



SEATTLE CITY COUNCIL

Public Assets and Homelessness Committee

Agenda

Wednesday, May 3, 2023

2:00 PM

Public Hearing

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

Andrew J. Lewis, Chair
Teresa Mosqueda, Vice-Chair
Lisa Herbold, Member
Debora Juarez, Member
Tammy J. Morales, Member

Chair Info: 206-684-8807; Andrew.Lewis@seattle.gov

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Meeting Location:

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

Committee Website:

<https://www.seattle.gov/council/committees/public-assets-and-homelessness>

This meeting also constitutes a meeting of the City Council, provided that the meeting shall be conducted as a committee meeting under the Council Rules and Procedures, and Council action shall be limited to committee business.

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 the meeting at

<http://www.seattle.gov/council/committees/public-comment>. Online registration to speak will begin two hours 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 Councilmember Lewis at Andrew.Lewis@seattle.gov

Please Note: Times listed are estimated

A. Call To Order

B. Approval of the Agenda

C. Public Comment

D. Items of Business

1. [CB 120548](#) **AN ORDINANCE relating to the Seattle Department of Finance and Administrative Services (FAS); authorizing the acquisition of real property identified in King County Records as Parcel Number 766620-2390, commonly known as the Bakun Building, from the Washington State Department of Transportation; authorizing acceptance and recording of deeds for general municipal purposes including, but not limited to, the acquisition of the Bakun Building property; and ratifying and confirming certain prior acts.**

Attachments: [Att A - Real Property Purchase and Sale Agreement](#)

Supporting Documents:

[Summary and Fiscal Note](#)

[Summary Att 1 - Bakun Building Site Map](#)

[Summary Att 2 - Elliott Bay Seawall Project MOA with Muckleshoot Indian Tribe](#)

[Summary Att 3 - Tribal Interpretive Center Draft Floor Plan \(MOA Amendment\)](#)

[Summary Att 4 - Waterfront Operations and Tribal Interpretive Center CIP Page](#)

[Summary Att 5 - Council Budget Action FG-002-A-001-2023](#)

[Central Staff Memo](#)

[Presentation](#)

Briefing, Discussion, and Possible Vote

Presenters: Jaison Elkins, Tribal Chairman, Donney Stevenson, Vice-Chair, Muckleshoot Indian Tribe; Marshall Foster, Director Seattle Center; Interim Director Angela Brady, Office of the Waterfront; Karen Gruen, Finance and Administrative Services; Eric McConaghy, Council Central Staff

2. [CB 120559](#) **AN ORDINANCE** relating to current use taxation; approving applications for current use taxation of properties located 4200 Baker Avenue NW and 2317 S Norman Street under the King County Public Benefit Rating System.

Attachments: [Att 1 - King County Department of Natural Resources and Parks \(DNRP\) report on application E22CT021S](#)
 [Att 2 - DNRP report on application E22CT030S](#)

Supporting Documents: [Summary and Fiscal Note](#)
 [Central Staff Memo](#)
 [Presentation](#)

Public Hearing, Briefing, Discussion, and Possible Vote

Presenters: Bill Bernstein, King County; Lish Whitson, Council
Central Staff

E. Adjournment



Legislation Text

File #: CB 120548, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the Seattle Department of Finance and Administrative Services (FAS); authorizing the acquisition of real property identified in King County Records as Parcel Number 766620-2390, commonly known as the Bakun Building, from the Washington State Department of Transportation; authorizing acceptance and recording of deeds for general municipal purposes including, but not limited to, the acquisition of the Bakun Building property; and ratifying and confirming certain prior acts.

WHEREAS, the Washington State Department of Transportation (WSDOT) has designated as surplus the Bakun Building property at 1426 Alaskan Way (“Property”); and

WHEREAS, the Seattle Department of Transportation (SDOT) has an outstanding commitment to the Muckleshoot Indian Tribe to provide building space on the Seattle downtown waterfront for a Tribal Interpretive Center, which is a requirement of the Elliott Bay Seawall Project permitting and the Memorandum of Agreement (MOA) between SDOT and the Muckleshoot Indian Tribe dated October 23, 2013; and

WHEREAS, the Muckleshoot Indian Tribe and SDOT have agreed upon the location for the Tribal Interpretive Center (within the Bakun Building), per the Second Amendment to the MOA for the Elliott Bay Seawall Project; and

WHEREAS, the Office of the Waterfront and Civic Projects (OWCP) team has identified the Bakun Building as an ideal candidate to house the City’s waterfront operations: maintenance, programming, and public safety staff who will need dedicated building space to support their ongoing work on the waterfront; and

WHEREAS, WSDOT, the Property owner, is a willing seller and has agreed to sell the Property according to

the Real Property Purchase and Sale Agreement between WSDOT and the City, which is conditioned upon approval by the Mayor and City Council; and

WHEREAS, The City of Seattle’s 2023-2028 Adopted Capital Improvement Program includes a \$13 million project titled “Waterfront Operations and Tribal Interpretive Center” (MC-FA-OWMAINT) in the Department of Finance and Administrative Services (FAS) to acquire the Bakun Building property and to provide tenant improvements to support City staff space needs; and

WHEREAS, Council Budget Action FG-002-A-001-2023 appropriated \$500,000 in Finance General to transfer to FAS for the ongoing operating and maintenance costs associated with the Waterfront Operations and Muckleshoot Tribal Interpretive Center; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of the Department of Finance and Administrative Services or designee (“Director”) is authorized on behalf of The City of Seattle to acquire the following described real property (“Property”) situated in the City of Seattle, County of King, State of Washington identified by King County Parcel Number 766620-2390, together with all rights, privileges, and other property pertaining thereto, for general municipal purposes including but not limited to the acquisition of the Bakun Building and associated tenant improvement work to support City staff and tenant space needs:

SEATTLE TIDE LDS POR LOTS 1 & 2 BLK 175 LY SWLY OF LN PLW & 142 FT SWLY MEAS AT R/A FR WLY LN WESTERN AVE DAF - BEG MOST NLY COR BLK I AA DENNYS 4TH ADD TH SWLY ALG SLY LN PIKE ST 142 FT TO TPOB TH SELY PLT WLY LN WESTERN AVE 120 FT M/L TO SLY LN SD LOT 2 TH SWLY ALG SD SLY LN 24 FT M/L TO WLY LN BLK 175 TH NWLY ALG SD WLY LN 126 FT M/L TO SLY LN PIKE ST TH NELY ALG SD SLY LN 62 FT M/L TO TPOB LESS ST

Section 2. The Director is authorized, on behalf of The City of Seattle, to purchase the Property pursuant to the Real Property Purchase and Sale Agreement attached to this ordinance as Attachment A, and execute other documents as deemed necessary or desirable to acquire the Property for a purchase price not to exceed \$8,668,000.

Section 3. The Director is authorized, on behalf of The City of Seattle, to accept a deed for the Property for general municipal use; and the real property therein is placed under the jurisdiction of the Department of Finance and Administrative Services.

Section 4. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 5. 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 _____, 2023, and signed by me in open session in authentication of its passage this _____ day of _____, 2023.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2023.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2023.

