan for future transportation projects and programs. The effort seeks to coordinate all the City's modal plans into a unified transportation plan. The fund requested in this Change Request specifically will support communication Consultant contract, staffing, and outreach/communications support for the Transportation Funding Plan.	\$2,015,000
1.33	Transportation Technology Plan Carryforward (Seattle Department of Transportation)	This item increases the appropriation authority by \$1,000,000 in the Seattle Department of Transportation in the Transportation Fund Leadership and Administration Budget Control Level (13000-BO-TR-18001) and provides carry forward funding for the Transportation Technology Plan (TTP), which addresses current Departmental technology needs and helps to prepare the Department for managing 21st century transportation infrastructure.	\$1,000,000

Item #	Title	Description	Amount/FTE
1.34	Emergency Medical Dispatch IT Project (Seattle Fire Department)	This item increases appropriation authority by \$127,616 in the Seattle Fire Department in the Leadership and Administration BSL (00100-BO-FD-F1000). The budget carryforward is necessary for ITD to support the SFD's Emergency Medical Dispatch Project. This work has been delayed due to limited resource availability. The costs associated with this project will be direct billed to SFD.	\$127,616
1.35	OSE IT Initiatives: OSE Bldg Perform Standards App (Seattle Information Technology Department)	This item increases appropriation authority by \$359,070 in the IT Operating Fund in the Applications BSL (50410-BO-IT-D0600). The budget carryforward is necessary for ITD to support the OSE Bldg Perform Standards App Project. This work has been delayed due to limited resource availability. The costs associated with this project will be direct billed to OSE.	\$359,070
1.36	SFD IT Initiatives: Emergency MED Dispatch Prot (Seattle Information Technology Department)	This item increases appropriation authority by \$127,616 in the IT Operating Fund in the Applications BSL (50410-BO-IT-D0600). The budget carryforward is necessary for ITD to support the SFD's Emergency Medical Dispatch Project. This work has been delayed due to limited resource availability. The costs associated with this project will be direct billed to SFD.	\$127,616
1.37	PSERN Operator Service (Seattle Information Technology Department)	This item increases appropriation authority by \$600,000 in the IT Operating Fund in the Technology and Infrastructure BSL (50410-BO-IT-D0300). The budget carryforward is necessary for ITD to pay the PSERN (Puget Sound Emergency Radio Network) Operator, which took over as the regional emergency radio dispatch system. Payments have been delayed due to a delayed go-live date for the network.	\$600,000
1.38	CARE IT Initiatives: Criteria Based Dispatch System (Seattle Information Technology Department)	This item increases appropriation authority by \$31,182 in the IT Operating Fund in the Applications BSL (50410-BO-IT-D0600). This budget carryforward is necessary for ITD to continue work on the Criteria Based Dispatch System project. The costs associated with this work will be direct billed to CARE.	\$31,182

Item #	Title	Description	Amount/FTE
1.39	CARE IT Initiatives: 911 Call Data Recorder Integration (Seattle Information Technology Department)	This item increases appropriation authority by \$1,461,965 in the IT Operating Fund in the Applications BSL (50410-BO-IT-D0600). This budget carryforward is necessary for ITD to continue work on the 911 Call Data Recorder Integration project. The costs associated with this work will be direct billed to CARE.	\$1,461,965
1.40	FAS IT Initiatives: Replace Online Business Directory (OBD) (Seattle Information Technology Department)	This item increases appropriation authority by \$479,309 in the IT Operating Fund in the in the Applications BSL (50410-BO-IT-D0600). The budget carryforward is necessary for ITD to support the FAS Online Business Directory (OBD) project. The project was delayed due to resource constraints, and the project started during late of 2023. The cost associated with this work will be direct billed to FAS.	\$479,309
1.41	OH IT Initiatives: Housing Data Management System (Seattle Information Technology Department)	This item increases appropriation authority by \$1,485,178 in the IT Operating Fund in the Applications BSL (50410-BO-IT-D0600). The budget carryforward is necessary for ITD to continue to support the Office of Housing Data Management system project. The costs associated with this work will be direct billed to OH.	\$1,485,178
1.42	Cable Franchise Renewal Consultant Costs (Seattle Information Technology Department)	This item increases appropriation authority by \$217,000 in the Frontline Services & Workplace BSL (50410-BO-IT-D0400). This is for due diligence, audits, and ascertainment/community engagement associated with franchise renewal. The cable office is required to negotiate a franchise renewal, and our budget in the PCTech Digital Equity project is not sufficient for this work.	\$217,000

Item #	Title	Description	Amount/FTE
1.43	PET Fund Carryforward for CiviForm (Seattle Information Technology Department)	This item increases appropriation authority by \$222,260 in the Affordable Seattle Program within the IT Applications BSL (14500-BO-IT-D0600). This budget carryforward is necessary to complete needed platform integrations between CiviForm and department-specific customer relationship management tools. This work allows residents to have one point of entry to apply to all City benefit and discount programs while decreasing the administrative burden on staff processing applications. Costs associated with this work include one-time vendor support and internal ITD staff support to complete the platform integrations.	\$222,260
1.44	2024 TCIA Carryforward (Seattle Municipal Court)	This item increases appropriation authority by \$82,600 to Seattle Municipal Court in the General Fund, Court Operations Budget Control Level (00100-BO-MC-2000) to carryforward the remainder of unspent funds related to the Trial Court Improvement Account (TCIA). The funds will provide additional trainings and improvements for fiscal staff with the launch of the new Municipal Court Information System (MCIS 2.0).	\$82,600
1.45	SPU Carryforward for HSD Graffiti Contract Spending (Seattle Public Utilities)	This action would carry forward unspent SPU General Fund dollars in order to cover costs associated with a graffiti remediation contract held by HSD.	\$352,108

Item #	Title	Description	Amount/FTE
1.46	Generational Wealth Initiative Carryforward (Department of Neighborhoods)	This item increases appropriation authority by \$1,560,351 in the Department of Neighborhoods in the Payroll Expense Tax Fund Community Building Budget Control Level (14500-BO-DN-I3300) and by \$20,754 in the Payroll Expense Tax Fund Leadership and Administration Budget Control Level (14500-BO-DN-I3100) and provides resources for the Generational Wealth Initiative. In 2023, the Council appropriated \$1,850,000 one-time in the Department of Neighborhoods for the Generational Wealth Initiative. This item carries forward unspent portions of this funding.	\$1,581,105
1.47	DAP Carry Forward Request (Office of Economic Development)	This item increases appropriation authority in the Office of Economic Development by \$315,000 in the Payroll Expense Tax Fund Leadership and Administration Budget Control Level (14500-BO-ED-ADMIN) and provides resources for the continued implementation of Downtown Activation Plan initiatives, such as lighting projects in Downtown City parks and other one-time capital expenses in Downtown. The Downtown Activation Plan did not officially launch until late June 2023 and there are several outstanding work items which the department was not able to complete in the first six months of the project. This request carries forward underspend from one-time appropriations made in 2023.	\$315,000
1.48	2023 Carryforward Civil Service Vaccine Mandate Appeals (Civil Service Commissions)	This item increases appropriation authority by \$95000 to the BO-VC-VICIV Civil Service Commissions BSL. These resources will be used to increase the department's capacity for appeals and hearing related to vaccine mandate separations and impacts of the vaccine mandate being lifted, both for the Civil Service Commission (CSC) and Public Safety Civil Service Commission (PSCSC). The budget authority for this project was added as a one-time appropriation in the 2022 amended budget and carried forward in 2023. The project is not complete and may not be complete for several more years.	\$95,000

Item #	Title	Description	Amount/FTE
1.49	Law Timesheets Application (Law Department)	This item increases appropriation authority by \$70,000 to the Law Department in the General Fund, Criminal Budget Control Level (00100-BO-LW-J1500) for purchase of a Timesheets application. This is an application that is under contract by Seattle IT with a purchase order in place. The costs will flow through ITD and ultimately be paid by the Law Department.	\$70,000
1.50	Firefighters' Pension Fund Carryforward (Firefighter's Pension)	This item increases appropriation authority by \$860,000 in the Firefighters' Pension Budget Control Level (BO-FP-R2F01) in Fund 61040. It carries forward unused appropriation authority to help meet rising medical and long-term care costs, as well as the costs associated with pension increases resulting from the collective bargaining process. This authority is backed by existing fund balance.	\$860,000
1.51	Union Training Fund (Seattle Public Library)	This item increases appropriation authority by \$108,000 to the Human Resources Division (B5HRS). These funds are related to unspent resources designated for use by the Librarian's union (Local 2083). Carry-forward of these funds is stipulated in the Library & AFSCME labor contract – Article 25, Section 4.	\$108,000
1.52	Seattle Indian Health Board Carryforward (Human Services Department)	This item increases appropriation authority by \$800,000 in the General Fund Supporting Affordability & Livability Budget Control Level (00100-BO-HS-H1000) and provides resources for the Human Services Department to fund the Seattle Indian Center Detox Facility. This budget was initially added in the 2023 adopted budget and was not implemented due to project delays. Carryforward budget is required to provide funding in 2024.	\$800,000
1.53	Evergreen Treatment Services Facility Funding (Human Services Department)	This item increases appropriation authority by \$1,000,000 in the General Fund Promoting Public Health Budget Control Level (00100-BO-HS-H7000) and provides resources for the Human Services Department to provide funding for Evergreen Treatment Services facilities. This budget was originally added in the 2023 mid-year supplemental and is contracted to ETS through HSD's contract with King County Public Health in 2024.	\$1,000,000

Amendment A Version 1 to CB 120774 – CBO 2023 Carryforward ORD

Sponsor: Councilmember Rivera

Proviso \$25.3 million in OPCD's 2024 Adopted Budget for the EDI program.

Effect: This amendment would impose a proviso¹ on \$25.3 million allocated for the Equitable Development Initiative (EDI) program in the 2024 Adopted Budget. The proviso would require that the \$25.3 million (\$19.8 million JumpStart Fund, \$5.1 million Short-Term Rental Tax Fund, and \$0.4 million Community Development Block Grant (CDBG) portion of the General Fund) may not be spent until authorized by a future ordinance.

Council would consider lifting the proviso via ordinance after the Office of Planning and Community Development (OPCD) accomplishes the following: (1) expends the proposed 2023 carryforward amount of \$53.5 million, as proposed in Council Bill 120774; and (2) provides a status update report to the City Council on the existing list of projects (see the list in Appendix 1 to this amendment) funded through the EDI program, along with any lessons learned from the program evaluation work that is currently underway. This report should identify, where knowable, potential funding requests for these projects and what the projected timeline is for project completion. If not known, the report should describe activities completed to date for the project's development and next steps in the project development process.

This report should be submitted before or concurrently with transmittal of legislation to lift the proviso; this should occur no later than September 24, when the Council anticipates transmittal of the Executive's proposed 2024 Year-End Supplemental Budget Ordinance.

Background

The EDI grant program is intended to support community organizations in high displacement risk neighborhoods in acquiring sites and developing major capital projects, as well as providing capacity-building support to organizations that do not have experience undertaking a capital project. The EDI program focuses on providing early funding for projects at their initial stages of development, often prior to identification of a site for acquisition, and final funding for community-initiated capital projects, allowing them to start construction. If adopted, this amendment would pause any additional EDI funding beyond the appropriations carried forward from 2023, unless the Council lifts the proviso through a future ordinance.

If the proviso is not lifted by the Council in 2024, the \$25.3 million appropriation will lapse at year-end and become part of the 2025 beginning fund balance. The \$0.4 million of CDBG funds

¹ A proviso places a specific spending restriction on the use of an appropriation within the Adopted Budget. Within Council's statutory authority, budget provisos can restrict spending in a particular Budget Control Level, Budget Summary Level, division, department, or citywide. A proviso is "lifted" (i.e., the spending restriction is removed) either through Council action (ordinance) or when the prescribed conditions have been met.

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City Council
May 28, 2024
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could be reallocated for other eligible CDBG purposes. The current JumpStart Fund and Short-Term Rental Tax Fund policies restrict how this funding could be reallocated in the 2025 budget unless the policies are amended.

Add a new Section 2 to CB 120774 as follows and renumber subsequent sections as appropriate:

Section 2. None of the appropriations in the Office of Planning and Development's Equitable Development Initiative Budget Summary Level (BO-PC-X2P40), other than appropriations described in Section 1, item 1.20 of this ordinance may be spent until authorized by future ordinance.

Appendix 1: EDI Project Status as of March 1

Early EDI Projects: Generally, projects that are currently working to acquire land or are negotiating project and funding scope with OPCD

Title	EDI Zone	Project Name and Description
African Community Housing & Development - SIF	Delridge/West Seattle	Supporting the acquisition and development of a food incubation and innovation space to support small culturally attuned business entrepreneurship along the Delridge corridor
Africatown - Midtown Plaza	Capitol Hill / Central District	Midtown Center Africatown Africatown Community Land Trust in the Central Area has partnered with Capitol Hill Housing and the Capitol Hill Housing Foundation to develop Africatown Plaza at Midtown – a seven-story, mixed use building with 5,000-8,000 SF of commercial space and approximately 130 apartments affordable to households earning up to 60% AMI. Africatown Seattle on: Facebook, Twitter, Instagram, and YouTube.
Black Star Farmers	Citywide Search	Funding to support site acquisition for BSF, which funnels organically grown produce to underserved communities in Central and South Seattle by collaborating with existing mutual aid organizations. The network will empower oppressed communities to reconnect to ancestral foodways, deepen their relationship with land and food, and receive free local, organic produce and/or prepared meals. Additionally, the program will advise a small cohort of five urban gardeners to increase their yield and ability to feed families in need.
CAYA	Capitol Hill / Central District	CAYA Center House: Central Area Youth Association (CAYA) CAYA's new mixed use community center in the Central Area will accommodate growing programming needs as well as providing affordable homeownership opportunities to mitigate displacement of our community.
CDCPDA	Capitol Hill / Central District	Central District Community Preservation and Development Authority (CDCPDA) was funded to support rehabilitation of the McKinney Center for Community & Economic Development.
Chief Seattle Club (Northgate)	North	North College Longhouse Support for Chief Seattle Club to develop a longhouse and cultural center in partnership with Bellwether Housing and North Seattle Community College on surplus property owned by Seattle Colleges.
Co Lam Pagoda	Rainier Valley	Funding to support a mixed-use development for the Lotus Village project.
East African Community Services	Citywide Search	Funding to support acquisition of property to develop a mixed-use affordable housing and community facility.
Eritrean Association of Greater Seattle	Rainier Valley, Central District, Judkins Park	Funding to support rehabilitation at the EAGS community center.

Title	EDI Zone	Project Name and Description
Eritrean Community in Seattle & Vicinity	Capitol Hill / Central District	The Eritrean community In Seattle and Vicinity (ECISV) ECISV has been an operational agency for the refugees and immigrants of Eritrea and East African descents in Seattle since 1983. ECISV plans to redevelopment their 75 year old community center in the Central District. The vision for new development will be co-developed through membership and broader community engagement. Visit ECISV on Facebook
Estelita's Library	Beacon Hill	Freedom Cultural Center: Estelita's Library Estelita’s Library is a social justice community library and bookstore that uplifts and serves marginalized communities. Their mission is to decolonize space and knowledge, expanding their reach in Seattle, especially in Beacon Hill. They plan to acquire a property in Beacon Hill, serving as the library's headquarters while maintaining the Tiny House space in the Central District. The Freedom Cultural Center will be a dynamic, multi-use space fostering culture, community, and knowledge for historically marginalized individuals. Their ultimate goal is to build affordable housing that uplifts the community, staying true to their vision and commitment.
FAME-Equity Alliance of Washington	Capitol Hill / Central District	Funding to support capacity building and visioning to advance a new mixed-use affordable housing development.
Interim - Kong Yick	Pioneer Square & CID	Project Description Update Pending
LEMS	Rainier Valley - Columbia City	Life Enrichment Bookstore and Jazz Night School -- L.E.M.S. Life Enrichment Bookstore L.E.M.S. Bookstore is the longest standing cultural hub and community gathering space for the African diaspora in the Seattle Metropolitan Area. This project will sustain the community work LEMS has committed to supporting reparative strategies that invest directly in communities of color. LEMS is located on a historical landmark and has been serving the Seattle community for nearly over 30 years and is at a high risk of displacement being in an area of the city that has, is, and is likely to experience more significant displacement pressure for any BIPOC owned businesses. The vision for this project is to prevent commercial and community displacement of LEMS so that an organization with such a strong reputation and history can stay in the neighborhood.
Nurturing Roots	Beacon Hill	Funding to support Nurturing Roots in their acquisition of the community garden and the Black Power Epicenter nonprofit space.
NW Tap/Union Cultural Center	Rainier Valley	UCC's is to build an inclusive community through cultural arts to heal and cultivate positive change and they envision an interconnected community where all individuals feel a sense of belonging and empowered to develop their most authentic selves. EDI funds are to provide capacity-building for the organization to support pre-construction costs.
SCIDpda	Pioneer Square & CID	Seattle Chinatown International District Preservation and Development Authority (SCIDpda) SCIDpda is a leading force for the economic health of Seattle’s Chinatown International District, implementing strategies that range from support for individual businesses to marketing the entire neighborhood’s lively retail and cultural environment. They are completing their new housing project at 13th and Fir as part of the overall Yesler Terrace Redevelopment strategy.

Title	EDI Zone	Project Name and Description
Seattle Indian Services Commission	Pioneer Square & CID	Seattle Indian Services Commission Feasibility support to assist SISC in scoping out the redevelopment of their current facility to create a mixed-use building with cultural space and affordable housing.
SEED et al -- Hillman City Partners	Hillman City / Brighton	Hillman City Partners
Somali Health Board	Rainier Valley	Somali Health Board The Somali Community Cultural Innovation Hub came out of the Graham Street Vision process as a response to displacement pressure and a study conducted by the City of Seattle that found that East African communities experience high rates of discriminatory practices when accessing programs and securing safe and healthy housing. The project is partnership between Somali Health Board, Somali Community Services of Seattle and Al Noor Center of Washington. This project will provide a culturally relevant space in Southeast Seattle that serves as a multigenerational health hub, senior housing community, cultural anchor, and community center for the Somali and East African community.
Urban Black LLC	Delridge/West Seattle	Urban Black LCC is developing a project to support its Legacy Program, which seeks to help preserve and grow the wealth of Black families through community-controlled real estate development and to advance the Teyes Plaza Project
Urban Family	Rainier Valley	Funding to support Urban Family in purchase of a permanent space, UF is recognized in the Greater Seattle area as youth and family intervention experts, and community leaders frequently called upon by civic and community leaders to help stabilize neighborhoods under duress, and have mitigated the influence of systemic poverty, oppression, gangs and youth violence by providing grassroots and collaborative leadership, intervention programs, training, and consultation. Their innovative approach to problem-solving has helped many youths and their families to make life-changing decisions.
Youth Achievement Center - Africatown	Rainier Valley	Youth Achievement Center (YAC) -- The YAC is Africatown Community Land Trust's most recent project that we are developing in coalition with Community Passageways and Creative Justice in South Seattle adjacent to the Columbia City Light Rail station. The YAC will be a mixed use development providing emergency overnight housing, permanent affordable housing, and associated wraparound supportive services for Black and brown youth.