Elizabeth M. Adkisson, Interim City Clerk

(Seal)

Attachments:

Attachment A - Real Property Purchase and Sale Agreement

REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Real Property Purchase and Sale Agreement (the “Agreement”) is made and entered into by and between the **STATE OF WASHINGTON**, acting by and through its DEPARTMENT OF TRANSPORTATION (hereinafter “Seller”) and **THE CITY OF SEATTLE**, a municipal corporation of the State of Washington, acting through its DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES (FAS) (hereinafter “Buyer”). Seller and Buyer shall each be referred to individually as a “Party” or, collectively, as the “Parties.”

RECITALS

WHEREAS, Seller is the owner of certain real property located in King County, Washington, referenced as King County Tax Parcel No. 7666202390 and Seller Inventory Control Number 1-17-07888, and more particularly described in **Exhibit A**, attached hereto and by this reference incorporated herein (hereinafter, “the Property”); and

WHEREAS, Seller has determined that the Property is surplus to its needs as a department of the State of Washington and has offered the Property for sale to other public entities; and

WHEREAS, Buyer believes the Property may be suitable for certain municipal purposes and uses, Buyer wishes to acquire the Property from Seller, and Seller wishes to sell the Property to Buyer; with the Property consisting of approximately 4,372 square feet and visually depicted on the Site Plan attached hereto as **Exhibit A-1** attached hereto and by this reference incorporated herein; and

WHEREAS proposed Legislation authorizing a capital project that includes a request for funds sufficient to purchase the Property at the Purchase Price has been transmitted by the Mayor to the Council as part of the 2023 Proposed Budget.

NOW THEREFORE, in consideration of the mutual covenants, conditions, contingencies, and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I PROPERTY

1.1. Purchase and Sale. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the Property, together with all rights, privileges, and easements appurtenant to said real property, and all improvements on or associated with the Property.

ARTICLE II PURCHASE PRICE

2.1. Purchase Price. The total purchase price for the Property is EIGHT MILLION SIX HUNDRED SIXTY-EIGHT THOUSAND and 00/100 Dollars (\$8,668,000.00).

2.2. Payment of Purchase Price. Buyer shall pay the entire purchase price stipulated herein in cash upon closing which will occur on or before, but no later than June 30, 2023. If not paid in full by the date designated, and absent an agreement between the Parties to extend the closing date made in accordance with Section 11.6, this Agreement will be null and void and Seller will move forward with other sale options.

2.3. Agreement Date. The effective date of this Agreement shall be the date that this Agreement has been executed by both Parties (hereinafter the "Agreement Date").

ARTICLE III TITLE TO PROPERTY

3.1. Conveyance of the Property. Seller shall convey to Buyer at the Closing, fee simple title to the Property by execution and delivery of a Quit Claim Deed subject to all existing encumbrances, including easements, restrictions and reservations, if any.

3.2. Title Commitment. Following the date of this Agreement, Buyer may, at no expense to Seller, obtain a preliminary commitment for an ALTA owner's standard coverage title insurance policy issued by a Title Company describing the Property, showing all matters pertaining to the Property and identifying Buyer as the prospective named insured. Such preliminary commitment, Supplemental Reports (as defined below) and true, correct and legible copies of all documents referred to in such preliminary commitment and Supplemental Reports as conditions or exceptions to title to the Property are collectively referred to herein as the "Title Commitment." Buyer may elect to obtain extended coverage owner's title insurance, or endorsements to the Title Policy, and Buyer shall pay the increased cost of such endorsements and/or any excess premium over the premium charged for a standard coverage owner's policy and the cost of any ALTA survey required by the Title Company in connection therewith. At no expense Seller agrees to execute any customary affidavits, agreements, forms which the Title Company customarily requires of sellers in order to issue extended title insurance or to otherwise remove standard exceptions in the Title Policy.

3.3. Review of Title Commitment. Buyer shall give written notice to Seller of any disapproved exceptions in the Title Commitment. If Buyer so objects to any exceptions in the Title Commitment, Seller shall, within fifteen (15) days after receiving Buyer's written notice of objections, deliver to Buyer written notice that either (a) Seller will, at Seller's expense, cause some or all of the exception(s) to which Buyer has objected to be removed at or prior to Closing, or (b) Seller is unable to eliminate such exception(s). If Seller so fails to notify Buyer or is unable to remove any such exception at or prior to Closing, Buyer may elect to terminate this Agreement by written notice to Seller delivered no later than ten (10) days after the deadline for Seller's 15-day notice as described in the immediately preceding sentence, in which event Buyer and Seller shall have no further obligations under this Agreement. If Buyer does not terminate this Agreement pursuant to the immediately preceding sentence, then Buyer shall be deemed to have waived any objectionable exceptions that Seller is unable to remove, all of which exceptions shall be included as Permitted Exceptions.

If any new title matters are disclosed in a supplemental title report issued by the Title Company (a "Supplemental Report") or related document, the proceeding objection, Seller response

and termination / waiver provisions shall apply to the new title matters, except that Buyer's written notice of objections must be delivered within seven (7) days of delivery of the Supplemental Report or document and Seller's response must be delivered within five (5) days of Buyer's written notice of objections. The Closing Date (as defined below) shall be extended to the extent necessary to permit time for the foregoing notices.

If Seller gives written notice that it will cause one or more objectionable non-monetary exceptions to be removed but is unable to remove any of them on or before the Closing Date, Buyer will have the right in its sole discretion to either (a) proceed with the purchase and take the Property subject to those non-monetary exceptions not approved by Buyer, or (b) terminate this Agreement in which case Buyer shall have no further liability hereunder.

3.4. As used in this Agreement, "Permitted Exceptions" means (1) liens for real property taxes for the year of Closing to the extent not due and payable as of the Closing, (2) those matters affecting title to the Property which are created by or with the written consent of Buyer, and (3) such exceptions or other matters reflected on the Title Commitment, any Supplemental Report(s) thereto and/or an ALTA survey which Buyer does not object to or waives pursuant to Section 3.3 above. However, the following shall be removed at Closing and shall in no case be included as Permitted Exceptions: any deeds of trust or other monetary liens shown in the Title Commitment or Supplemental Report(s) thereto (other than real property taxes and assessments not delinquent and liens created by or at the request of Buyer).

ARTICLE IV CONDITIONS TO BUYER'S OBLIGATIONS

4.1. Documents and Reports. Within fifteen (15) days after the Agreement Date, Seller shall deliver to Buyer, if not already provided, copies of any leases, occupancy agreements, service agreements, licenses, easements, option agreements or other contracts, pertaining to the Property and/or its use or occupancy, other than those transmitted by Title Company in connection with the Title Commitment. Seller also agrees to provide Buyer with all documents relating to or concerning Property environmental or land use matters in Seller's possession, including but not limited to:

- (a) Environmental analysis, studies or reports, identifying the existence of or potential for soil or groundwater contamination on or adjacent to the Property
- (b) Soils, geologic, and hydrogeologic reports
- (c) Architectural, engineering, land use or environmental information or reports

4.2. City of Seattle Budget Ordinance Approval. Buyer's obligations under this Agreement are expressly conditioned on and subject to approval by the Seattle City Council of the 2023 City of Seattle Budget Ordinance that includes sufficient funds available to be used for purchase of the Property at the Purchase Price. The Seattle City Council may elect to modify the 2023 Proposed Budget prior to final adoption of the 2023 Budget Ordinance scheduled for Monday, November 22, 2022 that may or may not include funding for acquisition of the Property.