EDI Projects in Predevelopment: Projects that are currently working on design and permitting

Title	EDI Zone	Project Name and Description
Casa Latina	Capitol Hill / Central District / Beacon Hill	Casa Latina Casa Latina will use capacity building funding to support a capital project feasibility assessment for affordable senior housing and a senior center in the Central District, catered toward the Latino community.

Title	EDI Zone	Project Name and Description
Cham Refugees Community	Rainier Valley	Cham Refugees Community Construction of an upgraded, 12,000 square foot community center at their existing location in southeast Seattle. Development will be sharia-compliant and expand programming for youth, the elderly, and disabled members of the community. Cham Refugees Community on Facebook and YouTube.
Community-Owned Resource Development	Citywide Search	Community-Owned Resource Development EDI funds will loan up to \$1.2 million dollars to black developers at a 1-3% interest rate until the project is completed. The purpose of this fund is to increase access to funding for black developers who often face challenges accessing traditional sources of capital. The idea of creating a loan fund for black developers was born out of a need to address the lack of access to capital faced by black developers.
Duwamish Valley Affordable Housing Coalition	Duwamish and SW	Duwamish Valley Affordable Housing Coalition Build the capacity of the Coalition and the South Park and Georgetown communities. The coalition has developed a 3-prong anti-displacement approach – preserving existing affordable housing; developing new affordable housing; and developing a multi-purpose building that provides community gathering space, childcare and affordable spaces for local non-profits. Duwamish Valley Affordable Housing Coalition on Facebook.
Khmer Community S/KC	South Delridge / White Center	Khmer Community Space -- Khmer Community of Seattle King County (KCSKC) KCSKC secured a property to establish a Khmer Community Center. The Community Center will be a cultural hub and culturally responsive teaching platform to build trusting relationships, bridge intergenerational gaps, increase economic opportunity for Khmer Youth and young adults through employment and development of entrepreneurial skills. Having been displaced from their home in 2016, KCSKC hopes that the Khmer Community Center will help support SW Seattle and White Center as an epicenter for the Khmer Community.
Kwanza Prep Academy	Rainier Valley	Tayari Learning Center -- Kwanza Prep Academy (KPA) KPA was founded in 2019 as an early learning, tutoring, and stepped up to address digital inequities during the COVID-19 pandemic, acting as a bridge between immigrant and refugee families and schools. KPA has been working towards a vision for a childcare center in the Rainier Valley to address education equity. The organization purchased a single family home in Rainier Beach with plans to renovate into a childcare center.
Lake City Collective	North	Lake City Collective Lake City Collective uses a community ambassador model to increase the ability for local communities to become self-determining. LCC seeks to establish a location in Seattle’s Little Brook neighborhood that would allow them to expand services and establish partnerships that would preserve existing affordable housing sites in the neighborhood and improve living conditions. Lake City Collective on Facebook.

Title	EDI Zone	Project Name and Description
Multicultural Community Coalition Community Center	Rainier Valley	<p>Multicultural Community Center -- Multicultural Community Coalition (Southeast Seattle)</p> <p>The Multicultural Community Coalition (MCC) will anchor several community organizations serving Seattle’s growing immigrant, refugee and people of color communities by creating a community-owned and operated co-working space and an essential Cultural Innovation Center (CIC). The CIC is envisioned as a vital heritage and cultural arts venue which will house year-round, cultural events and activities as well as serving as a Creative Economy space in which artists, cultural nonprofits, and creative small businesses will produce and distribute cultural goods and services that generate jobs, revenue, and quality of life.</p>
Nehemiah Initiative	Capitol Hill / Central District	<p>Funding to support to support participating churches in the Central District to plan and implement state legislation about working with faith communities for affordable housing development.</p>
RBAC Rainier Beach Food Innovation Center	Rainier Valley - Rainier Beach	<p>RBAC is a Black-led community organization that is actively seeking to address racialized economic disparity in a neighborhood where communities of color experience a high risk of residential and cultural displacement. With this funding, RBAC will proceed with closing on a site adjacent to the Rainier Beach light rail station. RBAC’s Food Innovation Center is intended to create jobs and build on the many food cultures of Rainier Beach. The Center will support economic opportunity through new small food businesses, as well as education and workforce development for Seattle residents. The concept includes classrooms and teaching kitchens, an entrepreneurship center, a marketplace, food production facility, and community services. Plans for the site also include critically needed affordable housing.</p>
Rainier Valley Midwives	Rainier Valley	<p>Rainier Valley Midwives (RVM)</p> <p>RVM works to improve maternal health and birth outcomes for women of color, while also providing economic opportunities for health providers of color in South Seattle. RVM providers, clients, and community stakeholders created a vision for a permanent birth center to anchor their community and in 2021 RVM was able to purchase two adjoining sites in Columbia City that will eventually serve as the birth center. Visit RVM on Facebook.</p>
Royal Esquire Club	Columbia City / Lakewood / Genesee	<p>Royal Esquire Club Phase II -- Royal Esquire Club</p> <p>The Royal Esquire Club intends to continue improving their building to enable the continue the historic footprint in the community and provide a safe and modernized the place for the community to gather for meetings, parties, dinner and family & cultural events.</p>
Trans Women of Color Solidarity Network	Capitol Hill / Central District	<p>House of Constance -- The Trans Women of Color Solidarity Network is planning to work on repairs/remodeling of the current and initial staffing for project implementation at House of Constance. House of Constance is a new Black, Indigenous, Trans People of Color focused house in Seattle’s historic LGBTQ neighborhood (Capitol Hill), which will provide rent free housing for 8-10 community members, as well as necessary space for community gathering and organizing.</p>

Title	EDI Zone	Project Name and Description
Tubman Health Center	Rainier Valley	Flagship Clinic - The Tubman Center for Health & Freedom is currently slated to open its doors as a community health center in 2025, offering comprehensive Integrative Family Medicine and community programs. Tubman Health is a multifaceted health care system designed specifically to meet the health needs of communities of color and other marginalized groups. Visit Tubman Center on Facebook.
Wing Luke Museum	Pioneer Square & CID	Heritage House -- The Wing Luke Museum serves as a cultural anchor and economic driver for the Chinatown-International District community. In 2021, the museum purchased the Homestead Home, the most intact remaining single-family home in the Chinatown-International District (CID), constructed in 1937 despite the Chinese Exclusion Act and discriminatory barriers to single family homes in the CID. The museum will restore and upgrade the Homestead Home in order to operate the space as an immersive cultural and historical experience. The property additionally includes an 8,300 square foot parking lot that The Wing intends to develop into a mixed-use building with affordable apartments and street-level community gathering space.
Yehaw	Rainier Valley	#landback -- yəhaw Indigenous Creatives Collective has acquired a parcel of land within Seattle as part of their Land Rematriation project with the plans to create a community-led arts and food programming for Indigenous and broader BIPOC populations. This land would give those with broken relationships to the earth an opportunity to experience food and water sovereignty through sustainable, repetitive contact.

EDI Projects Under Construction or Under Way: Projects that are currently doing the work that has been funded to date

Title	EDI Zone	Project Name and Description
ADEFUA	Rainier Valley	ADEFUA Cultural Education Workshop – capacity building support to assist with potential property acquisition.
AiPace	Pioneer Square & CID	AiPACE (Aging in Pace Washington) At the to be acquired AiPACE senior day center and clinic, low-income, nursing-home-eligible Asian and Pacific Islander elders will receive culturally relevant wraparound services delivered through the evidence-based, nationally recognized Program of All-Inclusive Care for the Elderly (PACE), a nursing-home-alternative health care model that fosters independence and choice for elders to age at home. Visit AiPACE on Facebook.
African Women Business Alliance	Rainier Valley	Investing in capacity building to explore a permanent home for the Alliance and to support economic development of women-owned businesses.

Title	EDI Zone	Project Name and Description
Black and Tan Hall	Rainier Valley - Hillman City	Black and Tan Hall Finish construction of physical location of Black and Tan Hall in Hillman City that includes a cooperatively-owned restaurant, performing arts venue, and community gathering space. Build internal capacity of organization by hiring management team to develop systems and programs to sustain community-oriented and cooperative business model. Black and Tan Hall on: Facebook and Instagram.
Central Area Senior Center	Capitol Hill / Central District	Senior Center Improvements: Central Area Senior Center In 2020, after years of negotiations with the City, the Central Area Senior Center took ownership of the building where they serve as an African American institution and neighborhood gathering place for everyone in the Central District. They're using EDI funds to provide long-needed renovations to their property that will expand access to their programs. Visit Central Area Senior Center on Facebook.
Cultivate Southpark - SIF	Southpark	32,000 square feet of property in South Park will become 'El Barrio,' a community-owned cultural space that includes buy four buildings that house South Park Hall, the South Park Idea Lab co-working space and what the news release defines as locally owned micro businesses, including Resistencia Coffee.
Duwamish Valley Sustainability Association	Duwamish and SW	Transformed Nuestra Tierra: Bioenergia
El Centro - Columbia City	Beacon Hill	El Centro de La Raza's new development in Columbia City will have affordable housing units and ground floor childcare.
First AME Housing Association	Capitol Hill / Central District	Bryant Manor Pre-K: First AME Housing Association (FAME) FAME will development a 1,875 SF Pre-K facility within the redevelopment of Bryant Manor Apartments in the Central District. This early childhood education center will specifically serve low-income children who reside in and around the project. Up to 40 kids, ages 1-5 will benefit from a unique and culturally appropriate curriculum geared to teaching children of color, children learning English, and children from low-income families in a community-based setting.
Hip Hop Is Green	Capitol Hill / Central District	Cherry Street Farm and Commissary -- Hip Hop Is Green Hip Hop is Green's Cherry Street Farm & Lab is building a revolution in urban farming. They have installed a hydroponic farm and are building an education lab at the heart of Seattle's Central District. They want to every city across the country, starting in areas with limited access to fresh produce, to have their own Cherry Street Farms. Visit Hip Hop is Green on Twitter and Facebook.
House of Mkeka	Rainier Valley	House of Mkeka House of Mkeka is a collective of eight Black family households committed to community organizing and development through a Black, queer, womanist and anti-racist lens. The House of Mkeka Village is envisioned to be a 100% Black owned "pocket neighborhood" designed in cottage style aesthetic located on a potential site in the North end of Seattle, Madison Valley and/or Central District/Africatown.

Title	EDI Zone	Project Name and Description
Interim CDA -Bush Garden	Pioneer Square & CID	Bush Garden
Na'ah Illahee Fund	Citywide Search	Funding award to provide capacity-building and pre-development to support planning for the Elip Tilikum Land Conservancy.
New Hope Community Development Institute	Capitol Hill / Central District	New Hope Community Development Institute is partnering with LIHI to develop affordable housing with ground floor community space in the Central Area.
Opportunity Center @ Othello Square	Rainier Valley	Formerly called Homesite -- Opportunity Center @ Othello Square brings together multiple non-profit partners to pool their strengths in a community-focused campus. The Opportunity Center @ Othello Square includes non-profit offices, classrooms, cultural center, and maker space; 200 affordable and workforce apartments; and a mid-block public plaza for community use.
Rainier Ave Radio - SIF	Rainier Valley	Black-Owned community cultural center and career-connected learning institution building arts leadership and production skills in the next generation of south Seattle youth. Following a year of negotiation and fundraising, the Cultural Space Agency and Rainier Avenue Radio are proud to announce their partnership, and their purchase of the historic Columbia City Theater. With support from the Strategic Investment Fund, as well as direct philanthropy from local supporters, the two organizations have acquired the Theater for \$3.2 million and plan to reopen a fully renovated facility in 2023. Through the creation of the New Columbia City Theater Trust, cultural community members and neighbors will have the opportunity to be direct owners of, and investors in, the property.
United Indians of All Tribes	Magnolia - Discovery Park	The United Indians of All Tribes Foundation is completing repairs and upgrades to Daybreak Star in Discovery Park to prolong the centers useful life and modernize the facilities.

Completed EDI Projects: Projects have completed the work that has been funded to date

Title	EDI Zone	Project Name and Description
2020 Covid-Grants	Citywide	Various
Africatown - William Grose Center	Capitol Hill / Central District	William Grose Center for Cultural Innovation Africatown Create a space that supports small businesses, creative entrepreneurs and creating pathways to the knowledge-based economy. WGCCI will address community priorities and create career pathways that support entrepreneurship, innovation, and economic development located in the Central Area, which will serve Seattle's historically Black community that has been and continues to face high risk of displacement. The WGCCI will create dedicated spaces for innovation and civic tech events that can draw people in from the street and serve as a tech epicenter near existing cultural and community assets. Africatown Seattle on: Facebook, Twitter, Instagram, and YouTube.

Title	EDI Zone	Project Name and Description
Arte Noir - SIF	Capitol Hill / Central District	Arte Noir Arte Noir, a Black-led, community-based non-profit organization, will purchase 3228 sq feet of retail space at the corner of 23rd & Union within the new Midtown Square development to reinvest in Black art and culture with a permanent gallery space, a new Black culture retail space, and a small recording studio. As an anchor owner in the development, this project will establish generational control and generate equity gains that will be used to expand investment in Black artists and culture makers in the Central District, once the center of Black life in Seattle. Visit Arte Noir on Facebook.
BIPOC STAHC	Rainier Valley	Black, Indigenous People of Color Sustainable Tiny Art House Community (BIPOC STAHC) BIPOC STAHC's vision is to create a model that integrates affordable homeownership for low-income artists in order to prevent and reverse displacement of BIPOC artist within Seattle.
Byrd Barr Place	Capitol Hill / Central District	Byrd Barr Place Byrd Barr Place in the Central Area will renovate the 100+ year old historic Firehouse with inclusive, accessible design to add 1000+ SF of community gathering space. The project will retain the building as a cultural asset for Seattle's Black community and expand its services, which include energy assistance and home heating, housing assistance and eviction prevention, and food bank and home delivery. Byrd Barr Place on: Facebook, Twitter, and LinkedIn.
Chief Seattle Club (?al-?al)	Pioneer Square & CID	Chief Seattle Club's ?al?al is a mixed-use project in Pioneer Square that will create more than 80 affordable apartment homes in addition to a health clinic, non-profit office space, and a cafe/gallery space. The project will focus on serving the homeless American Indian/Alaskan Native (AI/AN) population in Seattle. Chief Seattle Club on: Facebook, Twitter, and Instagram.
Delridge Neighborhood Development Association (DNDA)	Delridge/West Seattle	Delridge Neighborhoods Development Association (DNDA) DNDA is currently undergoing a capital campaign and construction project, "Elevate Youngstown," to implement needed building improvements designed to ensure sustained access for people who visit the Youngstown Cultural Art Center for work, school, performances, classes and diverse community programs. The project aims to preserve and restore Youngstown as a building listed in the National Register of Historic Places and a designated City of Seattle Historic Landmark.
Duwamish Longhouse	Duwamish and SW	Duwamish Longhouse (Duwamish Valley Tribal Services, Duwamish Valley) Purchase of property adjacent to the Longhouse to support the continued viability of the cultural space. The current location has significant safety issues that affect the visitors attempting to access the Longhouse. Duwamish Cultural Center on Facebook, Twitter, and Instagram. Donate: givebigwa.org/Duwamish .
Empowering Youth & Family Outreach	Rainier Valley	Empowering Youth and Family Outreach will be purchasing commercial space in Bellwether Housing's Rose Street II project, providing a permanent home for their programs in Southeast Seattle.

Title	EDI Zone	Project Name and Description
Ethiopian Community in Seattle	Rainier Valley	8323 Rainier Avenue S: Ethiopian Community in Seattle Ethiopian Village Southeast Seattle Redevelopment of existing community center into a mixed-use project including affordable senior apartments and an expanded community center. Ethiopian Village will serve multiple generations of the Ethiopian community. Ethiopian Community in Seattle on: Facebook and Instagram.
Fathers and Sons Together	Rainier Valley	Fathers and Sons Together (FAST) FAST is building capacity and working on a feasibility study to seek to buy or build a Resource and Outreach Center in order to expand FAST's Next Generation Level Up program, a BIPOC-centered job readiness program for South Seattle residents ages 14-24. This program promotes economic opportunity through paid job training, providing pathways to living-wage career paths, and building on local cultural assets while enhancing cultural anchors.
Filipino Community of Seattle	Rainier Valley	Innovation Learning Center: Filipino Community of Seattle (FCS) Construction of FCS' Filipino Community Village Innovation Learning Center and Community Gathering Space, which will house STEAM education for youth and young adults, health and wellness programs for seniors, cultural enrichment programs, and domestic and gender-based violence counseling. The project also includes 95 affordable senior apartment homes.
Friends of Little Saigon	Pioneer Square & CID	Landmark Project: Little Saigon Landmark Project (Friends of Little Saigon, Chinatown-International District) A gathering place for the regional Vietnamese community in the Little Saigon business district. It will bring together the district's cultural, shopping, and culinary aspects in a distinctive physical anchor. The mixed-use Landmark Project will include a cultural center, Southeast Asian grocery, Emerald Night Market, and restaurant. Each component of the development will reflect Vietnamese Americans' rich culture, history, and future. The project is currently in feasibility and predevelopment. Friends of Little Saigon on Facebook and Instagram.
Hope Academy		Hope Academy Established in 2002, Hope Academy in South Delridge is the only East African community-based K-8 school accredited by the WA State Board of Education. HAS serves 120 students and more than 400 East African refugee and immigrant families through their programs. EDI funds will help secure ownership of the property.
Muslim Housing Services	Rainier Valley	Muslim Housing Services (MHS) MHS is a culturally competent organization that provides scatter site transitional and permanent housing for homeless single and two parent families with dependent children, including non-traditional and extended families, and families with underage children. MHS works directly with transitionally homeless families with children, with limited English proficiency, who are refugees and second-generation immigrants presenting multiple barriers to accessing and maintaining stable housing. MHS is working to acquire a permanent office space in the Rainier Beach neighborhood to support their ongoing work to prevent and respond to displacement of their constituency.

Title	EDI Zone	Project Name and Description
Queer the Land	Beacon Hill	Queer the Land seeks to fund the capacity building resources that they need to create a QT2BIPOC-owned and operated cooperative in one of Seattle’s historical communities of color to include affordable transitional and semi-permanent housing, co-working space, communal space, and a community garden. Queer the Land on Facebook.
Refugee and Immigrant Family Center	Delridge/West Seattle	Refugee and Immigrant Family Center (RIFC) RIFC mission is to provide a high quality part-time preschool experience for children ages 3-5 in a warm, nurturing, culturally relevant environment. RIFC prevented their displacement by purchasing their property, enabling the dual-language childcare program to continue to serve families and the community in Delridge.
Shared Space Foundation/Duwamish Tribal Services - SIF	Duwamish and SW	The Shared Spaces Foundation/DTS Heron’s Nest, a project aimed at preserving 3.56 acres of land in the West Seattle Greenbelt for community use, stewardship, sustainable education, and repatriating it to the Duwamish people. Funds will allow Shared Spaces to purchase the land currently used for the Heron’s Nest, serving as the first step in the repatriation process
SPIN: STEM Paths Innovation Network	Rainier Valley	Innovation Center -- SPIN plans to build an Innovation Center in Southeast Seattle that will improve access to low or no cost STEM workshops and programs for the community and schools. The Center will train emerging technologists and entrepreneurs; ready young adults for family-wage jobs; engage the imagination of youth from preschool through high school; and offer culturally relevant programming.
Wa Na Wari - SIF funds transferred to ARTS	Capitol Hill / Central District	Wa Na Wari Sited in a fifth-generation, Black-owned home, Wa Na Wari is an immersive community art project that reclaims Black cultural space and makes a statement about the importance of Black land ownership in gentrified communities. Creating a space for Black artists to gain income from performances and shows and support the cultural enrichment of the Central Area. Wa Na Wari will create an ownership model to convert single-family residences into cultural spaces.
West African Community Council	North or Rainier Valley	West African Community Center -- WACC partnered with EDI to purchase their community center building, allowing for greatly increased services to their community.



Legislation Text

File #: CB 120790, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to Seattle Public Utilities; authorizing the General Manager and Chief Executive Officer of Seattle Public Utilities, or designee, to execute an interlocal agreement with King County to receive payments for the disposal of residual waste from material recovery facilities in the City of Seattle; amending Ordinance 126955, which adopted the 2024 Budget; changing appropriations to various departments and budget control levels, and from various funds in the Budget; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

WHEREAS, recyclable materials collected within King County’s solid waste jurisdiction, which does not include materials from The City of Seattle (“City”), are sent to material recovery facilities within the City; and

WHEREAS, when the material recovery facilities within Seattle sort the collected material to separate recyclables, a residual volume of materials collected within the County’s solid waste jurisdiction cannot be recycled and need to be disposed; and

WHEREAS, the City Council on April 11, 2023, approved Ordinance 126796 authorizing General Manager and Chief Executive Officer of Seattle Public Utilities or designee to execute an interlocal agreement with King County to receive payments for the disposal of residual waste from material recovery facilities in Seattle; and

WHEREAS, the interlocal agreement authorized pursuant to Ordinance 126796 was subsequently modified to provide additional clarity on how the program support payments will be calculated; and

WHEREAS, the City and King County are authorized to enter this agreement regarding the disposal of those residuals under chapter 39.34 RCW (the Interlocal Cooperation Act); and

WHEREAS, a cooperative agreement regarding the disposal of residuals will benefit both parties and their ratepayers; and

WHEREAS, it is beneficial to the City to enter into an agreement with the King County regarding solid waste disposal of residuals; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The General Manager and Chief Executive Officer of Seattle Public Utilities, or designee, is authorized to execute, for and on behalf of The City of Seattle, the Interlocal Agreement for Disposal of Residual Solid Waste, attached to this ordinance as Attachment 1.

Section 2. To pay for necessary costs and expenses in 2024, but for which insufficient appropriations were made due to causes that could not reasonably have been foreseen at the time of the making of the 2024 Budget, appropriations for the following items in the 2024 Budget are increased from the funds shown, as follows:

Item	Fund	Department	Budget Summary Level	Amount
2.1	Solid Waste Fund (45010)	Seattle Public Utilities	General Expense (BO-SU-N000B)	\$1,630,000
Total				\$1,630,000

Section 3. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 4. This ordinance shall take effect as provided by Seattle Municipal Code Sections 1.04.020 and 1.04.070.

Passed by a 3/4 vote of all the members of the City Council the _____ day of _____, 2024, and signed by me in open session in authentication of its passage this _____ day of _____, 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this ____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)

Attachments:
Attachment 1 - Interlocal Agreement Disposal of Solid Waste

INTERLOCAL AGREEMENT DISPOSAL OF SOLID WASTE

THIS INTERLOCAL AGREEMENT (Agreement) is made by and between The City of Seattle, a municipal corporation of the State of Washington, acting by and through its Seattle Public Utilities (“SPU”) and King County, a political subdivision of the State of Washington, hereinafter referred to as the "County." SPU and the County also may be collectively referred to as the "Parties" and individually as "Party." This agreement has been authorized by the legislative body of each jurisdiction pursuant to formal action as designated below:

King County: Ordinance No. _____

City of Seattle: Ordinance No. _____

Recitals

WHEREAS, this Agreement is entered into by SPU and the County pursuant to Chapter 39.34 RCW (the “Interlocal Cooperation Act”); and

WHEREAS, the County, has jurisdiction over the solid waste, including recyclable materials, collected within unincorporated King County and the 37 municipalities with which it has Interlocal Agreements for solid waste disposal; and

WHEREAS, some of the Recyclable Materials collected within King County’s Solid Waste Jurisdiction, which does not include materials from the City of Seattle, are sent to Material Recovery Facilities located within the City of Seattle; and

WHEREAS, when the Material Recovery Facilities within the City of Seattle sort the collected material to separate recyclables, a residual volume of materials collected within the County’s Solid Waste Jurisdiction cannot be recycled and need to be disposed of; and

WHEREAS, the Material Recovery Facilities pay a disposal fee for the residuals that are separated and disposed of; and

WHEREAS, the City of Seattle’s position is that it has the authority under Seattle Municipal Code 21.36.040, and Seattle Municipal Code 21.36.112-116, and state law to direct the disposal of Residuals from Material Recovery Facilities within the City of Seattle; and

WHEREAS, the County’s position is that it has the authority under King County Code King County Code 10.08.020(C) and state law to direct the disposal of Residuals sorted from Recyclable Materials collected within King County’s Solid Waste Jurisdiction and

WHEREAS, the City of Seattle and the County disagree as to which entity has the authority to direct the disposal of Residuals processed in the City of Seattle from Recyclable Materials collected within King County’s Solid Waste Jurisdiction; and

WHEREAS, in 2021, the City filed a declaratory judgement action, seeking a court's determination of which Party's interpretation of authority was correct; and

WHEREAS, the Parties continued to meet to discuss resolution of this disagreement; and

WHEREAS, this Agreement is the compromise reached by both Parties; and

WHEREAS, the City and County believe that a cooperative agreement regarding the disposal of residuals will benefit both parties and their ratepayers; and the resolution will also preserve space at the King County Cedar Hills Regional Landfill; and

WHEREAS, the Parties have negotiated this Agreement in good faith.

NOW THEREFORE, in consideration of the Recitals and mutual promises set forth herein, the Parties agree as follows:

1. Purpose of Agreement

The purpose of this Agreement is to foster cooperation between the Parties and allow for the legal, efficient, and equitable disposition of Residual materials sorted from source-separated Recyclable Materials from King County’s Solid Waste Jurisdiction and processed at Material Recovery Facilities within the City of Seattle. This Agreement establishes the methodology and timing for payments to be made by SPU to the County for Residuals covered under this Agreement. This Agreement does not apply to Construction and Demolition Waste or Construction and Demolition materials.

2. Definitions

“King County Solid Waste Jurisdiction” means the geographic area for which King County government has comprehensive planning authority for solid waste management either by law, such as unincorporated areas, or by interlocal agreement, or both. It does not include the City of Seattle.

“Material Recovery Facilities” or “MRFs” means any facility that processes for transport source-separated solid waste, including source-separated recyclables, for the purpose of recycling. For purposes of this Agreement, MRFs are limited to those located within the City of Seattle.

“Program Support Payment” means the payment to be paid by the City to the County for each ton of Residuals sorted at MRFs located within the City that were collected from within the County’s Solid Waste Jurisdiction. The initial Program Support Payment rate is thirty dollars (\$30.00) per ton until adjusted as provided in Section 5.4.

“Recyclable Materials” means, for the purposes of this Agreement, solid waste that has been source-separated for the purpose of recycling, collected and delivered to MRFs for processing to remove Residuals. Recyclable Materials, after processing are those solid wastes that are separated for reuse, recycling or composting, including, but not limited to, papers, cardboard, metals, glass, plastic bottles and containers, plastic bags, mattresses, yard waste, food waste, wood waste, chemicals, oil, textiles, white goods and other materials that are identified as recyclable material under the King County comprehensive solid waste management plan.

“Residuals” means residual solid waste that is the nonrecyclable waste remaining after recycling processes at a MRF have removed Recyclable Materials.

“Solid waste” means all putrescible and nonputrescible solid and semisolid wastes, except wastes identified in WAC 173-350-020, including, but not limited to, garbage, rubbish, ashes, industrial wastes, commercial waste, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, discarded commodities and recyclable materials.

3. Duration of Agreement

This Agreement shall be effective no sooner than 30 days after it is approved by both the Seattle City Council and the King County Council and signed by both Parties, with the effective date being the date of the last signature ("Effective Date"). This Agreement shall remain in effect until terminated in accordance with the terms and conditions contained herein. Within a reasonable time of the Effective Date, the City shall dismiss, without prejudice, King County Superior Court Cause # 21-2-16144-4 SEA.

4. Default and Termination

- 4.1 Failure to keep or perform any term or condition of this Agreement shall be a default hereunder (a “Default”). Upon a Default, the aggrieved Party shall provide written notice to the defaulting Party specifying the nature of the Default and the aggrieved Party’s intention to terminate this Agreement if the Default is not corrected within thirty (30) days of the date of the notice. If the defaulting Party fails to cure within the stated period, the aggrieved Party may thereafter terminate this Agreement by sending written notice and the terms of Section 4.3 shall still apply.

- 4.2 Other than termination for Default, either Party may terminate this Agreement upon notifying the other Party in writing according to the notice provisions in this agreement no less than 180 days in advance of the date that the termination will take effect.
- 4.3 SPU shall not be obligated to make any additional Program Support Payments to the County for Residual waste directed to the SPU solid waste system after the effective date of termination, except that SPU shall pay to the County all payments for Residuals from the County's Solid Waste Jurisdiction disposed of prior to the effective date of termination. For example: if the date of termination is July 1 then SPU shall make payments to the County for all Residuals originating from the King County Solid Waste Jurisdiction directed to the SPU solid waste system up to July 1 even if the payments are not sent until after July 1 for waste transported before July 1.

5. Obligations of the City

- 5.1 On a quarterly basis, the City will collect data on the total tons of Recyclable Materials delivered to MRFs (TTRM) and the total tons of Recyclable Materials collected from within the County's Solid Waste Jurisdiction (KCRM). The City will collect data on the total tons of Residuals sorted at MRFs and directed to the City's disposal system (TR) on a quarterly basis. The City shall report the collected data required by this section to the County in accordance with section 5.2. Because the MRFs accept materials to be sorted from entities other than the City and the County's Solid Waste Jurisdiction, the Parties acknowledge that the TTRM and TR collected data include tonnage from those other entities. The Parties may also work on a joint reporting and tracking form to gather this information from the respective MRFs and satisfy the City's and County's obligations to track the Residuals.
- 5.2 Beginning at the end of the quarter following the effective date of this Agreement, the City shall provide the data collected under section 5.1 to the County on a quarterly basis within thirty (30) days of the end of that quarter. For example, if this Agreement is signed on October 28, 2023, then the City shall provide the County this data for the fourth quarter, October 31 to December 31, 2023, by January 31, 2024.
- 5.3 The City shall keep and make available for the County's inspection and audit all records pertaining to the collecting of data under section 5.1 and all Program Support Payment records. The City shall furnish to the County copies of these records upon request and shall keep all records for no less than six (6) years.

- 5.4 For Residuals collected within the County’s Solid Waste Jurisdiction, as calculated in compliance with Section 7, the City will pay the County a Program Support Payment of \$30.00 per ton that the City directs to its disposal facilities. Beginning April 1, 2024, and annually thereafter, the City will calculate the Program Support Payment to be paid to the County for the following year, which shall be increased by the same percentage as the City’s council-adopted increase in its railyard rate for disposal of Residuals. The City will notify the County of the rate changes for later years upon approval by the Seattle City Council. SPU has proposed railyard rate increases of 2.6% for April 2024 and April 2025. If these increases are adopted, then Program Support Payments will be \$30.78 per ton beginning in April 2024, and \$31.58 beginning in April 2025. Regardless of the Railroad rate, the Program Support Payment for any year will not be reduced below \$30 per ton.
- 5.5 If the County does not agree with the Program Support Payment set forth in the notice, then the Parties agree to attempt to resolve the dispute using the Agreement’s dispute resolutions procedures. Absent an agreement, the payment will not change, but either Party will be entitled to terminate the Agreement per Section 4 of this Agreement.
- 5.6 The City shall provide its Program Support Payment to the County on a quarterly basis within two months of the end of the quarter as follows:
- Quarter one (Q1) means January 1st through March 31st; Payment must be received by May 31st.
 - Quarter two (Q2) means April 1st through June 30th. Payment must be received by August 30st.
 - Quarter three (3) means July 1st through September 30th. Payment must be received by the County by November 3rd
 - Quarter four (4) means October 1st through December 31st. Payment must be received by February 28 of the following year.
- 5.7 Payments shall be made to King County Solid Waste Division.

6. Obligations of the County

- 6.1 The County will also collect data on the tons of Recyclable Materials from the County’s Solid Waste Jurisdiction delivered to MRFs for processing to separate out Residuals, and report that data to the City in accordance with the timeline in section 5.2. The Parties may also work on a joint reporting and tracking form to gather this information from the respective MRFs and satisfy the City’s and County’s obligations to track the Residuals. The County shall keep and make available for the City’s inspection and audit all records pertaining to the tracking of Residuals and all Program Support

Payment records. The County shall furnish to the City copies of these records upon request and shall keep all records for no less than six (6) years.

- 6.2 The County agrees that for all Residuals from Recyclable Materials collected from the County’s solid waste jurisdiction and sorted at MRFs, the City will be responsible for directing those Residuals to the City’s disposal system and will receive all disposal payments as long as this Agreement remains in full force and effect.
- 6.3 The County will direct any entity that sorts Recyclable Materials collected from the County’s solid waste jurisdiction within the City to follow the City’s directions regarding the disposal of related Residuals. If requested by the City, the County agrees to provide a letter to any such entities with those directions.

7. Calculation of Program Support Payment

- 7.1 The portion of the actual tons of Residuals generated within the County’s Solid Waste Jurisdiction and sorted at the MRFs cannot be specifically determined. Therefore, the Parties agree that the following formula provides an equitable approximation to derive that tonnage. Based on the quarterly tonnage data:

Number of tons of Recyclable Materials delivered to MRFs collected from within the County’s Solid Waste Jurisdiction (KCRM) divided by total tons of Recyclable Materials delivered to MRFs (TTRM) multiplied by the number of tons of all MRF Residuals directed to the City's disposal system (TR), resulting in the number of tons of Residuals sorted from Recyclable Materials collected within the County’s Solid Waste Jurisdiction (KCR), or

$$\left(\frac{KCRM}{TTRM}\right) \times TR = KCR$$

- 7.2 The Parties agree that Program Support Payment rate, as set forth in Section 5.6, shall be applied to the KCR to arrive at the dollar amount owed for the applicable quarter.

8. Compliance with Laws and Regulations

The Parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.

9. Notices

Any communication, notice or demand which either Party may be required or

desire to give to or serve on the other, shall be in writing and shall be deemed to have been duly given or sent if either delivered personally, sent by nationally recognized overnight delivery service or sent via United States Mail addressed to the following:

To the County:

	Solid Waste Division
Contact Name	Pat D. McLaughlin
Title	Solid Waste Division Director, DNRP
Address	King County Solid Waste Division 201 S. Jackson Street, Suite 5701 Seattle, WA 98104
Telephone	(206) 477-4501
E-Mail	pat.mclaughlin@kingcounty.gov

To SPU:

	Seattle Public Utilities
Contact Name	Sally Hulsman
Title	Director of Solid Waste Compliance & Inspections
Address	Seattle Municipal Tower, 59 th Floor 700 5 th AVE Seattle, WA 98014
Telephone	206-684-4682
E-Mail	Sally.hulsman@seattle.gov

or, to such other person or address as is hereafter designated in writing by either Party to the other. Each Party may change its notice address set forth in this section by giving notice of a new address to the other Party in accordance with this section. Any such communication, notice or demand shall be deemed to have been duly given or served one (1) business day after deposit with the courier service, if sent by overnight courier; on the date of personal delivery, if sent by hand delivery; or three (3) days after being placed in the U.S. mail, if sent by mail.

10. Indemnification and Hold Harmless; Release and Waiver

10.1. The City agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless the County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage, which is caused by, arises out of, or is incidental to the City's performance under this Agreement, except to the extent of the County's negligence. The City's obligations under this subsection shall include:

- a. The duty to promptly accept tender of defense and provide defense to the County at the City's own expense;
 - b. Indemnification of claims made by the City's own employees or agents; and,
 - c. The City expressly and specifically waives its immunity under the insurance provisions of Title 51 RCW but only to the extent necessary to fully indemnify the County, which waiver has been mutually negotiated by the Parties.
- 10.2 The County agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless the City, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage, which is caused by, arises out of, or is incidental to the County's performance under this Agreement, except to the extent of the City's negligence. The County's obligations under this subsection shall include:
- a. The duty to promptly accept tender of defense and provide defense to the City at the County's own expense;
 - b. Indemnification of claims made by the County's own employees or agents; and,
 - c. The County expressly and specifically waives its immunity under the industrial insurance provisions of Title 51 RCW but only to the extent necessary to fully indemnify the County, which waiver has been mutually negotiated by the Parties.
- 10.3 The Parties agree that the provisions of this Section 10 shall survive the termination of this Agreement.

11. Dispute Resolution

In the event that a dispute arises under this Agreement, the Parties shall each designate a person with authority to resolve the dispute and those representatives shall use reasonable efforts to resolve any dispute. If the representatives cannot resolve the dispute within fourteen (14) calendar days then either Party may request that King County's Director of the Solid Waste Division and the Deputy Director SPU Solid Waste review the dispute and meet and confer in an effort to resolve the dispute. If the Directors cannot resolve the dispute to each Party's satisfaction, then each Party shall designate, in writing, not more than three (3) candidates it proposes to act as a non-binding mediator within twenty (20) days following notification of a dispute. If the Parties cannot agree on one of the mediators from the combined list within fifteen (15) days, then the Parties shall promptly meet and select a mediator by blind draw. Upon

selection of the mediator, the Parties shall within forty-five (45) days or as soon thereafter as possible, meet and engage in a mediation of the dispute with the assistance of the mediator. The cost for the mediation services shall be borne equally between the Parties, each Party paying one-half of the cost. The mediator shall determine reasonable procedures. Testimony and briefing, if any, provided to the mediator shall be inadmissible in any subsequent court proceedings. If mediation fails to resolve the dispute, the Parties may thereafter seek redress in a court of competent jurisdiction. Nothing in this section shall be construed to prohibit either Party from exercising its right to terminate this Agreement as otherwise provided in this Agreement or be construed as a pre-condition to the exercise of such right to terminate.

12. Assignment

The Parties shall not assign this Agreement or any interest, obligation, or duty herein without the express written consent of the other Party.

13. Approval

This Agreement is expressly conditioned upon and subject to approval by ordinance of the City Council and by ordinance of the King County Council and shall not be binding unless and until so approved.

14. General Provisions

- 14.1 All of the terms, covenants, and conditions in this Agreement shall extend to and bind any approved legal successors and assigns of the Parties hereto.
- 14.2 This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in King County Superior Court.
- 14.3 The headings and recitals in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.
- 14.4 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time SPU shall have the right to terminate the

Agreement for cause.