4.3 City of Seattle Property Acquisition Ordinance and Mayor's Approval. Buyer's obligations under this Agreement are expressly conditioned on and subject to the Seattle City Council and the Mayor approving an Ordinance authorizing the acquisition of the Property by the City, and that Ordinance being enacted and taking effect. Pending executive approval, City departments intend to transmit legislation to the appropriate City Council committee in early 2023 authorizing the acquisition of the Property, subject to calendar availability to consider the legislation. Following City Council passage, and the Mayor's approval of the Ordinance, a 30-day comment period is required before the Ordinance will become effective.

4.4. Inspection of the Property. Buyer and its employees, representatives, consultants, contractors, subcontractors, and agents shall have the right and permission during the Contingency Period (as defined below) to enter upon the Property or any part thereof at all reasonable times and after reasonable prior notice, and from time to time, for the purpose, at Buyer's own risk, cost and expense, of making all tests and/or studies of the Property that the Buyer may wish to undertake, including, without limitation, surveys, structural studies and review of zoning, fire, safety, environmental, and other compliance matters; provided, however, that Buyer shall defend, indemnify and hold harmless Seller from and against all liability, cost, damage and expense (including, but not limited to, attorneys' fees) in connection with all claims, suits and actions of every name, kind and description made or brought against Seller, its officers, agents or employees by any person or entity as a result of or on account of actual or alleged bodily injury or property damage received or sustained, resulting from or caused by the negligent acts or omissions of Buyer, its officers, agents or employees, in exercising its rights under the right of entry granted herein.

Seller shall permit Buyer and its agents, at Buyer's sole expense, to enter the Property at reasonable times to conduct inspections concerning the Property and improvements, including, without limitation, the structural condition of improvements, Hazardous Substances (including Phase I and Phase II assessments), soils conditions, sensitive areas, and/or other matters affecting the feasibility of the Property for Buyer's intended use. Buyer shall advise Seller of any entry on to the Property in advance. Buyer may take or have taken materials, soil, and water samples from the Property and test and analyze those samples to determine the extent of any presence of Hazardous Substances or other contamination in, on, or under the Property. Such testing and sampling shall be performed in a manner not disruptive to any tenants or to the operation of the Property. Buyer shall indemnify and hold harmless Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released.

4.5. Approval of the Property. Buyer's obligations at Closing shall be subject to and contingent upon Buyer's approval, in its sole and absolute discretion, of all aspects of the Property, including, without limitation, the physical condition of the Property, and all of the information delivered by Seller pursuant to this Article IV or otherwise obtained by Buyer regarding the Property. Such contingency shall be satisfied or waived on or before the expiration of the Contingency Period.

4.6. Contingency Period Defined. As used in this Agreement, the term "Contingency Period" means the period commencing on the Agreement Date and ending at 5:00 p.m. on the day

that is forty-five (45) days after the Agreement Date. The Contingency Period may be extended by mutual agreement of the parties in writing should additional time be needed by Buyer to conduct inspections or assessments of the Property pursuant to Section 4.4.

4.7. Buyer's Right to Terminate. If Buyer's conditions, set forth in this Article IV, are not satisfied in Buyer's sole and absolute discretion, Buyer shall have the right to terminate this Agreement as follows: 1) under Sections 4.4, 4.5 and 4.6 by sending written notice to Seller on or before expiration of the Contingency Period; or 2) under Sections 4.2 or 4.3 by sending written notice to Seller on or before the Closing Date. If Buyer gives a termination notice to Seller as provided under this Section 4.7, this Agreement shall terminate and neither Party shall have any further liability to the other under this Agreement. If Buyer does not give a termination notice to Seller as provided for in this Section 4.7, Buyer shall be deemed to have satisfied or otherwise waived the condition set forth in this Article IV.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE PARTIES AND CONDITION OF PROPERTY

5.1. Warranties, Representations and Covenants of Seller. As of the date hereof and as of the Closing Date, Seller represents and warrants as follows:

5.1.1. Seller is an agency of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.

5.1.2. There is no pending, or to Seller's knowledge, threatened claim, lawsuit, litigation, arbitration, investigation or other proceeding pertaining to the Property or any part thereof. There is no pending or, to the best of Seller's knowledge, threatened condemnation or similar proceeding pertaining to the Property or any part thereof.

5.1.3. No governmental entity with jurisdiction or other person or entity has asserted, or to Seller's knowledge, has threatened to assert that the Property or any part thereof is in violation of any applicable legal requirement. Seller has consents necessary to own and operate the Property for its current use.

5.1.4. Except for the Permitted Exceptions, there are no contracts, agreements or other arrangements under which Seller is obligated to sell, exchange, transfer, lease, rent or allow the use of the Property or any part thereof now or in the future, or under which any person or entity has the right to possess or occupy the Property or any part thereof now or in the future.

5.1.5. Seller warrants and represents that there are no existing leases, tenancies, options, purchase rights, or rights of persons in possession of the Property.

5.1.6. From and after the Agreement Date unless this Agreement is terminated in accordance with its terms, Seller shall not without the prior written consent of Buyer: (a) grant, create, amend or enter into any easement, right-of-way, encumbrance, restriction, covenant, lease,

license, permit, option to purchase or other right or transaction which would affect the Property in any way prior to or after Closing; or (b) sell, dispose of or encumber any portion of the Property.

5.1.7. Seller shall continue to maintain the Property in its current condition, normal wear and tear excepted, and in compliance with all applicable laws and to pay all costs of the Property between the Agreement Date and Closing.

5.2. Representations, Warranties and Covenants of Buyer. As of the date hereof and, as of the Closing Date, Buyer represents and warrants as follows:

5.2.1. Buyer is a Washington Municipal Corporation, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.

ARTICLE VI HAZARDOUS SUBSTANCES

6.1. Definitions. The term “Hazardous Substances” means any substance, waste or material (including without limitation petroleum products, asbestos or asbestos-containing material, and polychlorinated biphenyls) regulated, defined or designated as dangerous, hazardous toxic or radioactive, by any federal, state or local law, statute, ordinance rule or regulation relating to the protection of human health or the environment now or hereafter in effect (collectively “Environmental Laws”).

6.2. Environmental Documents. Seller represents and warrants that it has delivered (or in accordance with Section 4.1 will deliver) to Buyer all documents, if any, within its possession or control pertaining to environmental conditions of the Property.

6.3. Environmental Indemnification. Seller agrees to indemnify, defend, and hold harmless Buyer, its Commissioners, officers, employees and agents (the “Buyer Indemnified Parties”) from and against any and all present or future claims or demands and any and all damages, losses, injuries, liabilities, causes of action, costs and expenses (including without limitation fines, penalties, judgments and attorneys’ fees) of any and every kind or character, known or unknown (collectively “Losses”) that any Buyer or any other Buyer Indemnified Party sustains as a result of claims by third Parties, including but not limited to federal, state and local regulatory agencies, for damages or remediation costs related to or arising out of the presence of Hazardous Substances in, at, on, under or originating from the Property that was caused during the Seller’s ownership. Losses shall include without limitation (a) the cost of any investigation, removal, remedial or other response or action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) Losses for injury or death of any person; and (c) Losses arising under any Environmental Law enacted after transfer.