- 14.5 This Agreement constitutes the entire agreement between the Parties for the purpose set forth in paragraph 1. There are no terms, obligations, covenants, or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both Parties.
- 14.6 The Parties agree to comply with RCW 39.34.040.
- 14.7 This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute but one and the same instrument.
- 14.8 Each individual signing this Agreement warrants that he or she has the authority to enter into this Agreement on behalf of the Party for which that individual signs.
- 14.9 The failure of either Party to insist upon strict performance of this Agreement shall not impact that Party's right to insist upon strict performance at a later time.
- 14.10 The Parties recognize and agree that the Parties hereto are independent governments. Except for the specific terms herein, nothing herein shall be construed to limit the discretion of the governing bodies of each Party. Nothing herein shall be construed as creating an association, joint venture, or partnership between the Parties, nor to impose any partnership obligations or liabilities on either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party. No new or separate legal or administrative agency is created by this Agreement. This Agreement shall be administered by the King County Solid Waste Division for the County and SPU Solid Waste.

15. Equal Opportunity to Draft

Each Party has had opportunity to consult with counsel in connection with the negotiation, execution and delivery of this Agreement. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would render the provisions of this Agreement in favor of or against the Party

preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement.

16. Third Party Beneficiary

This Agreement is not entered into with the intent that it shall benefit any other entity or person except those expressly described herein, and no such person or entity shall be entitled to be treated as a third-party beneficiary to this Agreement.

IN WITNESS WHEREOF, the County and SPU have executed this Agreement as of the latter date of signature below.

For the County:

Dow Constantine
King County Executive
Dated: _____

For SPU:

Jeff Fowler
Deputy Director of Solid Waste
Seattle Public Utilities

Dated: _____

SUMMARY and FISCAL NOTE

Department:	Dept. Contact:	CBO Contact:
Seattle Public Utilities	Sally Hulsman	Akshay Iyengar

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to Seattle Public Utilities; authorizing the General Manager and Chief Executive Officer of Seattle Public Utilities, or designee, to execute an interlocal agreement with King County to receive payments for the disposal of residual waste from material recovery facilities in the City of Seattle; amending Ordinance 126955, which adopted the 2024 Budget; changing appropriations to various departments and budget control levels, and from various funds in the Budget; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

Summary and Background of the Legislation:

This legislation would authorize Seattle Public Utilities (SPU) to execute an agreement with King County to allow for the legal, efficient, and equitable disposition of residual materials (garbage) collected by the County but sorted and processed at Material Recovery Facilities (MRF) within the City of Seattle. Pursuant to SMC 21.36.112, all residual material processed at MRFs within Seattle is designated as City Solid Waste and is required to be sent to an SPU transfer station or Union Pacific's Intermodal Facility.

This Agreement establishes the methodology and timing for payments to be made by SPU to King County for Residuals covered under this agreement. This agreement results in an additional 17,000 tons/year of MRF residual processing through Seattle's disposal contract for 2024. The agreement does not apply to Construction and Demolition Waste or materials. This Agreement is effective no sooner than 30 days after it is approved by both parties and remain in effect until terminated.

The City in 2023 approved Ordinance 126796 to authorize an agreement substantively the same as this agreement. It was subsequently modified to provide additional clarity on how the program support payments will be calculated.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No
No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation have financial impacts to the City? Yes No

Expenditure Change (\$); General Fund	2024	2025 est.	2026 est.	2027 est.	2028 est.
	\$0	\$0	\$0	\$0	\$0
Expenditure Change (\$); Other Funds	2024	2025 est.	2026 est.	2027 est.	2028 est.
	\$1,630,000	\$1,270,000	\$175,000	\$184,000	\$193,000

Revenue Change (\$); General Fund	2024	2025 est.	2026 est.	2027 est.	2028 est.
	\$170,000	\$171,000	\$24,000	\$25,000	\$26,000
Revenue Change (\$); Other Funds	2024	2025 est.	2026 est.	2027 est.	2028 est.
	\$1,870,000	\$2,027,000	\$268,000	\$282,000	\$296,000

Number of Positions	2024	2025 est.	2026 est.	2027 est.	2028 est.
Total FTE Change	2024	2025 est.	2026 est.	2027 est.	2028 est.

3.a. Appropriations

Fund Name and Number	Dept	Budget Control Level Name/Number*	2024 Appropriation Change	2025 Estimated Appropriation Change
SOLID WASTE FUND - 45010	SPU	BO-SU-N000B - General Expense	\$1,630,000	\$1,270,000
TOTAL			\$1,630,000	\$1,270,000

Appropriations Notes:

SPU will have approximately \$1.6M in increased costs for 2024, including approximately \$600k/year for increased landfill disposal payment, \$270k/year for disposal taxes, and \$765k/year for King County Program Support.

3.b. Revenues/Reimbursements

This legislation adds, changes, or deletes revenues or reimbursements.

Fund Name and Number	Dept	Revenue Source	2024 Revenue	2025 Estimated Revenue
SOLID WASTE FUND - 45010	SPU	Material Recovery Facilities Located in Seattle	\$1,870,000	\$2,027,000
TOTAL			\$1,870,000	\$2,027,000

Revenue/Reimbursement Notes:

SPU’s Solid Waste Fund will receive approximately \$1.9M/year in new commercial rail disposal revenue from the two Material Recovery Facilities in Seattle, as they return more residual waste to the Seattle disposal system, from King County and other landfills, to comply with the terms of the SPU-KC ILA. This will result in a net revenue to the Solid Waste Fund of approximately \$240k/year. This will also result in City of Seattle disposal tax revenue (General Fund) of approximately \$170k/year.

3.c. Positions

This legislation adds, changes, or deletes positions.

3.d. Other Impacts

Does the legislation have other financial impacts to The City of Seattle, including direct or indirect, one-time or ongoing costs, that are not included in Sections 3.a through 3.c? If so, please describe these financial impacts.

The agreement is expected to begin April 1st, 2024. Therefore 2024 financial impact will be 75% of a full year. Relevant revenues and costs will increase slightly in future years consistent with inflation adjustments in the retail rates and contract payments.

If the legislation has costs, but they can be absorbed within existing operations, please describe how those costs can be absorbed. The description should clearly describe if the absorbed costs are achievable because the department had excess resources within their existing budget or if by absorbing these costs the department is deprioritizing other work that would have used these resources.

Please describe any financial costs or other impacts of *not* implementing the legislation.

In the absence of an agreement, the County and the City may resolve the disposal of the residuals through litigation. The litigation would delay the increase in revenue and could result in the City not being entitled to the additional revenue.

4. OTHER IMPLICATIONS

a. Please describe how this legislation may affect any departments besides the originating department.

NA

b. Does this legislation affect a piece of property? If yes, please attach a map and explain any impacts on the property. Please attach any Environmental Impact Statements, Determinations of Non-Significance, or other reports generated for this property.

No

- c. Please describe any perceived implication for the principles of the Race and Social Justice Initiative.**
- i. How does this legislation impact vulnerable or historically disadvantaged communities? How did you arrive at this conclusion? In your response please consider impacts within City government (employees, internal programs) as well as in the broader community.**
NA
 - ii. Please attach any Racial Equity Toolkits or other racial equity analyses in the development and/or assessment of the legislation.**
NA
 - iii. What is the Language Access Plan for any communications to the public?**
NA
- d. Climate Change Implications**
- i. Emissions: How is this legislation likely to increase or decrease carbon emissions in a material way? Please attach any studies or other materials that were used to inform this response.**
NA
 - ii. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle’s resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**
No
- e. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s)? What mechanisms will be used to measure progress towards meeting those goals?**
NA

5. CHECKLIST

- Is a public hearing required?**
No
- Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required?**
No
- If this legislation changes spending and/or revenues for a fund, have you reviewed the relevant fund policies and determined that this legislation complies?**
Yes

- Does this legislation create a non-utility CIP project that involves a shared financial commitment with a non-City partner agency or organization?**
No

6. ATTACHMENTS

Summary Attachments: None.



Legislation Text

File #: CB 120786, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the City Light Department; accepting the following easements for electrical distribution rights in King County, Washington; placing said easements under the jurisdiction of the City Light Department; and ratifying and confirming certain prior acts.

WHEREAS, the City Light Department (“City Light”) requires that the owner of a new or altered electrical service obtain for The City of Seattle (“City”) a utility easement whenever City Light conductors must pass over, under, or through the property of another person, or when service equipment such as poles or vaults must be located either on the property being served or the property of a third party; and

WHEREAS, City Light has obtained, on behalf of the City, the necessary easements to provide electrical service from the property owners listed herein; and

WHEREAS, the Seattle City Charter, Article IV, Section 14, requires that all acquisition and disposal of real property interests shall be by ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City of Seattle hereby accepts the following easements, each granting to The City of Seattle an easement for overhead or underground electrical distribution rights upon, under, and across the real property in King County, Washington, as more particularly described in the document listed after each Grantor’s name:

PROLOGIS-EXCHANGE 3301 SOUTH NORFOLK LLC; dated November 2, 2021; SCL P.M. #230403-3-018; K.C. Recording #20211103000158;

MATTHEW & SHANNON HERMSEN; dated November 11, 2021; SCL P.M. #250411-1-019; K.C.

Recording #20211208000228;

ROYSTONE ON QUEEN ANNE LLC; dated November 30, 2021; SCL P.M. #250325-1-028; K.C.

Recording #20211208000236;

BDR URBAN 24 LLC; dated January 14, 2022; SCL P.M. #240336-4-043; K.C. Recording

#20220120000942;

GREENSTREAM INVESTMENTS LLC; dated December 12, 2022; SCL P.M. #240432-1-014; K.C.

Recording #20230103000268;

SERENA JENNIFER BATTEN; dated December 15, 2022; SCL P.M. #250433-2-054; K.C. Recording

#20230103000344;

EBM RE VIII LLC; dated December 30, 2022; SCL P.M. #250312-2-049; K.C. Recording

#20230109000435;

HOMESTEAD COMMUNITY LAND TRUST; dated December 21, 2022; SCL P.M. #230416-4-043;

K.C. Recording #20230106000566;

RIVERTON PARK UNITED METHODIST CHURCH; dated December 22, 2023; SCL P.M. #230416-

4-042; K.C. Recording #20230106000567;

BELLWETHER LINDEN LLLP; dated February 3, 2023; SCL P.M. #260419-2-005; K.C. Recording

#20230214000263;

SUKHBIR GREWAL & GURDIP SINGH; dated February 15, 2023; SCL P.M. #230422-2-057; K.C.

Recording #20230221000323;

SUKHBIR GREWAL & GURDIP SINGH; dated February 15, 2023; SCL P.M. #230422-2-057; K.C.

Recording #20230403000016;

ELISA ZHANG; dated March 24, 2023; SCL P.M. #230406-3-024; K.C. Recording #20230412000107;

WA MU 107 ST 20 LLC; dated April 19, 2023; SCL P.M. #230406-3-025; K.C. Recording

#20230419000675;

WILLOW INVESTMENT LLC; dated April 10, 2023; SCL P.M. #240427-2-043; K.C. Recording #20230420000405;

COOPER, CONNIE L. & FINGER, GREGORY W.; dated May 5, 2023; SCL P.M. #250409-1-006; K.C. Recording #20230508000897;

HAVENHURST HOLDINGS LLC & TENTH STREET PARTNERS LLC; dated May 11, 2023; SCL P.M. #260407-4-031; K.C. Recording #20230522000195;

LENNAR NORTHWEST LLC; dated May 15, 2023; SCL P.M. 230407-4-007; K.C. Recording #20230515000718;

12312 & 12316 14TH AVE NE LLC; dated May 23, 2023; SCL P.M. #260429-1-076; K.C. Recording #20230531000333;

1526 62ND LLC; dated May 24, 2023; SCL P.M. #250311-1-0198; K.C. Recording #20230605000433;
RIO BRAVO LLC; dated June 29, 2023; SCL P.M. #230301-2-029; K.C. Recording #20230710000259;
REALTY NW DREAM HOMES LLC; dated June 30, 2023; SCL P.M. #230413-1-022; K.C. Recording #20230710000267;

TERRESON, BRIAN & PATE, ERYN; dated May 23, 2023; SCL P.M. #230407-4-040; K.C. Recording #20230710000576;

ROLAND DEVELOPMENT LLC; dated July 11, 2023; SCL P.M. #240404-1-065; K.C. Recording #20230712000002;

STATION 49 LLC; dated August 2, 2023; SCL P.M. #250410-1-041; K.C. Recording #20230803000639;

KEYSTONE TWO APARTMENTS LLC; dated July 17, 2023; SCL P.M. #240336-4-045; K.C. Recording #20230807000308;

PETERSON JUNEAU LLC; dated August 1, 2023; SCL P.M. #240323-3-026; K.C. Recording #20230807000319;

DINH, BINH; dated August 9, 2023; SCL P.M. #230410-4-011; K.C. Recording #20230814000376;

KELLY A ERICKSON & SCOTT STERTON; dated August 7, 2023; SCL P.M. #250322-2-013; K.C. Recording #20230821000351;

HOUSING AUTHORITY OF THE CITY OF SEATTLE; dated September 21, 2023; SCL P.M. #240405-1-038; K.C. Recording #20230925000235;

9238 20TH AVE LLC; dated October 17, 2023; SCL P.M. #240336-4-062; K.C. Recording #20231023000337;

13TH WEST PARTNERS LLC; dated October 3, 2023; SCL P.M. #250313-3-055; K.C. Recording #20231023000340;

CLEAR VISION INVESTMENTS INC; dated October 3, 2023; SCL P.M. #260434-3-033; K.C. Recording #20231023000341;

DEBRA BOHN & CRAIG E BOHN; dated October 25, 2023; SCL P.M. #230401-4-012; K.C. Recording #20231031000186;

BRYANT MANOR 1 LLLP; dated October 23, 2023; SCL P.M. #240404-2-070; K.C. Recording #20231031000187;

DINH, BINH; dated October 25, 2023; SCL P.M. #230410-4-011; K.C. Recording #20231027000035;

DINH, BINH; dated October 30, 2023; SCL P.M. #230410-4-012; K.C. Recording #20231106000194;

TRUJILLO, GEORGETTE; dated October 30, 2023; SCL P.M. #230417-1-042; K.C. Recording #20231106000196;

ARBOR SPACE LLC; dated November 8, 2023; SCL P.M. #250419-3-058; K.C. Recording #20231114000228;

BURIEN 18 LLC & R&R GLENCREST LLC; dated October 28, 2023; SCL P.M. #230404-4-014; K.C. Recording #20231211000220;

LENNAR NORTHWEST LLC; dated November 20, 2023; SCL P.M. #230407-4-042; K.C. Recording

#20231211000757;

CRE MT BAKER PARTNERS LLC; dated December 6, 2023; SCL P.M. #240409-4-026; K.C.

Recording #20231218000279;

NORTH BLOCK SPRING STREET DEVELOPMENT LLC; dated November 27, 2023; SCL P.M.

#250432-3-024; K.C. Recording #20231218000284;

CP VI BOYLSTON LLC; dated November 27, 2023; SCL P.M. #250432-1-043; K.C. Recording

#20231218000289;

PETERSON JUNEAU LLC; dated December 13, 2023; SCL P.M. #240323-3-027; K.C. Recording

#20231218000671;

TERRAMAX GENERAL CONTRACTING LLC; dated January 3, 2024; SCL P.M. #240409-1-034;

K.C. Recording #20240108000242;

ARCADIA HOMES LLC; dated December 22, 2023; SCL P.M. #260302-1-030; K.C. Recording

#20240108000244;

YESLER TOWERS LLC; dated January 3, 2024; SCL P.M. #240405-2-018; K.C. Recording

#20240109000517;

SAVAGE DARYL W; dated December 14, 2023; SCL P.M. #240302-3-013; K.C. Recording

#20240103000442;

12203 DMM LLC & JOSE E VILLA; dated December 29, 2023; SCL P.M. #230409-3-027; K.C.

Recording #20240123000129;

CITY OF SEATTLE; dated September 25, 2023; SCL P.M. 250528-2-002A; K.C. Recording

#20230925000563.

Section 2. The real property interests conveyed by the easements in Section 1 of this ordinance are placed under the jurisdiction of the City Light Department.

Section 3. Any act consistent with the authority of this ordinance taken prior to its effective date is

hereby ratified and confirmed.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2024, and signed by me in open session in authentication of its passage this _____ day of _____, 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)

SUMMARY and FISCAL NOTE

Department:	Dept. Contact:	CBO Contact:
City Light	Andrew Strong	Greg Shiring

1. BILL SUMMARY

Legislation Title:

AN ORDINANCE relating to the City Light Department; accepting the following easements for electrical distribution rights in King County, Washington; placing said easements under the jurisdiction of the City Light Department; and ratifying and confirming certain prior acts.

Summary and Background of the Legislation:

City Light requires that the owner of a new or altered electrical service provide The City of Seattle with a utility easement whenever City Light facilities must pass over, under, or through the property of another person, or when service equipment such as poles or vaults must be located either on the property being served or the property of a third party.

City Light periodically requests that the City Council accept these distribution easements by ordinance. This legislation will accept the 51 distribution easements that have been received and recorded since the previous distribution easement acceptance ordinance was adopted.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation have financial impacts to the City? Yes No

4. OTHER IMPLICATIONS

a. Please describe how this legislation may affect any departments besides the originating department.

Not applicable.

b. Does this legislation affect a piece of property? If yes, please attach a map and explain any impacts on the property.

Yes. These easements are mapped in the Seattle City Light's Real Property Geographic Information System (GIS).

c. Please describe any perceived implication for the principles of the Race and Social Justice Initiative.

There are no perceived impacts. Not applicable.

d. Climate Change Implications

i. Emissions: How is this legislation likely to increase or decrease carbon emissions in a material way?

No.

ii. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way?

No.

e. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)? What mechanisms will be used to measure progress towards meeting those goals?

Not applicable.

5. CHECKLIST

Is a public hearing required?

Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required?

If this legislation changes spending and/or revenues for a fund, have you reviewed the relevant fund policies and determined that this legislation complies?

Does this legislation create a non-utility CIP project that involves a shared financial commitment with a non-City partner agency or organization?

6. ATTACHMENTS

Summary Attachments: None.



Legislation Text

File #: CB 120787, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the City Light Department; accepting the following easements for electrical distribution in King County, Washington; placing said easements under the jurisdiction of the City Light Department; and ratifying and confirming certain prior acts.