6.4. Survival. Notwithstanding any provision of this Agreement to the contrary, the provisions of this Article VII shall survive the Closing of the transaction contemplated herein.

ARTICLE VII CLOSING

7.1. Closing.

7.1.1. Time of Closing. The Closing shall be on or before, but no later than June 30, 2023 (“Closing”). All documents shall be deemed delivered on the Closing Date.

7.1.2. Place of Closing. The Closing shall take place informally either at the offices of the Buyer or the Seller, at a date which Buyer and Seller mutually agree to in writing, unless another method of execution and delivery is specified by Seller to Buyer by written notice (as defined below) prior to the Closing Date.

7.2. Other Instruments. Seller and Buyer shall each deliver to the other such other instruments as are reasonably required to consummate the purchase of the Property in accordance with the terms hereof.

7.3. Closing Costs. As both Seller and Buyer are governmental entities, the sale and purchase of the Property is exempt from the real estate excise tax (“REET”). Buyer shall pay the premium and all associated charges for the standard owner’s coverage title insurance, and the fees and charges (including recording fees) in connection with the recording of the Deed.

ARTICLE VIII POSSESSION

8.1. Possession of the Property shall be delivered to Buyer on the Closing Date.

ARTICLE IX COVENANTS OF SELLER PENDING CLOSING

9.1. Conduct, Notice of Change. Seller covenants that between the Agreement Date and the Closing Seller shall take all such actions as may be necessary to assure that the representations and warranties set forth in Section 5.1 hereof will be true and complete as of the Closing (except such representations, warranties and matters which relate solely to an earlier date), and all covenants of Seller set forth in this Agreement which are required to be performed by it at or prior to the Closing shall have been performed at or prior to the Closing as provided for in this Agreement. Seller shall give Buyer prompt written notice of any material change in any of the information contained in the representations and warranties made in Section 5.1 or elsewhere in this Agreement which occurs prior to the Closing.

9.2. Exclusivity. Between the Agreement Date and Closing or earlier termination of this Agreement, Seller shall not market the Property, make or accept any offers to sell, exchange, lease or otherwise transfer or in any way encumber, or otherwise solicit any offers to purchase, or

enter into any agreement for the sale, exchange, lease or other transfer or encumbrance of the Property.

ARTICLE X DEFAULT, REMEDIES

10.1. Specific Performance. In the event of a material breach or default in or of this Agreement or any of the representations, warranties, terms, covenants, conditions, or provisions hereof by Seller, Buyer shall have, in addition to a claim for damages for such breach or default, and in addition to and without prejudice to any other right or remedy available under this Agreement or at law or equity, the right to (a) demand and have specific performance of this Agreement; or (b) terminate this Agreement upon written notice without liability to Seller.

10.2. Attorneys' Fees. In the event either Party hereto finds it necessary to bring an action against the other Party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach or default hereunder or thereunder, the Party prevailing in any such action or proceeding shall be paid all costs and reasonable attorneys' fees by the other Party and in the event any judgment is secured by such prevailing Party all such costs and attorneys' fees shall be included in any such judgment. The reasonableness of such costs and attorneys' fees shall be determined by the court and not a jury.

ARTICLE XI MISCELLANEOUS

11.1. Risk of Loss; Condemnation. Seller assumes all risk and liability until Closing for damage or injury occurring to the Property by fire, storm, accident or any other casualty or cause, and for condemnation or a similar taking by any governmental agency of all or any portion of the Property; after Closing Buyer bears and assumes all such risks and liability. If, prior to Closing, (a) the Property, or any portion thereof, suffers any damage from fire or other casualty, or (b) an action is initiated or threatened to take the Property or any portion thereof, by eminent domain or condemnation proceedings or by deed in lieu thereof, then Seller shall promptly give written notice to Buyer of such event and Buyer may elect to either: (1) terminate this Agreement, or (2) consummate this Agreement, in which event Seller shall deliver to Buyer, on the Closing Date, any proceeds actually received by Seller in connection with such casualty or condemnation, or assign to Buyer, on the Closing, all of Seller's right, title and interest in any claim to proceeds of any insurance covering such damage, if any, or in the award of the condemning authority (provided that in no event shall Buyer be entitled to receive payment or assignment of such proceeds in an amount greater than the Purchase Price). Buyer shall make such election by sending written notice to Seller within twenty (20) days after Seller provides written notice to Buyer of the casualty or condemnation, as applicable; provided that, if Buyer fails to timely deliver written notice to Seller within said 20 days, Buyer shall be deemed to have elected to terminate this Agreement.

11.2. General Indemnity. Seller shall indemnify, defend, protect and hold the Buyer Indemnified Parties harmless from and against any and all liabilities, obligations, damages, penalties, fees, commissions, costs, expenses and other charges, including without limitation reasonable attorneys' fees, which any Buyer Indemnified Party may suffer or incur in connection with (i) its ownership of the Property resulting from any action or inaction of Seller, its agents or employees occurring before the Closing; (ii) the falsity or breach of any representation or warranty

set forth in Article VI hereof; (iii) any misrepresentation in or omission of any material documents, items or information to be submitted by Seller to Buyer relating to the Property or its operations; or (iv) any failure of Seller to perform any of its obligations hereunder. The foregoing indemnity shall survive the Closing and shall be in addition to, and not in derogation of any other rights Buyer may enjoy under this Agreement or under law for breach of any representation or warranty set forth in this Agreement. Promptly after the receipt by Buyer of notice of any claim or the commencement of any action or proceeding for which Seller has agreed to indemnify the Buyer Indemnified Parties, Buyer shall give Seller written notice of such claim or the commencement of such action or proceeding and Seller shall thereafter vigorously defend on behalf of Buyer, but at Seller's sole cost and expense, any such action or proceeding for which indemnification is sought utilizing counsel satisfactory to buyer. No settlement of any such action or proceeding shall be made without Buyer's prior written approval (unless buyer has previously been discharged from all liability in connection with such action or proceeding); provided that this provision is subject to the limitations of RCW 4.24.115 to the extent applicable.

11.3. Brokers and Finders. Each Party represents to the other that no broker or finder has been involved in this transaction. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith, Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, hereby agrees to indemnify and hold Seller harmless from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of such claim, and Seller, if such claim is based upon any agreement alleged to have been made by Seller, hereby agrees to indemnify and hold the Buyer Indemnified Parties harmless from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which any Buyer Indemnified Party may sustain or incur by reason of such claim. The provisions of this Section 12.3 shall survive the termination of this Agreement or the Closing.

11.4. Notices. All notices, demands, requests, consents and approvals which may, or are required to be given by any Party to any other Party hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by fax, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail return receipt requested, postage prepaid to:

Seller at Department of Transportation
 Attn: Headquarters Real Estate Services
 Property Management Program Manager
 P.O. Box 47338
 Olympia, WA 98504-7338

Buyer at: City of Seattle
 Department of Finance and Administrative Services
 Attn: Real Estate Services Division
 PO Box 94689
 Seattle, WA 98124-4689

or to such other address as either Party hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document. At the request of either Party or the Escrow Holder, the Parties will confirm facsimile transmitted signatures by signing an original document.

11.5. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, “days” means calendar days, and the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which case the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of five (5) days or less shall not include Saturdays, Sundays or holidays. The final day of any such period shall be deemed to end at 5 p.m., Pacific Standard or Daylight time, as applicable.

11.6. Amendment, Waiver. No modification, termination or amendment of this Agreement may be made except by written agreement signed by all Parties. No failure by Seller or Buyer to insist upon the strict performance of any covenant, duty agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any Party hereto, by notice and only by notice as provided in Section 12.4 hereof, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other Party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. All the terms, provisions, and conditions of this Agreement shall inure to the benefit of and be enforceable by Seller’s or Buyer’s respective successors and assigns. Buyer reserves the right to assign its rights under this Agreement.

11.7. No Merger; Survival. The terms of this Agreement shall not merge with any conveyance instrument transferring the Property to Buyer at Closing. All provisions of this Agreement which involve obligations, duties or rights which have not been determined or ascertained as of the Closing Date and all representations, warranties and indemnifications made in or to be made pursuant to this Agreement shall survive the Closing.

11.8. Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

11.9. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11.10. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

11.11. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by Seller or Buyer, Seller and Buyer hereby agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, at the Closing any and all such further acts, deeds and assurances as Buyer or Seller, as the case may be, may reasonably require to consummate the transactions contemplated hereunder.

11.12. No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Buyer and Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

11.13. Neutral Authorship. 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 interpret the provisions of this Agreement in favor of or against the Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

11.14. Governing Law, Time. This Agreement and the right of the Parties hereto shall be governed by and construed in accordance with the laws of the State of Washington and the Parties agree that in any such action venue shall lie exclusively in Thurston County, Washington. Time is of the essence of this Agreement.

11.15. Costs and Expenses. Each Party hereto will bear its own costs and expenses in connection with the negotiation, preparation, and execution of this Agreement and other documentation related hereto and in the performance of its duties hereunder.

11.16. Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the Parties with respect to the purchase and sale of the Property and supersedes all prior and contemporaneous agreements and understandings between the Parties hereto relating to the subject matter hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

Seller:

State of Washington, Department of Transportation

By: Robin Curl

Date: 11/8/2022

Its: Property Management Program Manager

Buyer:

City of Seattle, a Municipal Corporation

By: Andrew Lu

Date: 11-9-2022

Its: Chief Operating Officer
Department of Finance and Administrative Services

Exhibit A

Legal Description

That property acquired by Warranty Deed, recorded June 15, 2007, under recording number 20070615000367, records of King County, Washington, described as follows:

That portion of Lots 1 and 2, Block 175, Seattle Tide Lands, according to the official maps thereof on file in the office of the commissioner of Public Lands in Olympia, Washington, lying southwesterly of a line parallel with and distant 142 feet southwesterly, measured at right angles from the westerly line of Western Avenue in the City of Seattle, described as follows:

Beginning at the most northerly corner of Block "I", of addition to the Town of Seattle, as laid out by A.A. Denny (commonly known as A.A. Denny's 4th Addition to the City of Seattle), according to the plat thereof recorded in Volume 1 of Plats, page 69, in King County, Washington, (at the southwesterly corner of Western Avenue and Pike Street); Thence southwesterly along the southerly line of Pike Street 142 feet to the TRUE POINT OF BEGINNING;

Thence at right angles southeasterly parallel to the westerly line of Western Avenue 120 feet, more or less, to the southerly line of Lot 2, Block 175, Seattle Tide Lands;

Thence southwesterly along said southerly line 24 feet, more or less, to the westerly boundary line of Block 175, Seattle Tide lands;

Thence northwesterly along the westerly boundary line of said Block 175, a distance of 126 feet, more or less, to the southerly line of Pike Street;

Thence northeasterly along the southerly line of Pike Street a distance of 62 feet, more or less, to the point of beginning;

EXCEPT portion thereof condemned in King County Superior Court Cause No. 397727 as provided by Ordinance No. 77088 and as amended by Ordinance No. 77749 of the City of Seattle.

Exhibit A-1



SUMMARY and FISCAL NOTE*

Department:	Dept. Contact:	CBO Contact:
Finance and Administrative Services	Karen Gruen	Caleb Wagenaar

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to the Seattle Department of Finance and Administrative Services (FAS); authorizing the acquisition of real property identified in King County Records as Parcel Number 766620-2390, commonly known as the Bakun Building, from the Washington State Department of Transportation; authorizing acceptance and recording of deeds for general municipal purposes including, but not limited to, the acquisition of the Bakun Building property, and ratifying and confirming certain prior acts.

Summary and Background of the Legislation:

This legislation authorizes the acquisition of real property by the City of Seattle from the Washington State Department of Transportation (WSDOT) at 1426 Alaskan Way, known as the “Bakun Building” (the “Property”). WSDOT has surplused the Property and has offered to sell the Property to the City for \$8,668,000. An appraisal obtained by FAS indicates that the WSDOT offer price is fair.

The Property contains a 16,129 SF building on a 4,372 SF lot. The building was constructed in 1925, and has been used historically as a produce warehouse, sausage manufacturing facility, as office space for an architecture firm, and finally by WSDOT as the Alaskan Way Viaduct replacement project field office. The Property was surplused by WSDOT and has been vacant for several years. The Property is zoned for Pike Market Mixed (PMM)-85, with an easement purchased by the condo association to the east of the property that limits the height of any future development to 10 feet from the existing roofline (limiting height to approximately 45 feet). In addition, the City of Seattle owns 908 SF of right-of-way beneath the existing footprint of the building.

The Seattle Department of Transportation (SDOT) has an outstanding commitment to the Muckleshoot Tribe to provide up to 10,000 SF of building space for long-term use as a Tribal Interpretive Center on the waterfront, which is a requirement of the Elliott Bay Seawall Project (EBSP) permitting (see attachment Elliott Bay Seawall Project Memorandum of Agreement). The Muckleshoot Tribe has agreed that this Property is suitable for the Interpretive Center (see attachment EBSP MOA Amendment). Additionally, the Bakun Building has been identified by the Office of Waterfront and Civic Projects (OWCP) team as an ideal candidate to house the City’s waterfront operations.

The 2023 budget includes a \$13 million capital project to acquire the building and to provide tenant improvements to support city staff space needs, as well as a \$500,000 ongoing earmark in the General Fund for FAS operations & maintenance costs. OWCP and FAS have

negotiated and signed a purchase and sale agreement with WSDOT with a closing date no later than June 30, 2023, contingent on Council approval by ordinance.

As the future owner and operator of the Property, FAS is developing a schedule and project plan for needed renovations to the building and interior spaces. FAS believes that it will be simplest and least disruptive to make renovations following acquisition and prior to tenant occupancy, with completion likely in late 2024 or early 2025. Needed renovations include roof replacement, elevator repair, HVAC system replacement, potential seismic upgrades, and tenant improvements. OWCP, Seattle Center, and the Office of Intergovernmental Affairs will continue to coordinate with the Muckleshoot Tribe on building renovation status and timeline.