WHEREAS, the Seattle Department of Construction and Inspections requires that applications for short plats, lot boundary adjustments, and unit lot subdivisions be reviewed by other City departments as a condition of its approval of such property divisions; and

WHEREAS, it is the intent of The City of Seattle that each lot created by such property divisions has adequate access and rights for placement, operation, and maintenance of all utilities including electrical service; and

WHEREAS, the access and rights for such utilities are provided by means of utility easements in the final approved short plats, lot boundary adjustments, and unit lot subdivisions granted by the property owners; and

WHEREAS, the Seattle City Charter, Article IV, Section 14, requires that all acquisition and disposal of real property interests shall be by ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City of Seattle hereby accepts the easements for overhead or underground electrical distribution rights upon, under, and across the real property in King County, Washington, as more particularly described in the short plats, lot boundary adjustments, and unit lot subdivisions approved by the Seattle Department of Construction and Inspections, with the easements granted to The City of Seattle by the following

persons or entities identified as follows:

GREENBUILD DEVELOPMENT LLC; SDCI #3028574; approved March 9, 2023; K.C. Recording #20230317900007;

SCP ARBOR HEIGHTS LLC; SDCI #3032898; approved December 15, 2022; K.C. Recording #20221230900001;

DANG QUOC; SDCI #3032908; approved February 16, 2023; K.C. Recording #20230302900004;

3727 DAWSON LLC; SDCI #3034021; approved March 29, 2023; K.C. Recording #20230406900003;

8318 13TH AVE LLC; SDCI #3034745; approved December 20, 2022; K.C. Recording #20230201900002;

8318 13TH LLC; SDCI #3034800; approved December 20, 2022; K.C. Recording #20230201900003;

BUILDER SYNDICATE LLC; SDCI #3036788; approved February 9, 2023; K.C. Recording #20230310900002;

BT PROPERTY INVESTMENTS LLC; SDCI #3036923; approved February 8, 2023; K.C. Recording #20230315900007;

HEMLOCK PARCEL LLC; SDCI #3036950; approved January 12, 2023; K.C. Recording #20230123900011;

828 PROPERTY LLC; SDCI #3037577; approved March 29, 2023; K.C. Recording #20230412900011;

9741 57TH AVE S SEATTLE LLC; SDCI #3037654; approved January 12, 2023; K.C. Recording #20230126900004;

EBM RE VIII LLC; SDCI #3037708; approved January 26, 2023; K.C. Recording #20230203900001;

COLLZ INC; SDCI #3037754; approved January 12, 2023; K.C. Recording #20230127900002;

VO ALEX; SDCI #3038005; approved January 31, 2023; K.C. Recording #20230210900002;

WALTIER HOMES LLC; SDCI #3038067; approved January 12, 2023; K.C. Recording #20230127900003;

PEELER CONSTRUCTION LLC; SDCI #3038153; approved January 12, 2023; K.C. Recording #20230130900007;

9205 14TH LLC; SDCI #3038230; approved March 29, 2023; K.C. Recording #20230412900010;

STEELE HOMES INC; SDCI #3038345; approved January 12, 2023; K.C. Recording #20230125900002;

GREEN WAY HOMES LLC; SDCI #3038387; approved January 26, 2023; K.C. Recording #20230221900010;

DWELL DEVELOPMENT LLC; SDCI #3038398; approved February 28, 2023; K.C. Recording #20230321900001;

STEWARD VENTURES LLC; SDCI #3038443; approved January 26, 2023; K.C. Recording #20230203900014;

DB FUND LLC; SDCI #3038478; approved January 26, 2023; K.C. Recording #20230216900008;
2029 YALE AVE E LLC; SDCI #3038506; approved February 2, 2023; K.C. Recording #20230217900003;

SEA ALKI PROPERTIES LLC; SDCI #3038578; approved January 24, 2023; K.C. Recording #20230217900006;

INDELIBLE ASSETS LLC; SDCI #3038698; approved February 15, 2023; K.C. Recording #20230302900007;

19TH & STATE LLC; SDCI #3038729; approved February 7, 2023; K.C. Recording #20230214900007;

16TH & SPRING DEV CO LLC; SDCI #3038814; approved January 23, 2023; K.C. Recording #20230131900027;

JAMISON CONSTRUCTION SERVICES LLC; SDCI #3038940; approved January 26, 2023; K.C. Recording #20230203900012;

GREEN OWL HOO LLC; SDCI #3039059; approved November 18, 2022; K.C. Recording
#20230110900005;

KEY DEVELOPMENT LLC; SDCI #3039069; approved December 20, 2022; K.C. Recording
#20230106900006;

DIMA CONSTRUCTION LLC; SDCI #3039080; approved February 8, 2023; K.C. Recording
#20230216900007;

LIVV FAMILY HOLDINGS LLC; SDCI #3039081; approved January 23, 2023; K.C. Recording
#20230214900006;

BLACKWOOD HOLDINGS XXV LLC; SDCI #3039086; approved January 13, 2023; K.C. Recording
#20230302900001;

1206 N 47TH ST LLC; SDCI #3039225; approved January 13, 2023; K.C. Recording
#20230123900010;

KOCH ADAM H; SDCI #3039226; approved December 20, 2022; K.C. Recording #20230106900007;
CITY HOMES 2206 DEVELOPMENT LLC; SDCI #3039259; approved April 7, 2023; K.C. Recording
#20230421900002;

COOMBES DEVELOPMENT LLC & COOMBES 6016 CALIFORNIA AVE SW LLC; SDCI
#3039293; approved January 12, 2023; K.C. Recording #20230321900003;

9425 18th AVE SW LLC; SDCI #3039421; approved February 9, 2023; K.C. Recording
#20230217900002;

RUFFHOUSE DEVELOPMENT LLC; SDCI #3039461; approved March 9, 2023; K.C. Recording
#20230330900044;

MODERN S CONSTRUCTION LLC; SDCI #3039466; approved February 21, 2023; K.C. Recording
#20230224900002;

FADAMI MOYAD FARHAN; SDCI #3039513; approved April 5, 2023; K.C. Recording

#20230414900003;

GREEN WAY HOMES LLC; SDCI #3039539; approved March 6, 2023; K.C. Recording

#20230313900002;

GREEN WAY HOMES LLC; SDCI #3039540; approved September 20, 2022; K.C. Recording

#20230112900001;

BLACKWOOD HOLDINGS XXX LLC; SDCI #3039731; approved March 14, 2023; K.C. Recording

#20230330900042;

2617 44TH AVE SW LLC; SDCI #3039752; approved March 23, 2023; K.C. Recording

#20230330900039;

MODERN HOMES LLC; SDCI #3039770; approved January 9, 2023; K.C. Recording

#20230123900001;

SEATTLE BUILT GREEN LLC; SDCI #3039772; approved December 28, 2022; K.C. Recording

#20230104900003;

LOF II HOLDINGS LLC; SDCI #3039796; approved February 2, 2023; K.C. Recording

#20230210900003;

RUFFHOUSE DEVELOPMENT LLC; SDCI #3039797; approved March 14, 2023; K.C. Recording

#20230328900005;

911 14TH AVE LLC; SDCI #3039818; approved February 13, 2023; K.C. Recording

#20230127900004;

MODERN HOMES LLC; SDCI #3039830; approved January 26, 2023; K.C. Recording

#20230210900001;

COOMBES 4107 42ND AVE SW LLC; SDCI #3039831; approved March 29, 2023; K.C. Recording

#20230412900007;

FLANIGAN GROUP DEVELOPMENT LLC; SDCI #3039832; approved April 18, 2023; K.C.

Recording #20230421900001;

KJW RENTALS INC; SDCI #3039837; approved March 17, 2023; K.C. Recording #20230328900006;

ECOWORKS HOME INC; SDCI #3039866; approved February 28, 2023; K.C. Recording
#20230313900003;

CITY HOMES 2206 DEVELOPMENT LLC; SDCI #3039889; approved March 29, 2023; K.C.

Recording #20230412900009;

1601 S WASHINGTON ST LLC; SDCI #3039916; approved January 26, 2023; K.C. Recording

#20230203900013;

ALASKA JUNCTION ECO HOMES LLC; SDCI #3039965; approved January 23, 2023; K.C.

Recording #20230308900003;

AMERICAN DREAM HOME GROUP 11 LLC & AMERICAN DREAM REALTY INVESTMENT
GROUP 11 LLC; SDCI #3039984; approved February 8, 2023; K.C. Recording #20230214900005;

SUPREME GREEN HOMES DEVELOPMENT LLC; SDCI #3040004; approved April 5, 2023; K.C.

Recording #20230407900006;

DIMA CONSTRUCTION LLC; SDCI #3040031; approved February 28, 2023; K.C. Recording

#20230303900007;

LOF HOLDING COMPANY LLC; SDCI #3040070; approved March 17, 2023; K.C. Recording

#20230405900003;

AK HOMES INC; SDCI #3040111; approved April 3, 2023; K.C. Recording #20230412900013;

COACHER RONALD D & COACHER LISA J; SDCI #3040136; approved March 29, 2023; K.C.

Recording #20230425900002;

HIND MAN KENNETH & CARR BENJAMIN; SDCI #3040207; approved January 12, 2023; K.C.

Recording #20230201900004;

GILMAN PARK 6 LLC; SDCI #3040217; approved April 4, 2023; K.C. Recording #20230407900004;

TANG REAL ESTATE INVESTMENTS CORP; SDCI #3040220; approved March 29, 2023; K.C.

Recording #20230405900007;

GREEN LAKE TOWNHOMES LLC; SDCI #3032473; approved April 21, 2023; K.C. Recording

#20230503900006;

COLUMBIA CITY LIVING LLC; SDCI #3032577; approved April 27, 2023; K.C. Recording

#20230502900001;

MRN HOMES LLC; SDCI #3036059; approved March 14, 2023; K.C. Recording #20230504900005;

PIVOTAL HOMES LLC; SDCI #3037992; approved May 9, 2023; K.C. Recording #20230516900002;

MANN VIRENDER; SDCI #3038569; approved April 21, 2023; K.C. Recording #20230510900026;

BAKER INVESTMENT PARTNERS LLC; SDCI #3039469; approved April 17, 2023; K.C. Recording

#20230427900003;

MOKAN HOMES LLC; SDCI #3039684; approved May 22, 2023; K.C. Recording #20230605900005;

BLACKHAWK INVESTMENTS LLC; SDCI #3039784; approved May 8, 2023; K.C. Recording

#20230519900003;

PROJECT 1905 LLC; SDCI #3039977; approved April 21, 2023; K.C. Recording #20230504900006;

1607 KING ST TOWNHOMES LLC; SDCI #3040219; approved May 9, 2023; K.C. Recording

#20230518900001;

CURTMAWIL LLC; SDCI #3038702; approved June 13, 2023; K.C. Recording #20230620900011;

TOC SEATTLE TERMINAL 1 LLC; SDCI #3038873; approved January 31, 2023; K.C. Recording

#20230216900001;

12312 & 12316 16TH AVE NE LLC; SDCI #3039033; approved June 2, 2023; K.C. Recording

#20230614900008;

LEOTA COMMONS LLC; SDCI #3039103; approved May 22, 2023; K.C. Recording

#20230605900004;

CITY HOMES 9216 DEVELOPMENT LP; SDCI #3039779; approved June 8, 2023; K.C. Recording #20230616900004;

BLACKWOOD HOLDINGS XXXII LLC; SDCI #3039855; approved May 18, 2023; K.C. Recording #20230525900001;

GREEN WAY HOMES LLC & LEGACY FRANKLIN AVE E; SDCI #3039972; approved May 22, 2023; K.C. Recording #20230526900001;

1020 E JOHN LLC; SDCI #3040214; approved June 2, 2023; K.C. Recording #20230609900013;

9238 20TH AVE LLC; SDCI #3040377; approved June 8, 2023; K.C. Recording #20230622900002;

9238 20TH AVE LLC; SDCI #3040429; approved June 8, 2023; K.C. Recording #20230622900001;

CLOVERDALE MODERN TOWNHOMES LLC; SDCI #3030266; approved May 16, 2023; K.C. Recording #20230628900002;

SKALA HOMES LLC; SDCI #3037979; approved June 5, 2023; K.C. Recording #20230629900001;

1512 12TH AVE S LLC; SDCI #3038442; approved July 12, 2023; K.C. Recording #20230720900001;

ACS LLC; SDCI #3038451; approved June 30, 2023; K.C. Recording #20230706900001;

ACS LLC; SDCI #3038454; approved June 30, 2023; K.C. Recording #20230706900002;

ANN PHUS COMPANY LLC; SDCI #3038683; approved June 13, 2023; K.C. Recording #20230726900008;

12312 & 12316 14th AVE NE LLC; SDCI #3038941; approved June 22, 2023; K.C. Recording #20230629900011;

ASHWORTH HOMES LLC; SDCI #3039010; approved July 12, 2023; K.C. Recording #20230719900012;

GEMINI NORTHWEST LLC; SDCI #3039285; approved January 12, 2023; K.C. Recording #20230127900001;

3401 LOFTS LLC; SDCI #3039595; approved July 6, 2023; K.C. Recording #20230719900011;

EBM RE XI LLC; SDCI #3039773; approved July 12, 2023; K.C. Recording #20230724900001;

GREEN OWL HOO LLC; SDCI #3039827; approved June 29, 2023; K.C. Recording

#20230707900005;

8520 16th AVE NW LLC; SDCI #3040170; approved July 6, 2023; K.C. Recording #20230724900002;

218 10TH AVE E LLC; SDCI #3040192; approved July 17, 2023; K.C. Recording #20230724900004;

4548 33rd AVE LLC; SDCI #3040355; approved June 29, 2023; K.C. Recording #20230712900012;

4548 33RD AVE LLC; SDCI #3040357; approved June 29, 2023; K.C. Recording #20230712900011;

HAUS LLC; SDCI #3040501; approved June 29, 2023; K.C. Recording #20230713900001;

HAUS LLC; SDCI #3040502; approved June 29, 2023; K.C. Recording #20230714900012;

2636 NW 63RD ST LLC; SDCI #3040555; approved July 6, 2023; K.C. Recording #20230713900002;

8306 13TH LLC; SDCI #3040581; approved June 22, 2023; K.C. Recording #20230629900010;

EBM RE XI LLC; SDCI #3040714; approved June 29, 2023; K.C. Recording #20230707900004;

SEA20G LLC; SDCI #3036720; approved August 1, 2023; K.C. Recording #20230807900003;

8520 16th AVE NW LLC; SDCI #3040169; approved August 14, 2023; K.C. Recording

#20230818900004;

MRN HOMES LLC; SDCI #3040271; approved August 7, 2023; K.C. Recording #20230818900006;

2324 15TH AVE LLC; SDCI #3040295; approved August 7, 2023; K.C. Recording #20230809900003;

MODERN HOMES LLC; SDCI #3040379; approved August 7, 2023; K.C. Recording

#20230811900002;

ASHWORTH HOMES LLC; SDCI #3040453; approved August 7, 2023; K.C. Recording

#20230809900001;

KANEBUILT LLC; SDCI #3040513; approved July 25, 2023; K.C. Recording #20230728900001;

ENGLISH STEVE & ENGLISH RUTH; SDCI #3040545; approved July 6, 2023; K.C. Recording

#20230811900001;

KANEBUILT LLC; SDCI #3040629; approved August 14, 2023; K.C. Recording #20230818900005;

NORKIRK LLC; SDCI #3039685; approved August 23, 2023; K.C. Recording #20230831900037;

ASHWORTH HOMES LLC; SDCI #3039810; approved August 21, 2023; K.C. Recording
#20230823900002;

STEVENSON TOBY & STEVENSON CHRISTINA; SDCI #3039864; approved August 21, 2023;
K.C. Recording #20230905900003;

ROSE STREET COTTAGES LLC; SDCI #3039985; approved August 30, 2023; K.C. Recording
#20230908900004;

HOMESLICE LLC; SDCI #3040457; approved August 15, 2023; K.C. Recording #20230831900038;

LARS HARTMAN & HARTMAN RACHAEL JOY; SDCI #3040510; approved September 8, 2023;
K.C. Recording #20230922900007;

PITZER MIKAEL & PITZER TUESDAY; SDCI #3040549; approved August 30, 2023; K.C.
Recording #20230906900007;

RUFFHOUSE DEVELOPMENT LLC; SDCI #3040598; approved August 23, 2023; K.C. Recording
#20230831900035;

RENTON AVE PROPERTY LLC; SDCI #3040643; approved August 31, 2023; K.C. Recording
#20230912900008;

RAMACHANDRAN VIVEK; SDCI #3040821; approved August 15, 2023; K.C. Recording
#20230828900003;

3915 HUDSON LLC; SDCI #3038824; approved September 29, 2023; K.C. Recording
#20231011900001;

3915 HUDSON LLC; SDCI #3038825; approved September 19, 2023; K.C. Recording
#20231006900002;

6018 41ST AVE SW LLC; SDCI #3039600; approved September 14, 2023; K.C. Recording

#20230929900002;

CITY HOMES 1016 DEVELOPMENT LP; SDCI #3040133; approved September 28, 2023; K.C.

Recording #20231006900005;

WESTCOST HOMES LLC; SDCI #3040193; approved October 12, 2023; K.C. Recording

#20231025900001;

EBM RE XI LLC; SDCI #3040233; approved September 19, 2023; K.C. Recording #20230929900001;

EBM RE XI LLC; SDCI #3040234; approved September 29, 2023; K.C. Recording #20231011900002;

J FANELLI PROPERTIES LLC & 88 GROUP LLC; SDCI #3040252; approved October 19, 2023;

K.C. Recording #20231027900002;

ROLAND DEVELOPMENT LLC; SDCI #3040386; approved October 5, 2023; K.C. Recording

#20231020900001;

EMB RE 12 LLC; SDCI #3040507; approved September 28, 2023; K.C. Recording #20231011900003;

NWP NEW HEIGHTS LLC; SDCI #3040561; approved September 19, 2023; K.C. Recording

#20230929900003;

608 18TH AVE E LLC; SDCI #3040639; approved September 28, 2023; K.C. Recording

#20231013900008;

LVS ON MILLS LLC; SDCI #3040740; approved September 28, 2023; K.C. Recording

#20231006900009;

CITY HOMES 6021 DEVELOPMENT LP; SDCI #3040747; approved October 5, 2023; K.C.