2. CAPITAL IMPROVEMENT PROGRAM

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

This project already exists within the 2023-2028 Adopted CIP budget:

Project Name:	Project I.D.:	Project Location:	Start Date:	End Date:	Total Project Cost Through 2028:
Waterfront Operations and Tribal Interpretive Center	MC-FA-OWMAINT	1426 Alaskan Way	2023	2024	\$13,000,000

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes No

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

Yes. Once the building is operational, additional funding for the ongoing operations and maintenance will be needed. Those funds are likely not needed until the capital project is underway. Ongoing operations & maintenance funding for the Waterfront Operations and Tribal Interpretive Center was appropriated in Finance General in the 2023 Adopted Budget by Council Budget Action FG-002-A-001-2023.

Are there financial costs or other impacts of *not* implementing the legislation?

If the City does not purchase the property, the City will forfeit due diligence costs and other expenses related to the purchase of the property.

Not implementing the legislation will impact OWCP’s time frame for securing an operations center and would prevent SDOT from meeting its obligation to provide building space to the Muckleshoot Tribe for a Tribal Interpretive Center as required under the Elliott Bay Seawall Project Memorandum of Agreement.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

This legislation will affect OWCP and Seattle Center, as the purchase of the property is, in part, for the opening of a waterfront operations center, which will be managed by Seattle Center. This legislation will also affect SDOT through meeting its outstanding commitment to the Muckleshoot Tribe to provide a Tribal Interpretive Center on the waterfront, which is a requirement of the Elliott Bay Seawall Project Memorandum of Agreement.

b. Is a public hearing required for this legislation?

No, however, pending executive approval and City Council authorization, a 30-day comment period is required before the Ordinance will become effective.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No publication is required for this legislation.

d. Does this legislation affect a piece of property?

This legislation affects a piece of property. A site plan is attached.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

The purpose of this legislation is to acquire a property, with approximately 7,300 square feet of building space to be leased, rent free, to the Muckleshoot Indian Tribe. The Muckleshoot Indians inhabited the Seattle Waterfront and surrounding region for thousands of years prior to the arrival of American and European settlers to the shores of Puget Sound, who actively displaced and eventually banished indigenous people from living within the Seattle city limits. SDOT's commitment to the Muckleshoot Tribe to provide a Tribal Interpretive Center on the waterfront helps to correct a great historical injustice by recognizing Seattle's original people and their right to occupy their ancestral lands. The central location on the waterfront for the Tribal Interpretive Center would help to introduce the history and culture of Seattle's indigenous peoples to a wider audience of residents and tourists who may otherwise be unable to access the Muckleshoot reservation.

Additionally, this project recognizes that the Muckleshoot Tribe is a successor in interest to tribes and bands that were parties to the Treaty of Point Elliott, 12 Stat. 927, and Treaty of Medicine Creek, 10 Stat. 1132, in which indigenous signatories reserved the right to fish at usual and accustomed grounds and stations. SDOT and the Tribe have a mutual interest in recognizing the Tribe's presence on the Seattle Waterfront and this project's potential impact on the exercise of the Tribe's treaty rights. SDOT and the Tribe have reached an agreement to provide a non-exclusive means for the Tribe's fishers to resolve potential claims against SDOT for damage to fishing gear, lost fishing time and for net moves.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

This building will be renovated and restored to City requirement for building code. In addition, FAS will include decarbonization efforts in the initial renovation of the building, to help meet City of Seattle facility emission targets and leverage the construction process as building systems are rehabilitated.

2. 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 is not expected to have an impact on the Seattle's resiliency to climate change, aside from the renovations and decarbonization efforts described above.

g. 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)?

This legislation will help OWCP's ability to serve its primary function along the waterfront and meet SDOT's commitment to the Muckleshoot Tribe under the Elliott Bay Seawall Project Memorandum of Agreement, who will once again have a fixed presence on the waterfront.

Summary Attachments (if any):

Summary Attachment 1 - Bakun Building Site Map

Summary Attachment 2 - Memorandum of Agreement for the Elliott Bay Seawall Project between the City of Seattle Department of Transportation and the Muckleshoot Indian Tribe


Summary Attachment 3 - Amendment No. 2 to the Memorandum of Agreement for the Elliott Bay Seawall Project between the City of Seattle Department of Transportation and the Muckleshoot Indian Tribe

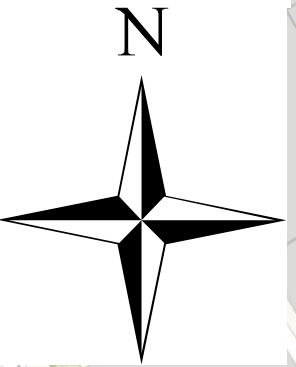
Summary Attachment 4 - Waterfront Operations and Tribal Interpretive Center CIP Project Page

Summary Attachment 5 - 2023 Seattle City Council Budget Action FG-002-A-001-2023



Legend

 Bakun Bldg

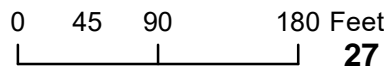


Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community



Bakun Building

Produced by FAS - Real Estate Services Division



ORIGINAL

**Memorandum of Agreement for the Elliott Bay Seawall Project
Between the City of Seattle Department of Transportation and the
Muckleshoot Indian Tribe**

IDENTIFICATION OF PARTIES AND PROJECT

This Memorandum of Agreement (Agreement) is entered into between the City of Seattle Department of Transportation (SDOT) and the Muckleshoot Indian Tribe (TRIBE). SDOT and the TRIBE are hereinafter collectively referred to as the “Parties” and individually “Party.” The Parties hereby agree, as allowed and limited by applicable law, to the following terms and conditions governing the Elliott Bay Seawall Project.

For purposes of this Agreement, the Elliott Bay Seawall Project (Project) is defined as the preferred alternative for the replacement of the Elliott Bay Seawall, as described in the Final Environmental Impact Statement (FEIS) issued by SDOT in March 2013, including any terms or conditions required by federal, state or local permits and other authorizations for the Project.

PURPOSE OF AGREEMENT

The purpose of this Agreement is to fully and fairly resolve the issues associated with the impacts of the Project on the TRIBE’s rights and interests, by delineating the commitments by all Parties related to avoiding, minimizing, and resolving the impacts of this Project on Treaty rights.

RECITALS

1. SDOT issued an FEIS in March, 2013, in which the preferred alternative was identified for replacement of Elliott Bay Seawall.
2. With regard to fishing activities, the TRIBE is a successor in interest to tribes and bands that were parties to the Treaty of Point Elliott, 12 Stat. 927, and the Treaty of Medicine Creek, 10 Stat. 1132, in which the Indian signatories reserved the right to fish at usual and accustomed grounds and stations. The TRIBE has adjudicated Treaty fishing and gathering rights, including the right to take fish at its usual and accustomed fishing grounds and stations. *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974; *Muckleshoot Indian Tribe v. Hall*, 698 F. Supp. 1504 (W.D.

Wash. 1988). The Project will be constructed within the TRIBE'S usual and accustomed area.

3. The construction of the Project and subsequent maintenance of the Project could affect the exercise of the TRIBES's Treaty rights.
4. SDOT and the TRIBE have a mutual interest in recognizing the TRIBE'S presence on the Seattle Waterfront.
5. SDOT and the TRIBE have met on a government-to-government basis to explore opportunities to modify the Project in order to avoid or minimize its potential impacts on the TRIBE's Treaty rights and have met to discuss measures to minimize and resolve the impacts from the Project on the TRIBE's Treaty rights.
6. This Agreement is the result of government-to-government consultation and reflects mutual commitments and undertakings of the Parties pertaining to the Project.
7. The Parties desire that this Agreement provide a non-exclusive means for TRIBE fishers to resolve claims against SDOT for damage to fishing gear, lost fishing time and for net moves, even though the TRIBE fishers are not parties to this Agreement nor are they intended to be third-party beneficiaries of this Agreement.

NOW, THEREFORE, the above recitals are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, **IT IS MUTUALLY AGREED AS FOLLOWS:**

TERMS AND CONDITIONS

8. Selected Alternative

SDOT intends to implement the Preferred Alternative for the Project, as described in the FEIS issued in March 2013. The Parties recognize that the building of the Project is subject to the availability of funds and the timely receipt of necessary federal, state and local regulatory approvals. The Parties recognize that the Project construction schedule may be modified during the design and construction process consistent with the requirements of SEPA.

Although the Project is not yet fully funded, this Agreement addresses the Project's impacts on the TRIBES's Treaty rights, including impacts from Project modifications and maintenance activities that do not materially increase the impacts on the TRIBE's Treaty rights beyond those described in the FEIS.

9. Treaty Impact Measures

The TRIBE has expressed concern about the impact of the Project on its Treaty rights

in areas that will be affected by the Project. The Parties agree that the Project is likely to impact the TRIBE's Treaty rights and that it is difficult to assess and quantify those potential impacts. The Parties believe that interference with the TRIBE's Treaty rights could result from construction activities such as material loading/offloading, barging activities, construction and maintenance activities of the seawall and habitat features. Impacts of proposed Project activities are described in the FEIS. Accordingly, the Parties agree the measures described in this Agreement are reasonable and appropriate to address the anticipated Project interference with the TRIBE's Treaty rights:

9.1 Impacts to Treaty Rights:

The Parties recognize that the Project will impact the TRIBE's Treaty rights. SDOT agrees to compensate the TRIBE Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000) in satisfaction of any and all claims, disputed or not, associated with the impact of the Project on the TRIBE's Treaty rights.

9.2 Fishing Coordination During Construction:

The TRIBE and SDOT have developed Operational Protocols (Attachment A), attached hereto and by this reference made a part of this Agreement, that coordinate Project in-water construction activities and TRIBE fishing activities, consistent with Treaty rights and with SDOT safety, security and other operational requirements. The Parties agree to update these protocols, as appropriate, to capture revised construction schedules, but no less often than annually in June of each year.

9.3 Vessel Coordination Program:

Between October and December for each year, the TRIBE shall provide staff, on-site, from 7 am to 7 pm at the locations of fishing activities in the Project area to coordinate fishing activity with construction equipment (e.g., barges) to minimize fishing gear conflicts with construction activities. Attachment A (Operational Protocols) describes the roles and responsibilities of the Vessel Coordination Program.

SDOT agrees to compensate the TRIBE One Hundred Fifteen Thousand Dollars (\$115,000.00) per year towards its vessel coordination program, in order to provide for its vessel coordination activities between October and December. Compensation under this program includes an annual inflation adjustment as described in Section 11.4. In the event the TRIBE does not expend the total amount each year for the coordination program, or if there is no fishery, the TRIBE agrees to use the remaining funds for fisheries purposes.

SDOT also agrees to compensate the TRIBE One Hundred Twenty-Five Thousand Dollars (\$125,000.00) in a onetime payment for a purchase of a vessel to help the TRIBE run the Vessel Coordination Program. At the end of Project construction, the TRIBE will retain the vessel.

For the duration of construction, the TRIBE agrees to request that TRIBE fishers avoid treaty fishing activity within twenty five (25) feet of the Elliott Bay Seawall construction zone during the month of September to avoid conflicts with seawall

construction activities. It is acknowledged that barging will take place in months when the vessel coordination program is not operational, however SDOT agrees that no ingress/egress of barges will take place during August and September, or in a manner that interferes with any of the TRIBE's test/evaluation fisheries during the month of July. As the test/evaluation fisheries times and locations are known in advance, the TRIBE will provide at least three (3) weeks advance notice to SDOT as to the time and location the test/evaluation fisheries are scheduled to occur.

9.4 Net Moves During Construction:

SDOT agrees to compensate the TRIBE fishers the rate of Three Hundred Fifty Dollars (\$350.00) for moving each set- or drift-net to accommodate the movement of a barge to or from the Project construction site or other Project-related marine vessel traffic.

SDOT will establish a process to facilitate payment to the TRIBE and individual fishers. In order for payment to be made to the TRIBE fisher, the process for this provision must be followed as detailed in Attachment A (Operational Protocols) and the Net Move Form (Attachment B), attached hereto and by this reference made a part of this Agreement.

9.5 Gear Damage / Replacement and Lost Fishing Time:

9.5.1 In the event that any TRIBE fisher's set- and drift- net and any other gear is damaged as a result of barge activities or other Project construction activities, SDOT shall replace the damaged gear and compensate the TRIBE fishers for lost fishing time as described in Section 9.5.2. For the purposes of this Section, gear is defined as any equipment used for the harvesting of fish, or shellfish, and includes vessels used for such harvesting, as permitted by applicable law.

In order for replacement gear or lost fishing time payment to be made to the TRIBE fisher, the process for documenting, approval, and payment for this provision must be followed as detailed in Attachment A (Operational Protocols) and the Gear Damage/Replacement and Lost Fishing Time Forms (Attachments C and D), attached hereto and by this reference made a part of this Agreement, must be completed and executed by all signatories on the forms.

To facilitate gear replacement and avoid the prolonged loss of fishing time, SDOT will provide an initial payment of Seventeen Thousand Five Hundred Dollars (\$17,500) for the TRIBE to acquire two coho set nets, two chum set nets, two shackles coho gear, and two shackles chum gear. The initial payment also includes compensation for the time and labor for the TRIBE to hang the nets. The stockpiled nets/gear will be used to replace gear damaged by Project activities. In the event the stockpile of nets and gear is used according to the process outlined in Attachment A (Operational Protocols), SDOT will provide additional funds for actual costs incurred by the TRIBE, to replenish the stockpile for the duration of the Project, upon submission of an invoice by the TRIBE, as described in Attachment A (Operational Protocols). Approved and fully executed Gear Damage/Replacement Forms (Attachment C), will serve as supporting documentation for the invoice. At the end of Project construction, the TRIBE will retain any remaining nets and gear.

In the event the TRIBE is not able to replace damaged gear with the stockpiled nets and gear, SDOT agrees to compensate the TRIBE fishers for the replacement value of the gear, as described Attachment A (Operational Protocols). As with net moves and gear replacement, compensation for damaged gear requires the process to be followed as detailed in Attachment A (Operational Protocols) and the Gear Damage/Replacement Form (Attachment C).

9.5.2 Lost Fishing Time: In the event that a TRIBE fisher's net or gear is damaged, SDOT will also compensate the TRIBE fisher for two (2) lost days of fishing time. Compensation for lost fishing time shall be based on the value of the average of the three highest catches recorded for the open fishing area during the period of concern, the day of the gear damage or loss and the following day. The process for this provision is documented in Attachment A (Operational Protocols) and the Lost Fishing Time Form (Attachment D), must be completed and executed by all signatories on the form.