Recording #20231020900002;

RAR 36 LLC; SDCI #3040830; approved October 19, 2023; K.C. Recording #20231026900004;

HA SAM COT & CHANG HUA SAO; SDCI #3040844; approved October 19, 2023; K.C. Recording

#20231027900001;

GCH 515 HOWE LLC; SDCI #3039577; approved November 2, 2023; K.C. Recording

#20231113900002;

KEY DEVELOPMENT LLC; SDCI #3039758; approved October 24, 2023; K.C. Recording

#20231102900001;

KEY DEVELOPMENT LLC; SDCI #3039780; approved October 24, 2023; K.C. Recording

#20231102900002;

BUILD SOUND LLC; SDCI #3039960; approved October 24, 2023; K.C. Recording

#20231102900005;

J FANELLI PROPERTIES LLC & 88 GROUP LLC; SDCI #3040253; approved October 19, 2023;

K.C. Recording #20231102900004;

QUEEN ANNE MASONIC DEVELOPMENT LLC; SDCI #3040348; approved November 2, 2023;

K.C. Recording #20231113900004;

KNIGHT SCOT LLC; SDCI #3040553; approved October 19, 2023; K.C. Recording

#20231102900003;

COOMBES 4225 LINDEN AVE N LLC; SDCI #3040605; approved October 24, 2023; K.C. Recording

#20231030900004;

EBM RE 12 LLC; SDCI #3040751; approved November 2, 2023; K.C. Recording #20231117900002;

1526 62ND LLC; SDCI #3040823; approved November 2, 2023; K.C. Recording #20231113900001;

ARSENE ALICE & ARSENE HARRY; SDCI #3034966; approved December 1, 2023; K.C. Recording

#20231222900001;

PERPTUITY LLC; SDCI #3038337; approved December 18, 2023; K.C. Recording #20231222900003;

J & T DEVELOPMENT LLC; SDCI #3038552; approved December 8, 2023; K.C. Recording

#20231215900011;

MULTANI DEVLOPMENT LLC; SDCI #3038743; approved December 6, 2023; K.C. Recording

#20231220900051;

CHIU ALEX Y; SDCI #3039211; approved December 6, 2023; K.C. Recording #20231220900049;

ASHWORTH HOMES LLC; SDCI #3039363; approved November 2, 2023; K.C. Recording
#20231130900003;

ASHWORTH HOMES LLC; SDCI #3039364; approved November 30, 2023; K.C. Recording
#20231208900012;

LIVING ELEMENTS LLC; SDCI #3039430; approved November 30, 2023; K.C. Recording
#20231215900015;

BUILD FRANK LLC; SDCI #3039914; approved December 18, 2023; K.C. Recording
#20231220900047;

MORGAN 44 LLC; SDCI #3039922; approved November 2, 2023; K.C. Recording #20231130900002;

SUPREME GREEN HOMES DEVELOPMENT LLC; SDCI #3040030; approved December 1, 2023;
K.C. Recording #20231215900012;

CITY HOMES 1016 DEVELOPMENT LP; SDCI #3040142; approved December 1, 2023; K.C.
Recording #20231207900014;

1301 31ST LLC; SDCI #3040191; approved November 3, 2023; K.C. Recording #20231130900004;

LIMELITE DEVELOPMENT II LLC; SDCI #3040212; approved November 28, 2023; K.C. Recording
#20231207900001;

LITTLE LAKE LANDING LLC; SDCI #3040356; approved December 1, 2023; K.C. Recording
#20231207900010;

EBM RE XI LLC; SDCI #3040376; approved December 1, 2023; K.C. Recording #20231207900013;

D & C HOMES LLC; SDCI #3040395; approved November 9, 2023; K.C. Recording
#20231204900002;

D & C HOMES LLC; SDCI #3040397; approved December 6, 2023; K.C. Recording
#20231220900050;

EBM RE XI LLC; SDCI #3040498; approved November 2, 2023; K.C. Recording #20231205900005;

EBM RE XI LLC; SDCI #3040547; approved November 2, 2023; K.C. Recording #20231130900005;

MIDVALE HOMES LLC; SDCI #3040566; approved November 9, 2023; K.C. Recording

#20231207900009;

EBM RE XI LLC; SDCI #3040574; approved December 1, 2023; K.C. Recording #20231207900011;

2012 FRANKLIN AVE E LLC; SDCI #3040630; approved December 1, 2023; K.C. Recording

#20231215900014;

ASHWORTH HOMES LLC; SDCI #3040725; approved November 9, 2023; K.C. Recording

#20231205900006;

1526 62ND LLC; SDCI #3040726; approved December 1, 2023; K.C. Recording #20231208900010;

CITY HOMES 6021 DEVELOPMENT LP; SDCI #3040748; approved November 2, 2023; K.C.

Recording #20231130900001;

EBM XI LLC; SDCI #3040827; approved December 4, 2023; K.C. Recording #20231208900011;

2611 BALLARD HOMES LLC; SDCI #3040904; approved November 30, 2023; K.C. Recording

#20231215900013;

AE CONSTRUCTION LLC; SDCI #3041072; approved December 1, 2023; K.C. Recording

#20231207900012.

Section 2. The real property interests conveyed by the easements in Section 1 of this ordinance are placed under the jurisdiction of the City Light Department.

Section 3. Any act consistent with the authority of this ordinance taken prior to its effective date is hereby ratified and confirmed.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2024, and signed by
me in open session in authentication of its passage this _____ day of _____, 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)

SUMMARY and FISCAL NOTE

Department:	Dept. Contact:	CBO Contact:
City Light	Andrew Strong	Greg Shiring

1. BILL SUMMARY

Legislation Title:

AN ORDINANCE relating to the City Light Department; accepting the following easements for electrical distribution in King County, Washington; placing said easements under the jurisdiction of the City Light Department; and ratifying and confirming certain prior acts.

Summary and Background of the Legislation:

This ordinance accepts 182 easements for overhead and underground electrical rights in King County, Washington. These easements are contained in short plats, lot boundary adjustments, and unit lot subdivisions approved by the Seattle Department of Construction and Inspections (SDCI).

SDCI requires that applications for short plats, lot boundary adjustments, and unit lot subdivisions be reviewed by other City departments. Each lot created in such property divisions needs to have adequate access for all utilities, including electrical service. The access for such utilities is provided by the means of utility easements in the final approved short plats, lot boundary adjustments, and unit lot subdivisions recorded with King County.

The Seattle City Charter requires that all acquisition and disposal of real property interests must be by ordinance. City Light periodically requests that the City Council accept by ordinance all the electrical service easements acquired through land use permitting actions.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation have financial impacts to the City? Yes No

3.d. Other Impacts

Does the legislation have other financial impacts to The City of Seattle, including direct or indirect, one-time or ongoing costs, that are not included in Sections 3.a through 3.c? If so, please describe these financial impacts.

No.

If the legislation has costs, but they can be absorbed within existing operations, please describe how those costs can be absorbed. The description should clearly describe if the absorbed costs are achievable because the department had excess resources within their existing budget or if by absorbing these costs the department is deprioritizing other work that would have used these resources.

Not applicable.

Please describe any financial costs or other impacts of *not* implementing the legislation.

City Light cannot provide electrical service for these customers without the easements being in place. The financial cost of not implementing this legislation would be the forgone revenue from these customer accounts.

4. OTHER IMPLICATIONS

a. Please describe how this legislation may affect any departments besides the originating department.

This legislation accepts the electrical service easements contained in short plats, lot boundary adjustments, and unit lot subdivisions, acquired through land use permitting actions by SDCI during the prior years.

b. Does this legislation affect a piece of property? If yes, please attach a map and explain any impacts on the property.

Yes. These easements are mapped in the Seattle City Light's Real Property Geographic Information System (GIS).

c. Please describe any perceived implication for the principles of the Race and Social Justice Initiative.

There are no perceived impacts. Not applicable.

d. Climate Change Implications

i. Emissions: How is this legislation likely to increase or decrease carbon emissions in a material way?

No.

ii. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way?

No.

e. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)? What mechanisms will be used to measure progress towards meeting those goals?

Not applicable.

5. CHECKLIST

- Is a public hearing required?**
- Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required?**
- If this legislation changes spending and/or revenues for a fund, have you reviewed the relevant fund policies and determined that this legislation complies?**
- Does this legislation create a non-utility CIP project that involves a shared financial commitment with a non-City partner agency or organization?**

6. ATTACHMENTS

Summary Attachments: None.



Legislation Text

File #: CB 120768, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE granting permission to the Board of Regents of the University of Washington to continue to operate and maintain an existing pedestrian skybridge over 12th Avenue Northeast, between Northeast 43rd Street and Northeast 45th Street; repealing Section 7 of Ordinance 119532; and providing for acceptance of the permit and conditions.

WHEREAS, by Ordinance 119532, The City of Seattle granted General Insurance Company of America permission to maintain and operate an existing pedestrian skybridge over and across 12th Avenue Northeast, between Northeast 43rd Street and Northeast 45th Street; and

WHEREAS, by Ordinance 123242, The City of Seattle transferred this permission to the Board of Regents of the University of Washington; and

WHEREAS, the permission authorized by Ordinance 119532 was due for renewal on March 27, 2019; and

WHEREAS, although the permission expired on March 26, 2019, the Board of Regents for the University of Washington has complied with all the conditions and obligations of Ordinance 119532; and

WHEREAS, since the adoption of Ordinance 119532, The City of Seattle has established a practice for the length of permit to be one 15-year term, renewable for one successive 15-year term; and

WHEREAS, the Board of Regents of the University of Washington submitted an application to the Director of Transportation to renew the permission granted by Ordinance 119532 for a 15-year term; and

WHEREAS, the obligations of Ordinance 119532 remain in effect after the ordinance term expires until the encroachment is removed, or the Board of Regents of the University of Washington is relieved of the obligations by the Seattle Department of Transportation Director, or the Seattle City Council passes a

new ordinance to renew the permission granted; and

WHEREAS, the Board of Regents of the University of Washington has satisfied all the terms of the original authorizing ordinance and the Director of Transportation recommends that the term permit be renewed for 15 years subject to the terms identified in this ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, the City of Seattle (“City”) grants permission (also referred to in this ordinance as a permit) to the Board of Regents of the University of Washington, and its successors and assigns as approved by the Director of the Seattle Department of Transportation (“Director”) according to Section 13 of this ordinance (the party named above and each such approved successor and assign are referred to as “Permittee”), to continue maintaining and operating an existing pedestrian skybridge over and across 12th Avenue Northeast, between Northeast 43rd Street and Northeast 45th Street. The pedestrian skybridge is adjacent in whole or in part to the properties legally described as:

PARCEL A:

A PORTION OF LOT 3, ALL OF LOTS 4, 5 AND 6, AND A PORTION OF LOT 7, ALL IN BLOCK 3, BROOKLYN ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7 OF PLATS, PAGE 32, IN KING COUNTY, WASHINGTON, AND THE VACATED ALLEY ADJOINING VACATED BY ORDINANCE NO. 98024 OF THE CITY OF SATTLE, RECORDED UNDER RECORDING NO. 6551901, WHICH ATTACHED THERETO BY OPERATION OF LAW, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 12, BLOCK 3 OF SAID SUBDIVISION;

THENCE NORTH 02°07'06" EAST ALONG THE EAST LINE OF SAID BLOCK 219.64 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 02°07'06" EAST ALONG SAID LINE 169.16 FEET;

THENCE NORTH 87°48'34" WEST 116.05 FEET;

THENCE SOUTH 02°06'48" WEST 169.33 FEET;

THENCE SOUTH 87°53'49" EAST 116.03 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B:

LOTS 1 THROUGH 3, INCLUSIVE;

LOTS 7 THROUGH 10, INCLUSIVE; AND

LOTS 13 THROUGH 24, INCLUSIVE;

ALL IN BLOCK 3, BROOKLYN ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7 OF PLATS, PAGE 32, RECORDS OF KING COUNTY, WASHINGTON, AND THE VACATED ALLEY ADJOINING VACATED BY ORDINANCE NO. 98024 OF THE CITY OF SEATTLE, RECORDED UNDER RECORDING NO. 6551901, WHICH ATTACHED THERETO BY OPERATION OF LAW,

EXCEPT ANY PORTION OF SAID LOTS 3 AND 7 CONTAINED WITHIN THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 12, BLOCK 3 OF SAID SUBDIVISION;

THENCE NORTH 02°07'06" EAST ALONG THE EAST LINE OF SAID BLOCK 219.64 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 02°07'06" EAST ALONG SAID LINE 169.16 FEET;

THENCE NORTH 87°48'34" WEST 116.05 FEET;

THENCE SOUTH 02°06'48" WEST 169.33 FEET;

THENCE SOUTH 87°53'49" EAST 116.03 FEET TO THE TRUE POINT OF BEGINNING,

EXCEPT THEREFROM THOSE PORTIONS OF SAID LOTS 1 AND 24 TAKEN BY ORDINANCE NO/ 10566 OF THE CITY OF SEATTLE FOR THE WIDENING OF NORTHEAST 45TH STREET, AS FURTHER DESCRIBED IN RECORDING NUMBER 6551901.

PARCEL C:

LOTS 11 AND 12, BLOCK 3, BROOKLYN ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7 OF PLATS, PAGE(S) 32, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF THE VACATED ALLEY ADJOINING VACATED BY ORDINANCE NO. 98024 OF THE CITY OF SEATTLE, RECORDED UNDER RECORDING NO. 6551901, WHICH ATTACHED THERETO BY OPERATIO OF LAW.

PARCEL D:

LOTS 5 THROUGH 8, INCLUSIVE AND LOTS 13 THROUGH 19, INCLUSIVE, BLOCK 4, BROOKLYN ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7 OF PLATS, PAGE(S) 32, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL E:

LOTS 9 THROUGH 12, INCLUSIVE AND LOTS 21 THROUGH 24, INCLUSIVE, BLOCK A, BROOKLYN SUPPLEMENTAL ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 20, IN KING COUNTY, WASHINGTON;

EXCEPT THE NORTH 1/10 FOOT OF SAID LOT 9.

PARCEL F:

LOTS 1 THOUGH 10, INCLUSIVE, BLOCK 9, PETTIT'S UNIVERSITY ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 10 OF PLATS, PAGE 73, IN KING COUNTY, WASHINGTON;

TOGETHER WITH LOT 2, EXCEPT THE SOUTH 50 FEET THEREOF, AND ALL OF LOTS 3 AND 4, BLOCK 3, SHELTON'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 12 OF PLATS, PAGE 2, IN KING COUNTY, WASHINGTON;

TOGETHER WITH A TRIANGULAR PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING SOUTHERLY OF THE SOUTH LINE OF LOT 1, BLOCK 9 OF SAID PETTIT'S UNIVERSITY ADDITION TO THE CITY OF SEATTLE;

LYING WESTERLY OF THE WESTERLY LINE OF LOT 4, BLOCK 3, OF SAID SHELTON'S ADDITION TO THE CITY OF SEATTLE; AND LYING EASTERLY OF THE EAST LINE OF THAT CERTAIN ALLEY LYING WESTERLY OF THE ABOVE DESCRIBED BLOCKS 3 AND 9, AS SAID ALLEY WAS CONVEYED TO THE CITY OF SEATTLE BY DEED RECORDED ON MAY 23, 1910 UNDER RECORDING NUMBER 684632.

PARCEL G:

LOTS 19 THOUGH 21, INCLUSIVE, BLOCK 2, BROOKLYN ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7 OF PLATS, PAGE(S) 32, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL H:

LOTS 9 AND 10, BLOCK 4, BROOKLY ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7 OF PLATS, PAGE(S) 32, RECORDS OF KING COUNTY, WASHINGTON.

Section 2. **Term.** The permission granted to the Permittee is for a renewed term of 15 years starting on the effective date of this ordinance, and ending at 11:59 p.m. on the last day of the fifteenth year. This is the final term authorized in Ordinance 119532, subject to the right of the City to require the removal of the

pedestrian skybridge or to revise by ordinance any of the terms and conditions of the permission granted by this ordinance. The Permittee shall submit any application for a new permission no later than one year prior to the expiration of the then-existing term. Any application for a new permit for the existing skybridge is subject to the procedures detailed in SDOT Director’s Rule 02-2021 or any successor Director’s Rules.

Section 3. **Protection of utilities.** The permission granted is subject to the Permittee bearing the expense of any protection, support, or relocation of existing utilities deemed necessary by the owners of the utilities, and the Permittee being responsible for any damage to the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of the pedestrian skybridge and for any consequential damages that may result from any damage to utilities or interruption in service caused by any of the foregoing.

Section 4. **Removal for public use or for cause.** The permission granted is subject to use of the street right-of-way or other public place (collectively, “public place”) by the City and the public for travel, utility purposes, and other public uses or benefits. The City expressly reserves the right to deny renewal, or terminate the permission at any time prior to expiration of the initial term or any renewal term, and require the Permittee to remove the pedestrian skybridge, or any part thereof or installation on the public place, at the Permittee’s sole cost and expense in the event that:

A. The City Council determines by ordinance that the space occupied by the pedestrian skybridge is necessary for any public use or benefit or that the pedestrian skybridge interferes with any public use or benefit;

or

B. The Director determines that use of the pedestrian skybridge has been abandoned; or

C. The Director determines that any term or condition of this ordinance has been violated, and the violation has not been corrected by the Permittee by the compliance date after a written request by the City to correct the violation (unless a notice to correct is not required due to an immediate threat to the health or safety of the public).

A City Council determination that the space is needed for, or the pedestrian skybridge interferes with, a

public use or benefit is conclusive and final without any right of the Permittee to resort to the courts to adjudicate the matter.

Section 5. **Permittee's obligation to remove and restore.** If the permission granted is not renewed at the expiration of a term, or if the permission expires without an application for a new permission being granted, or if the City terminates the permission, then within 90 days after the expiration or termination of the permission, or prior to any earlier date stated in an ordinance or order requiring removal of the pedestrian skybridge, the Permittee shall, at its own expense, remove the pedestrian skybridge and all of the Permittee's equipment and property from the public place and replace and restore all portions of the public place that may have been disturbed for any part of the pedestrian skybridge in as good condition for public use as existed prior to construction of the pedestrian skybridge and in at least as good condition in all respects as the abutting portions of the public place as required by Seattle Department of Transportation (SDOT) right-of-way restoration standards.

Failure to remove the pedestrian skybridge as required by this section is a violation of Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; however, applicability of Chapter 15.90 does not eliminate any remedies available to the City under this ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this section, the City may in its sole discretion remove the pedestrian skybridge and restore the public place at the Permittee's expense, and collect such expense in any manner provided by law.

Upon the Permittee's completion of removal and restoration in accordance with this section, or upon the City's completion of the removal and restoration and the Permittee's payment to the City for the City's removal and restoration costs, the Director shall then issue a certification that the Permittee has fulfilled its removal and restoration obligations under this ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the Permittee from compliance with all or any of the Permittee's obligations under this section.

Section 6. **Repair or reconstruction.** The pedestrian skybridge shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the pedestrian skybridge in good and safe condition for the protection of the public. The Permittee shall not reconstruct or repair the pedestrian skybridge except in strict accordance with plans and specifications approved by the Director. The Director may, in the Director's judgment, order the pedestrian skybridge reconstructed or repaired at the Permittee's cost and expense because of: the deterioration of the pedestrian skybridge; the installation, construction, reconstruction, maintenance, operation, or repair of any municipally owned public utilities; or for any other cause.

Section 7. **Failure to correct unsafe condition.** After written notice to the Permittee and failure of the Permittee to correct an unsafe condition within the time stated in the notice, the Director may order the pedestrian skybridge be removed at the Permittee's expense if the Director deems that the pedestrian skybridge creates a risk of injury to the public. If there is an immediate threat to the health or safety of the public, a notice to correct is not required.

Section 8. **Continuing obligations.** Notwithstanding termination or expiration of the permission granted, or removal of the pedestrian skybridge, the Permittee shall remain bound by all of its obligations under this ordinance until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance, or the Seattle City Council passes a new ordinance to renew the permission granted and establishes a new term. Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by the obligations in Section 9 of this ordinance and shall remain liable for any unpaid fees assessed under Section 14 and Section 16 of this ordinance.

Section 9. **Release, hold harmless, indemnification, and duty to defend.** The Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description arising out of or by reason of the pedestrian skybridge or this ordinance, including but not limited to claims resulting from injury, damage, or loss to the Permittee or the Permittee's property.

The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only damages that may result from the sole negligence of the City, that may accrue to, be asserted by, or be suffered by any person or property including, without limitation, damage, death, or injury to members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

A. The existence, condition, construction, reconstruction, modification, maintenance, operation, use, or removal of the pedestrian skybridge;

B. Anything that has been done or may at any time be done by the Permittee by reason of this ordinance; or

C. The Permittee failing or refusing to strictly comply with every provision of this ordinance; or arising out of or by reason of the pedestrian skybridge or this ordinance in any other way.

If any suit, action, or claim of the nature described above is filed, instituted, or begun against the City, the Permittee shall upon notice from the City defend the City, with counsel acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment within 90 days after the action or suit has been finally determined, if determined adversely to the City. If it is determined by a court of competent jurisdiction that Revised Code of Washington (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result from the concurrent negligence of the City, its agents, contractors, or employees, and the Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Permittee or the Permittee's agents, contractors, or employees.

Section 10. **Insurance.** For as long as the Permittee exercises any permission granted by this ordinance and until the Director has issued a certification that the Permittee has fulfilled its removal and restoration

obligations under Section 5 of this ordinance, the Permittee shall obtain and maintain in full force and effect, at its own expense, insurance and/or self-insurance that protects the Permittee and the City from claims and risks of loss from perils that can be insured against under commercial general liability (CGL) insurance policies in conjunction with:

A. Construction, reconstruction, modification, operation, maintenance, use, existence, or removal of the pedestrian skybridge, as well as restoration of any disturbed areas of the public place in connection with removal of the pedestrian skybridge;

B. The Permittee's activity upon or the use or occupation of the public place described in Section 1 of this ordinance; and

C. Claims and risks in connection with activities performed by the Permittee by virtue of the permission granted by this ordinance.

Minimum insurance requirements are CGL insurance written on an occurrence form at least as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage to be placed with an insurer admitted and licensed to conduct business in Washington State or with a surplus lines carrier pursuant to chapter 48.15 RCW. If coverage is placed with any other insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject to approval by the City's Risk Manager.

Minimum limits of liability shall be \$5,000,000 per Occurrence; \$10,000,000 General Aggregate; \$5,000,000 Products/Completed Operations Aggregate, including Premises Operations; Personal/Advertising Injury; Contractual Liability. Coverage shall include "The City of Seattle, its officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability subject to a Separation of Insureds clause.

Within 60 days after the effective date of this ordinance, the Permittee shall provide to the City, or cause to be provided, certification of insurance coverage including an actual copy of the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement or equivalent. The insurance coverage

certification shall be delivered or sent to the Director or to SDOT at an address as the Director may specify in writing from time to time. The Permittee shall provide a certified complete copy of the insurance policy to the City promptly upon request.

If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager may be submitted in lieu of the insurance coverage certification required by this ordinance, if approved in writing by the City's Risk Manager. The letter of certification must provide all information required by the City's Risk Manager and document, to the satisfaction of the City's Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in force. After a self-insurance certification is approved, the City may from time to time subsequently require updated or additional information. The approved self-insured Permittee must provide 30 days' prior notice of any cancellation or material adverse financial condition of its self-insurance program. The City may at any time revoke approval of self-insurance and require the Permittee to obtain and maintain insurance as specified in this ordinance.

In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the insurance required under this section until the Director has approved the assignment or transfer pursuant to Section 13 of this ordinance.

Section 11. Contractor insurance. The Permittee shall contractually require that any and all of its contractors performing work on any premises contemplated by this permit name "The City of Seattle, its officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance and/or self-insurance. The Permittee shall also include in all contract documents with its contractors a third-party beneficiary provision extending to the City construction indemnities and warranties granted to the Permittee.

Section 12. Adjustment of insurance and bond requirements. The Director may adjust minimum liability insurance levels and require surety bond requirements during the term of this permission. If the Director determines that an adjustment is necessary to fully protect the interests of the City, the Director shall

notify the Permittee of the new requirements in writing. The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted insurance and surety bond levels to the Director.

Section 13. Consent for and conditions of assignment or transfer. When the Property is transferred, the permission granted by this ordinance shall be assignable and transferable by operation of law pursuant to Section 19 of this ordinance. Prior to transfer, the new owner of the Property shall accept in writing all of the terms and conditions of the permission granted by this ordinance and the new owner of the Property shall be conferred with the rights and obligations of Permittee by this ordinance. Other than a transfer to a new owner of the Property, Permittee shall not transfer, assign, mortgage, pledge or encumber the same without the Director's consent, which the Director shall not unreasonably refuse. The Director may approve assignment or transfer of the permission granted by this ordinance to a successor entity only if the successor or assignee has accepted in writing all of the terms and conditions of the permission granted by this ordinance; has provided, at the time of the acceptance, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 14 and Section 16 of this ordinance. Upon the Director's approval of an assignment or transfer, the rights and obligations conferred on the Permittee by this ordinance shall be conferred on the successors and assigns. Any person or entity seeking approval for an assignment or transfer of the permission granted by this ordinance shall provide the Director with a description of the current and anticipated use of the pedestrian skybridge.

Section 14. Inspection fees. The Permittee shall, as provided by SMC Chapter 15.76 or successor provision, pay the City the amounts charged by the City to inspect the pedestrian skybridge during construction, reconstruction, repair, annual safety inspections, and at other times deemed necessary by the City. An inspection or approval of the pedestrian skybridge by the City shall not be construed as a representation, warranty, or assurance to the Permittee or any other person as to the safety, soundness, or condition of the pedestrian skybridge. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee. The Permittee shall pay the City the amounts charged

by the City to review the inspection reports required by Section 15 of this ordinance.

Section 15. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT at an address specified by the Director, an inspection report that:

- A. Describes the physical dimensions and condition of all load-bearing elements;
- B. Describes any damages or possible repairs to any element of the pedestrian skybridge;
- C. Prioritizes all repairs and establishes a timeframe for making repairs; and
- D. Is stamped by a professional structural engineer licensed in the State of Washington.

A report meeting the foregoing requirements shall be submitted within 60 days after the effective date of the ordinance; subsequent reports shall be submitted every two years, provided that, in the event of a natural disaster or other event that may have damaged the pedestrian skybridge, the Director may require that additional reports be submitted by a date established by the Director. The Permittee has the duty of inspecting and maintaining the pedestrian skybridge. The responsibility to submit structural inspection reports periodically or as required by the Director does not waive or alter any of the Permittee's other obligations under this ordinance. The receipt of any reports by the Director shall not create any duties on the part of the Director. Any failure by the Director to require a report, or to require action after receipt of any report, shall not waive or limit the obligations of the Permittee. The Permittee shall pay the City the amounts charged by the City to review the inspection reports submitted by the Permittee.

Section 16. **Annual fee.** Beginning on the effective date of this ordinance the Permittee shall pay an Issuance Fee, and annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an Annual Renewal Fee, and an Annual Use and Occupation Fee of \$43,790.63 or as adjusted annually thereafter, for the privileges granted by this ordinance.

Adjustments to the Annual Use and Occupation Fee shall be made in accordance with a term permit fee schedule adopted by the City Council and may be made every year. In the absence of a schedule, the Director may only increase or decrease the previous year's fee to reflect any inflationary changes so as to charge the fee

in constant dollar terms. This adjustment will be calculated by adjusting the previous year's fee by the percentage change between the two most recent year-end values available for the Consumer Price Index for the Seattle-Tacoma-Bellevue Area, All Urban Consumers, All Products, Not Seasonally Adjusted. Permittee shall pay any other applicable fees, including fees for reviewing applications to renew the permit after expiration of the first term. All payments shall be made to the City Finance Director for credit to the Transportation Fund.

Section 17. Compliance with other laws. Permittee shall construct, maintain, and operate the pedestrian skybridge in compliance with all applicable federal, state, County and City laws and regulations. Without limitation, in all matters pertaining to the pedestrian skybridge, the Permittee shall comply with the City's laws prohibiting discrimination in employment and contracting including Seattle's Fair Employment Practices Ordinance, SMC Chapter 14.04, and Fair Contracting Practices Code, SMC Chapter 14.10 (or successor provisions).

Section 18. Acceptance of terms and conditions. The Permittee shall provide evidence of insurance coverage required by Section 10 of this ordinance and the covenant agreement required by Section 19 of this ordinance within 60 days after the effective date of this ordinance. Continued occupation of the right-of-way constitutes the Permittee's acceptance of the terms of this ordinance.

Section 19. Obligations run with the Property. The obligations and conditions imposed on the Permittee by and through this ordinance are covenants that run with the land and bind subsequent owners of the property adjacent to the pedestrian skybridge and legally described in Section 1 of this ordinance (the "Property"), regardless of whether the Director has approved assignment or transfer of the permission granted herein to such subsequent owner(s). At the request of the Director, Permittee shall provide to the Director a current title report showing the identity of all owner(s) of the Property and all encumbrances on the Property. The Permittee shall, within 60 days of the effective date of this ordinance, and prior to conveying any interest in the Property, deliver to the Director upon a form to be supplied by the Director a covenant agreement imposing the obligations and conditions set forth in this ordinance, signed and acknowledged by the Permittee and any

other owner(s) of the Property and recorded with the King County Recorder's Office. The Director shall file the recorded covenant agreement with the City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At the request of the Director, Permittee shall cause encumbrances on the Property to be subordinated to the covenant agreement.

Section 20. **Section titles.** Section titles are for convenient reference only and do not modify or limit the text of a section.

Section 21. **Repeal of Section 7 of Ordinance 119532.** Section 7 of Ordinance 119532 is repealed.

Section 22. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2024, and signed by me in open session in authentication of its passage this _____ day of _____, 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)

SUMMARY and FISCAL NOTE

Department:	Dept. Contact:	CBO Contact:
Seattle Department of Transportation	Amy Gray	Christie Parker

1. BILL SUMMARY

Legislation Title:

AN ORDINANCE granting permission to the Board of Regents of the University of Washington to continue to operate and maintain an existing pedestrian skybridge over 12th Avenue Northeast, between Northeast 43rd Street and Northeast 45th Street; repealing Section 7 of Ordinance 119532; and providing for acceptance of the permit and conditions.

Summary and Background of the Legislation:

This legislation allows the Board of Regents of the University of Washington to continue maintaining and operating an existing pedestrian skybridge over and across 12th Avenue Northeast, between Northeast 43rd Street and Northeast 45th Street. The pedestrian skybridge permit is for a period of 15 years, commencing on the effective date of the ordinance. The legislation specifies the conditions under which permission is granted.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation have financial impacts to the City? Yes No

Expenditure Change (\$); General Fund	2024	2025 est.	2026 est.	2027 est.	2028 est.
Expenditure Change (\$); Other Funds	2024	2025 est.	2026 est.	2027 est.	2028 est.

Revenue Change (\$); General Fund	2024	2025 est.	2026 est.	2027 est.	2028 est.
Revenue Change (\$); Other Funds	2024	2025 est.	2026 est.	2027 est.	2028 est.
	Annual Fee: \$43,790.63	TBD	TBD	TBD	TBD

Number of Positions	2024	2025 est.	2026 est.	2027 est.	2028 est.

Total FTE Change	2024	2025 est.	2026 est.	2027 est.	2028 est.

3.b. Revenues/Reimbursements

This legislation adds, changes, or deletes revenues or reimbursements.

Anticipated Revenue/Reimbursement Resulting from This Legislation:

Fund Name and Number	Dept	Revenue Source	2024 Revenue	2025 Estimated Revenue
Transportation Fund (13000)	SDOT	Annual Fee	\$43,790.63	TBD
TOTAL			\$43,790.63	TBD

Revenue/Reimbursement Notes:

The 2024 fee is based on the 2024 land value as assessed by King County.

3.d. Other Impacts

Does the legislation have other financial impacts to The City of Seattle, including direct or indirect, one-time or ongoing costs, that are not included in Sections 3.a through 3.c? If so, please describe these financial impacts.

No.

If the legislation has costs, but they can be absorbed within existing operations, please describe how those costs can be absorbed. The description should clearly describe if the absorbed costs are achievable because the department had excess resources within their existing budget or if by absorbing these costs the department is deprioritizing other work that would have used these resources.

N/A

Please describe any financial costs or other impacts of *not* implementing the legislation.

If the legislation is not enacted by the City Council, the City of Seattle would not receive the 2024 annual fee of \$43,790.63 and future annual fees.

4. OTHER IMPLICATIONS

a. Please describe how this legislation may affect any departments besides the originating department.

N/A

- b. Does this legislation affect a piece of property? If yes, please attach a map and explain any impacts on the property. Please attach any Environmental Impact Statements, Determinations of Non-Significance, or other reports generated for this property.**
Yes, the Board of Regents of the University of Washington property legally described in Section 1 of the Council Bill.
- c. Please describe any perceived implication for the principles of the Race and Social Justice Initiative.**
- i. How does this legislation impact vulnerable or historically disadvantaged communities? How did you arrive at this conclusion? In your response please consider impacts within City government (employees, internal programs) as well as in the broader community.**
The renewal of this existing term permit does not impact vulnerable or historically disadvantaged communities.
 - ii. Please attach any Racial Equity Toolkits or other racial equity analyses in the development and/or assessment of the legislation.**
N/A
 - iii. What is the Language Access Plan for any communications to the public?**
N/A
- d. Climate Change Implications**
- i. Emissions: How is this legislation likely to increase or decrease carbon emissions in a material way? Please attach any studies or other materials that were used to inform this response.**
This is a renewal for an existing pedestrian skybridge and is not likely to increase or decrease carbon emissions in a material way.
 - ii. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle’s resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**
This legislation will not increase or decrease Seattle’s ability to adapt to climate change in a material way.
- e. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s)? What mechanisms will be used to measure progress towards meeting those goals?**

5. CHECKLIST

- Is a public hearing required?

- Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required?**
- If this legislation changes spending and/or revenues for a fund, have you reviewed the relevant fund policies and determined that this legislation complies?**
- Does this legislation create a non-utility CIP project that involves a shared financial commitment with a non-City partner agency or organization?**

6. ATTACHMENTS

Summary Attachments:

- Summary Attachment A – 12th Ave NE Skybridge Area Map
- Summary Attachment B – 12th Ave NE Skybridge Photo
- Summary Attachment C – Annual Fee Assessment Summary

12th Ave NE Skybridge Area Map



Map is for informational purposes only and is not intended to modify or supplement the legal description(s) in the Ordinance.

12th Ave NE Skybridge Photo



STREET USE ANNUAL FEE ASSESSMENT

Date: 12/21/2023

Summary:
Land Value: \$562.50/SF
2024 Permit Fee:
\$43,790.63

I. Property Description:

Existing pedestrian skybridge over and across 12th Avenue Northeast, between Northeast 43rd Street and Northeast 45th Street. The skybridge provides a pedestrian connection for visitors and staff using the parking garage with the UW Tower. The skybridge total area is 519 square feet.

Applicant:

The Board of Regents of the University of Washington

Abutting Parcels, Property Size, Assessed Value:

2024

Parcel 1142000415; Lot size: 4,120

Tax year 2024 Appraised Land Value \$2,060,000 (\$500/sq ft)

Parcel 1142000400; Lot size: 10,784

Tax year 2024 Appraised Land Value \$6,740,000 (\$625/sq ft)

II. Annual Fee Assessment:

The 2024 permit fee is calculated as follows:

$(\$562.50/\text{SF}) \times (519 \text{ SF}) \times (200\%) \times (7.5\%) = \$43,790.63$ where 200% is the degree of alienation for a private skybridge and 7.5% is the annual rate of return.

Fee methodology authorized under Ordinance 123485, as amended by Ordinances 123585, 123907, and 124532.



Legislation Text

File #: CB 120769, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE granting the Board of Regents of the University of Washington permission to continue maintaining and operating an existing vehicular and pedestrian skybridge over and across the alley between 11th Avenue Northeast and 12th Avenue Northeast, north of Northeast 43rd Street; repealing Section 7 of Ordinance 119161; and providing for the acceptance of the permit and conditions.

WHEREAS, by Ordinance 96899, The City of Seattle (“City”) granted General Insurance Company of America permission to construct, maintain, and operate a vehicular and pedestrian skybridge over and across the alley between 11th Avenue Northeast and 12th Avenue Northeast, north of Northeast 43rd Street; and

WHEREAS, by Ordinance 119161, the City renewed this permission to General Insurance Company of America; and

WHEREAS, by Ordinance 123234, the City transferred the permit from General Insurance Company of America to the Board of Regents for the University of Washington; and

WHEREAS, since the adoption of Ordinance 119161, The City of Seattle has established a practice for the length of permit to be one 15-year term, renewable for one successive 15-year term; and

WHEREAS, reflective of this change the Board of Regents of the University of Washington has submitted an application to the Director of Transportation to renew the permission granted by Ordinance 119161 as amended by Ordinance 123234 for a 15-year term; and

WHEREAS, the permission authorized by Ordinance 119161 as amended by Ordinance 123234 was due for renewal on August 14, 2018; and

WHEREAS, the purpose of the vehicular and pedestrian skybridge is to connect the two parking garages across

the alley in King County Parcel 1142000425; and

WHEREAS, the obligations of Ordinance 119161 remain in effect after the ordinance term expires until the encroachment is removed, or the Board of Regents of the University of Washington is relieved of the obligations by the Seattle Department of Transportation Director, or the Seattle City Council passes a new ordinance to renew the permission granted; and

WHEREAS, the Board of Regents of the University of Washington has satisfied all the terms of the original authorizing ordinance and the Director of Transportation recommends that the term permit be renewed for 15 years subject to the terms identified in this ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, The City of Seattle (“City”) grants permission (also referred to in this ordinance as a permit) to the Board of Regents of the University of Washington, and its successors and assigns as approved by the Director of the Seattle Department of Transportation (“Director”) according to Section 14 of this ordinance (the party named above and each such approved successor and assign are referred to as “Permittee”), to maintain and operate an existing vehicular and pedestrian skybridge over and across the alley between 11th Avenue Northeast and 12th Avenue Northeast, north of Northeast 43rd Street. The vehicular and pedestrian skybridge is adjacent in whole or in part to the properties legally described as:

Lots 5 through 8, and Lots 13 through 19, all in Block 4, Brooklyn Addition, Volume 7 of Plats, page 32, records of King County, Washington.

Section 2. **Term.** The permission granted to the Permittee is for a final renewed term of 15 years starting on the effective date of this ordinance, and ending at 11:59 p.m. on last day of the fifteenth year. This is the final term authorized in Ordinance 119161, subject to the right of the City to require the removal of the vehicular and pedestrian skybridge or to revise by ordinance any of the terms and conditions of the permission granted by this ordinance. The Permittee shall submit any application for a new permission no later than one

year prior to the expiration of the then-existing term. Any application for a new permit for the existing vehicular and pedestrian skybridge is subject to the procedures detailed in SDOT Director's Rule 02-2021 or any successor Director's Rules.

Section 3. **Protection of utilities.** The permission granted is subject to the Permittee bearing the expense of any protection, support, or relocation of existing utilities deemed necessary by the owners of the utilities, and the Permittee being responsible for any damage to the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of the vehicular and pedestrian skybridge and for any consequential damages that may result from any damage to utilities or interruption in service caused by any of the foregoing.

Section 4. **Removal for public use or for cause.** The permission granted is subject to use of the street right-of-way or other public place (collectively, "public place") by the City and the public for travel, utility purposes, and other public uses or benefits. The City expressly reserves the right to deny renewal, or terminate the permission at any time prior to expiration of the initial term or any renewal term, and require the Permittee to remove the vehicular and pedestrian skybridge, or any part thereof or installation on the public place, at the Permittee's sole cost and expense in the event that:

A. The City Council determines by ordinance that the space occupied by the vehicular and pedestrian skybridge is necessary for any public use or benefit or that the vehicular and pedestrian skybridge interferes with any public use or benefit; or

B. The Director determines that use of the vehicular and pedestrian skybridge has been abandoned; or

C. The Director determines that any term or condition of this ordinance has been violated, and the violation has not been corrected by the Permittee by the compliance date after a written request by the City to correct the violation (unless a notice to correct is not required due to an immediate threat to the health or safety of the public).

A City Council determination that the space is needed for, or the vehicular and pedestrian skybridge

interferes with, a public use or benefit is conclusive and final without any right of the Permittee to resort to the courts to adjudicate the matter.

Section 5. **Permittee's obligation to remove and restore.** If the permission granted is not renewed at the expiration of a term, or if the permission expires without an application for a new permission being granted, or if the City terminates the permission, then within 90 days after the expiration or termination of the permission, or prior to any earlier date stated in an ordinance or order requiring removal of the vehicular and pedestrian skybridge, the Permittee shall, at its own expense, remove the vehicular and pedestrian skybridge and all of the Permittee's equipment and property from the public place and replace and restore all portions of the public place that may have been disturbed for any part of the vehicular and pedestrian skybridge in as good condition for public use as existed prior to construction of the vehicular and pedestrian skybridge and in at least as good condition in all respects as the abutting portions of the public place as required by Seattle Department of Transportation (SDOT) right-of-way restoration standards.

Failure to remove the vehicular and pedestrian skybridge as required by this section is a violation of Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; however, applicability of SMC Chapter 15.90 does not eliminate any remedies available to the City under this ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this section, the City may in its sole discretion remove the vehicular and pedestrian skybridge and restore the public place at the Permittee's expense and collect such expense in any manner provided by law.

Upon the Permittee's completion of removal and restoration in accordance with this section, or upon the City's completion of the removal and restoration and the Permittee's payment to the City for the City's removal and restoration costs, the Director shall then issue a certification that the Permittee has fulfilled its removal and restoration obligations under this ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the Permittee from compliance with all or any of the Permittee's obligations under this section.

Section 6. **Repair or reconstruction.** The vehicular and pedestrian skybridge shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the vehicular and pedestrian skybridge in good and safe condition for the protection of the public. The Permittee shall not reconstruct or repair the vehicular and pedestrian skybridge except in strict accordance with plans and specifications approved by the Director. The Director may, in the Director's judgment, order the vehicular and pedestrian skybridge reconstructed or repaired at the Permittee's cost and expense: because of the deterioration of the vehicular and pedestrian skybridge; because of the installation, construction, reconstruction, maintenance, operation, or repair of any municipally owned public utilities; or for any other cause.

Section 7. **Failure to correct unsafe condition.** After written notice to the Permittee and failure of the Permittee to correct an unsafe condition within the time stated in the notice, the Director may order the vehicular and pedestrian skybridge be removed at the Permittee's expense if the Director deems that the vehicular and pedestrian skybridge creates a risk of injury to the public. If there is an immediate threat to the health or safety of the public, a notice to correct is not required.

Section 8. **Continuing obligations.** Notwithstanding termination or expiration of the permission granted, or removal of the vehicular and pedestrian skybridge, the Permittee shall remain bound by all of its obligations under this ordinance until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance, or the Seattle City Council passes a new ordinance to renew the permission granted and/or establish a new term. Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by the obligations in Section 9 of this ordinance and shall remain liable for any unpaid fees assessed under Section 15 and Section 17 of this ordinance.

Section 9. **Release, hold harmless, indemnification, and duty to defend.** The Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description arising out of or by reason of the vehicular and pedestrian skybridge or this ordinance, including but not limited

to claims resulting from injury, damage, or loss to the Permittee or the Permittee's property.

The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only damages that may result from the sole negligence of the City, that may accrue to, be asserted by, or be suffered by any person or property including, without limitation, damage, death, or injury to members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

A. The existence, condition, construction, reconstruction, modification, maintenance, operation, use, or removal of the vehicular and pedestrian skybridge;

B. Anything that has been done or may at any time be done by the Permittee by reason of this ordinance; or

C. The Permittee failing or refusing to strictly comply with every provision of this ordinance; or arising out of or by reason of the vehicular and pedestrian skybridge or this ordinance in any other way.

If any suit, action, or claim of the nature described above is filed, instituted, or begun against the City, the Permittee shall upon notice from the City defend the City, with counsel acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment within 90 days after the action or suit has been finally determined, if determined adversely to the City. If it is determined by a court of competent jurisdiction that Revised Code of Washington (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result from the concurrent negligence of the City, its agents, contractors, or employees, and the Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Permittee or the Permittee's agents, contractors, or employees.

Section 10. **Insurance.** For as long as the Permittee exercises any permission granted by this ordinance

and until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain and maintain in full force and effect, at its own expense, insurance and/or self-insurance that protects the Permittee and the City from claims and risks of loss from perils that can be insured against under commercial general liability (CGL) insurance policies in conjunction with:

A. Construction, reconstruction, modification, operation, maintenance, use, existence, or removal of the vehicular and pedestrian skybridge, as well as restoration of any disturbed areas of the public place in connection with removal of the vehicular and pedestrian skybridge;

B. The Permittee's activity upon or the use or occupation of the public place described in Section 1 of this ordinance; and

C. Claims and risks in connection with activities performed by the Permittee by virtue of the permission granted by this ordinance.

Minimum insurance requirements are CGL insurance written on an occurrence form at least as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage to be placed with an insurer admitted and licensed to conduct business in Washington State or with a surplus lines carrier pursuant to chapter 48.15 RCW. If coverage is placed with any other insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject to approval by the City's Risk Manager.

Minimum limits of liability shall be \$5,000,000 per Occurrence; \$10,000,000 General Aggregate; \$5,000,000 Products/Completed Operations Aggregate, including Premises Operations; Personal/Advertising Injury; Contractual Liability. Coverage shall include "The City of Seattle, its officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability subject to a Separation of Insureds clause.

Within 60 days after the effective date of this ordinance, the Permittee shall provide to the City, or cause to be provided, certification of insurance coverage including an actual copy of the blanket or designated

additional insured policy provision per the ISO CG 20 12 endorsement or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to SDOT at an address as the Director may specify in writing from time to time. The Permittee shall provide a certified complete copy of the insurance policy to the City promptly upon request.

If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager may be submitted in lieu of the insurance coverage certification required by this ordinance, if approved in writing by the City's Risk Manager. The letter of certification must provide all information required by the City's Risk Manager and document, to the satisfaction of the City's Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in force. After a self-insurance certification is approved, the City may from time to time subsequently require updated or additional information. The approved self-insured Permittee must provide 30 days' prior notice of any cancellation or material adverse financial condition of its self-insurance program. The City may at any time revoke approval of self-insurance and require the Permittee to obtain and maintain insurance as specified in this ordinance.

In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the insurance required under this section until the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

Section 11. **Contractor insurance.** The Permittee shall contractually require that any and all of its contractors performing work on any premises contemplated by this permit name "The City of Seattle, its officers, officials, employees, and agents" as additional insureds for primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance and/or self-insurance. The Permittee shall also include in all contract documents with its contractors a third-party beneficiary provision extending to the City construction indemnities and warranties granted to the Permittee.

Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance, the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond in the amount determined by the

Director, executed by a surety company authorized and qualified to do business in the State of Washington, conditioned with a requirement that the Permittee shall comply with every provision of this ordinance and with every order the Director issues under this ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance. The City may waive bond requirements for any public entity permittee for which the City has determined that the City's interest will be adequately protected. If at any time during the term granted by this ordinance the City determines that a bond is necessary to adequately protect the City's interests, the Director shall notify the Permittee of the new requirements in writing. The Permittee shall provide the bond to the Director within 60 days after notification.

Section 13. **Adjustment of insurance and bond requirements.** The Director may adjust minimum liability insurance levels and surety bond requirements during the term of this permission. If the Director determines that an adjustment is necessary to fully protect the interests of the City, the Director shall notify the Permittee of the new requirements in writing. The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted insurance and surety bond levels to the Director.

Section 14. **Consent for and conditions of assignment or transfer.** When the Property is transferred, the permission granted by this ordinance shall be assignable and transferable by operation of law pursuant to Section 20 of this ordinance. Continued occupation of the right-of-way constitutes the Permittee's acceptance of the terms of this ordinance, and the new owner shall be conferred with the rights and obligations of the Permittee by this ordinance. Other than a transfer to a new owner of the Property, the Permittee shall not transfer, assign, mortgage, pledge or encumber the same without the Director's consent, which the Director shall not unreasonably refuse. The Director may approve assignment or transfer of the permission granted by this ordinance to a successor entity only if the successor or assignee has provided, at the time of the assignment or transfer, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 15 and Section 17 of this ordinance. Upon the Director's approval of an assignment or

transfer, the rights and obligations conferred on the Permittee by this ordinance shall be conferred on the successors and assigns. Any person or entity seeking approval for an assignment or transfer of the permission granted by this ordinance shall provide the Director with a description of the current and anticipated use of the vehicular and pedestrian skybridge.

Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or successor provision, pay the City the amounts charged by the City to inspect the vehicular and pedestrian skybridge during construction, reconstruction, repair, annual safety inspections, and at other times deemed necessary by the City. An inspection or approval of the vehicular and pedestrian skybridge by the City shall not be construed as a representation, warranty, or assurance to the Permittee or any other person as to the safety, soundness, or condition of the vehicular and pedestrian skybridge. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.

Section 16. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT at an address specified by the Director, an inspection report that:

- A. Describes the physical dimensions and condition of all load-bearing elements;
- B. Describes any damages or possible repairs to any element of the vehicular and pedestrian skybridge;
- C. Prioritizes all repairs and establishes a timeframe for making repairs; and
- D. Is stamped by a professional structural engineer licensed in the State of Washington.

A report meeting the foregoing requirements shall be submitted within 60 days after the effective date of the ordinance; subsequent reports shall be submitted every two years, provided that, in the event of a natural disaster or other event that may have damaged the vehicular and pedestrian skybridge, the Director may require that additional reports be submitted by a date established by the Director. The Permittee has the duty of inspecting and maintaining the vehicular and pedestrian skybridge. The responsibility to submit structural inspection reports periodically or as required by the Director does not waive or alter any of the Permittee's other obligations under this ordinance. The receipt of any reports by the Director shall not create any duties on

the part of the Director. Any failure by the Director to require a report, or to require action after receipt of any report, shall not waive or limit the obligations of the Permittee. The Permittee shall pay the City the amounts charged by the City to review the inspection reports submitted by the Permittee.

Section 17. **Annual fee.** Beginning on the effective date of this ordinance the Permittee shall pay an Issuance Fee, and annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an Annual Renewal Fee, and an Annual Use and Occupation Fee of \$14,955.47, or as adjusted annually thereafter, for the privileges granted by this ordinance.

Adjustments to the Annual Use and Occupation Fee shall be made in accordance with a term permit fee schedule adopted by the City Council and may be made every year. In the absence of a schedule, the Director may only increase or decrease the previous year's fee to reflect any inflationary changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by adjusting the previous year's fee by the percentage change between the two most recent year-end values available for the Consumer Price Index for the Seattle-Tacoma-Bellevue Area, All Urban Consumers, All Products, Not Seasonally Adjusted. Permittee shall pay any other applicable fees, including fees for reviewing applications to renew the permit after expiration of the first term. All payments shall be made to the City Finance Director for credit to the Transportation Fund.

Section 18. **Compliance with other laws.** The Permittee shall construct, maintain, and operate the vehicular and pedestrian skybridge in compliance with all applicable federal, state, County and City laws and regulations. Without limitation, in all matters pertaining to the vehicular and pedestrian skybridge, the Permittee shall comply with the City's laws prohibiting discrimination in employment and contracting including Seattle's Fair Employment Practices Ordinance, SMC Chapter 14.04, and Fair Contracting Practices Code, SMC Chapter 14.10 (or successor provisions).

Section 19. **Acceptance of terms and conditions.** The Permittee shall provide evidence of insurance coverage required by Section 10 of this ordinance, the bond as required by Section 12 of this ordinance, and the covenant agreement required by Section 20 of this ordinance within 60 days after the effective date of this

ordinance. Continued occupation of the right-of-way constitutes the Permittee’s acceptance of the terms of this ordinance.

Section 20. Obligations run with the Property. The obligations and conditions imposed on the Permittee by and through this ordinance are covenants that run with the land and bind subsequent owners of the property adjacent to the vehicular and pedestrian skybridge and legally described in Section 1 of this ordinance (the “Property”), regardless of whether the Director has approved assignment or transfer of the permission granted herein to such subsequent owner(s). At the request of the Director, the Permittee shall provide to the Director a current title report showing the identity of all owner(s) of the Property and all encumbrances on the Property. The Permittee shall, within 60 days of the effective date of this ordinance, and prior to conveying any interest in the Property, deliver to the Director upon a form to be supplied by the Director, a covenant agreement imposing the obligations and conditions set forth in this ordinance, signed and acknowledged by the Permittee and any other owner(s) of the Property and recorded with the King County Recorder’s Office. The Director shall file the recorded covenant agreement with the City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At the request of the Director, Permittee shall cause encumbrances on the Property to be subordinated to the covenant agreement.

Section 21. Repeal of Section 7 in Ordinance 119161. Section 7 of Ordinance 119161 is repealed.

Section 22. Section titles. Section titles are for convenient reference only and do not modify or limit the text of a section.

Section 23. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2024, and signed by me in open session in authentication of its passage this _____ day of _____, 2024.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2024.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2024.

Scheereen Dedman, City Clerk

(Seal)

SUMMARY and FISCAL NOTE

Department:	Dept. Contact:	CBO Contact:
Seattle Department of Transportation	Amy Gray	Christie Parker

1. BILL SUMMARY

Legislation Title:

AN ORDINANCE granting the Board of Regents of the University of Washington permission to continue maintaining and operating an existing vehicular and pedestrian skybridge over and across the alley between 11th Avenue Northeast and 12th Avenue Northeast, north of Northeast 43rd Street; repealing Section 7 of Ordinance 119161; and providing for the acceptance of the permit and conditions.

Summary and Background of the Legislation:

This legislation allows the Board of Regents of the University of Washington to continue maintaining and operating the existing vehicular and pedestrian skybridge over and across the alley between 11th Avenue Northeast and 12th Avenue Northeast, north of Northeast 43rd Street. The vehicular and pedestrian skybridge permit is for a period of 15 years, commencing on the effective date of the ordinance. The legislation specifies the conditions under which permission is granted.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation have financial impacts to the City? Yes No

Expenditure Change (\$); General Fund	2024	2025 est.	2026 est.	2027 est.	2028 est.
Expenditure Change (\$); Other Funds	2024	2025 est.	2026 est.	2027 est.	2028 est.

Revenue Change (\$); General Fund	2024	2025 est.	2026 est.	2027 est.	2028 est.
Revenue Change (\$); Other Funds	2024	2025 est.	2026 est.	2027 est.	2028 est.
	Annual Fee: \$14,955.47	TBD	TBD	TBD	TBD

Number of Positions	2024	2025 est.	2026 est.	2027 est.	2028 est.
Total FTE Change	2024	2025 est.	2026 est.	2027 est.	2028 est.

3.b. Revenues/Reimbursements

This legislation adds, changes, or deletes revenues or reimbursements.

Anticipated Revenue/Reimbursement Resulting from This Legislation:

Fund Name and Number	Dept	Revenue Source	2024 Revenue	2025 Estimated Revenue
Transportation Fund (13000)	SDOT	Annual Fee	\$14,955.47	TBD
TOTAL			\$14,955.47	TBD

Revenue/Reimbursement Notes:

The 2024 fee is based on the 2024 assessed land value by King County.

3.d. Other Impacts

Does the legislation have other financial impacts to The City of Seattle, including direct or indirect, one-time or ongoing costs, that are not included in Sections 3.a through 3.c? If so, please describe these financial impacts.

No.

If the legislation has costs, but they can be absorbed within existing operations, please describe how those costs can be absorbed. The description should clearly describe if the absorbed costs are achievable because the department had excess resources within their existing budget or if by absorbing these costs the department is deprioritizing other work that would have used these resources.

N/A

Please describe any financial costs or other impacts of *not* implementing the legislation.

If the legislation is not enacted by City Council, the City of Seattle will not receive the 2024 fee of \$14,955.47 and future annual fees.

4. OTHER IMPLICATIONS

a. Please describe how this legislation may affect any departments besides the originating department.

N/A

- b. Does this legislation affect a piece of property? If yes, please attach a map and explain any impacts on the property. Please attach any Environmental Impact Statements, Determinations of Non-Significance, or other reports generated for this property.**
Yes, the Board of Regents of the University of Washington property legally described in Section 1 of the Council Bill.
- c. Please describe any perceived implication for the principles of the Race and Social Justice Initiative.**
- i. How does this legislation impact vulnerable or historically disadvantaged communities? How did you arrive at this conclusion? In your response please consider impacts within City government (employees, internal programs) as well as in the broader community.**
This is a renewal of an existing skybridge term permit and does not impact vulnerable or historically disadvantaged communities.
 - ii. Please attach any Racial Equity Toolkits or other racial equity analyses in the development and/or assessment of the legislation.**
N/A
 - iii. What is the Language Access Plan for any communications to the public?**
N/A
- d. Climate Change Implications**
- i. Emissions: How is this legislation likely to increase or decrease carbon emissions in a material way? Please attach any studies or other materials that were used to inform this response.**
This is a renewal of an existing skybridge term permit and is unlikely to increase or decrease carbon emissions in a material way.
 - ii. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle’s resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**
This legislation will not increase or decrease Seattle’s ability to adapt to climate change in a material way.
- e. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s)? What mechanisms will be used to measure progress towards meeting those goals?**
N/A

5. CHECKLIST

- Is a public hearing required?

- Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required?**
- If this legislation changes spending and/or revenues for a fund, have you reviewed the relevant fund policies and determined that this legislation complies?**
- Does this legislation create a non-utility CIP project that involves a shared financial commitment with a non-City partner agency or organization?**

6. ATTACHMENTS

Summary Attachments:

Summary Attachment A - UW 12th Ave NE Alley Skybridge Area Map

Summary Attachment B - UW 12th Ave NE Alley Skybridge Photos

Summary Attachment C - UW 12th Ave NE Alley Skybridge Annual Fee Assessment

UW 12th Ave NE Alley Skybridge Area Map



Map is for informational purposes only and is not intended to modify or supplement the legal description(s) in the Ordinance.

UW 12th Ave NE Skybridge Photos





Annual Fee Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 1/11/2024

<p><u>Summary:</u> 2024 Land Value: \$562.50/SF Permit Fee: \$14,955.47</p>

I. Property Description:

Existing vehicular and pedestrian skybridge over and across the alley between 11th Avenue Northeast and 12th Avenue Northeast, north of Northeast 43rd Street. The vehicular and pedestrian skybridge connects the buildings located at 4318 11th Avenue Northeast and 4317 12th Avenue Northeast. The use area is **709 square feet**.

Applicant:

The Board of Regents of the University of Washington

Abutting Parcels, Property Size, Assessed Value:

2024

Parcel 1142000415; Lot size: 4,120 square feet
Tax year 2024 Appraised Land Value: \$2,060,000 (\$500/square foot)

Parcel 1142000425; Lot size: 45,320 square feet
Tax year 2024 Appraised Land Value: \$28,325,000 (\$625/square foot)

Average 2024 Tax Assessed Land Value \$562.50/SF

II. Annual Fee Assessment:

The 2024 permit fee is calculated as follows:

$(\$562.50/\text{SF}) \times (709 \text{ SF}) \times (50\%) \times (7.5\%) = \$14,955.47$ where 50% is the degree of alienation for vehicle skybridge; and 7.5% is the annual rate of return.

Fee methodology authorized under Ordinance 123485, as amended by Ordinances 123585, 12390, and 126159.