10 Tribal Access and Representation

10.1 Interpretive Center:

If the Central Waterfront Program is fully funded, SDOT will provide a minimum of 10,000 square feet of space, suitable for an interpretive center, at a mutually agreeable location in a building within the Central Waterfront Program footprint for a Tribal Interpretive Center, without charging rent for use of the space. If space cannot be allocated within a building, then SDOT will use its best efforts to provide an alternative mutually agreeable location. The TRIBE will be financially responsible for all aspects of the Center, including coordination with other Tribes, design, development, staffing, operation and interior maintenance.

The Interpretive Center needs to be open within six (6) months of the completion of the Central Waterfront Program construction of the space, unless SDOT agrees to a later time. The TRIBE will have 6 months after SDOT notifies the TRIBE that a specific location has been identified for this purpose to decide whether or not to proceed with development of the Interpretive Center and to notify SDOT of its decision. Within 6 months of the TRIBE notice of intent to proceed with the Interpretive Center, the TRIBE shall submit an implementation plan to SDOT for review, which will become the basis of the lease agreement between the TRIBE and SDOT. This lease agreement and its terms will be reevaluated every 15 years.

10.2 Content for Interpretive Signs/Kiosks:

SDOT will coordinate with the TRIBE as identified in the Section 106 MOA to develop culturally appropriate content for inclusion in interpretive signs or kiosks that will be installed permanently along the waterfront. As stated in the Section 106 MOA, SDOT will allocate \$25,000 for implementation of the signs and kiosks.

10.3 Annual Canoe Journey:

SDOT will work with Seattle Parks and the TRIBE over the next twelve (12) months to identify and provide a suitable location for the annual canoe journey that may include overnight camping. SDOT and Parks will take steps to reduce the amount of time and effort involved for the Tribe to get permits and permissions to use City property for the landing.

11. Payments

11.1 Annual Payments

For the first payment for the Vessel Coordination Program (as described in Section 9.3), the TRIBE will invoice SDOT after execution of this agreement. Payment will be made within 60 calendar days of receipt of invoice by SDOT. For subsequent annual payment for the Vessel Coordination Program, made only in years the Project is in construction, the TRIBE will invoice SDOT no earlier than December 1st of the previous year. Payment will be made by SDOT to the TRIBE within 30 calendar days of receipt of invoice by SDOT.

11.2 Onetime Payment

For the onetime lump sum payment for the impacts to Treaty Rights (as described in Section 9.1), purchase of a vessel (as described in Section 9.3) and the Gear Replacement stockpile (as described in Section 9.5), the TRIBE will invoice SDOT after the commencement of in-water construction. Payment will be made by SDOT to the TRIBE within 60 calendar days of receipt of invoice by SDOT.

11.3 Each invoice will include the Agreement title, the day, month, and year. Invoice templates for all Treaty impact measures are attached to this Agreement, as follows:

11.3.1 The Invoice Template (Attachment E), attached hereto and by this reference made a part of this Agreement, provides an example invoice for Annual Payments (as noted in Section 9.3) and for replenishing the stockpiled nets/gear as needed (as described in Section 9.5).

11.3.2 The Net Move Form, Gear damage/Replacement Form and Lost Fishing Time Forms (Attachments B, C and D) serve as invoices for Net Moves During Construction (as described in Section 9.4) and Gear Damage / Replacement and Lost Fishing Time (as described in Section 9.5).

11.3.3 All invoices will be processed as outlined in the Operational Protocols (Attachment A).

11.3.4 SDOT agrees to make payment to the TRIBE within the timelines outlined in this agreement.

11.4 All amounts noted in this Agreement shall be in 2013 dollars using the June 2013 Consumer Price Index for All Urban Consumers, U.S. City Average, all items (Index), as published by the United States Department of Labor, Bureau of Labor Statistics, as the base year. The initial annual payment of \$115,000 for 2013 shall be made as indicated in section 11.1. For subsequent years, payments will be adjusted for inflation based on the June Index for the year the payment is due, as compared to the June 2013 base Index.

12. Amendment

This Agreement may be amended by written agreement of the Parties. Such amendments shall be signed by the Parties' Lead Representatives, as noted in Section 22.

13. Technical Attachments

All Attachments to this Agreement may be modified with the written approval of the Parties' Designated Representatives, as noted in Section 22.

14. No Objection to Project

The TRIBE agrees that it will not object to or otherwise oppose the Project in any federal, state, or local regulatory, administrative, or judicial proceedings associated with the permitting, financing, and construction of the Project, including any permit modifications or NEPA/SEPA reevaluations for the Project that do not materially increase the impacts of the Project on the TRIBE's Treaty rights beyond those described in the FEIS. Upon the execution of this Agreement, the TRIBE agrees to transmit a letter via electronic mail to the US Army Corps of Engineers, referencing the Project, stating that the TRIBE does not oppose the issuance of federal permit approval for the Project. This letter will be sent no later than one (1) business days following receipt of an executed Agreement.

15. Release

The Parties agree that the terms of this Agreement constitute a full and fair settlement regarding actual or potential interference with the TRIBE's Treaty rights including, but not limited to, potential interference with TRIBE fishing access resulting from the Project.

Except for those obligations which SDOT undertakes in this Agreement, the TRIBE, its successors or assigns, hereby release and forever discharge SDOT, their agents and contractors from any and all claims, demands and causes of action of any nature whatsoever against SDOT for damages or equitable or other non-monetary relief associated with the impact of the Project on its Treaty rights. This release does not pertain to claims or causes of action resulting from the Project for other than anticipated potential impacts to the TRIBE's Treaty rights.

16. Integration and Severability

This Agreement constitutes a single integrated contract that expresses the entire agreement of the Parties hereto. Any prior representations or agreements, whether oral

or written, in regard to this Agreement or its subject matter are hereby superseded in their entirety by this Agreement. If any provision of this Agreement is held invalid, it shall be considered severable from the remainder, and the remaining provisions shall be given full force and effect, provided that such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement.

17. Termination

In the event that SDOT makes material modifications to the Project that may increase the adverse impact of the Project on the TRIBE's access to its usual and accustomed Treaty fishing grounds and stations, then the TRIBE may withdraw from this Agreement after providing at least thirty (30) calendar days written notice to SDOT and after complying with the dispute resolution requirements of Section 21 of this Agreement. Any dispute about whether modifications to the Project are "material" or whether they result in increased adverse impacts to TRIBE's access to its usual and accustomed Treaty fishing grounds and stations shall be resolved in accordance with the dispute resolution provisions of Section 21. In the event that the TRIBE withdraws from this Agreement pursuant to this Section, the TRIBE agrees to enter into additional negotiations with SDOT regarding the extent of the modified Project's increased adverse impact to TRIBE's access to its usual and accustomed Treaty fishing grounds and stations. In the event that the Parties enter into a subsequent agreement regarding the Project impact to the TRIBE's Treaty fishing access rights, any mitigation or compensation already provided to the TRIBE by SDOT shall be included in any new agreement negotiated by the Parties.

18. Agreement Binding

The terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

19. Authority to Sign

The TRIBE represents, warrants, and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized. As part of this Agreement, the TRIBE will furnish a copy of the resolution of the Tribal Council granting authority of the undersigned to execute this Agreement on behalf of the TRIBE no later than five (5) business days following execution of this Agreement.

SDOT represents warrants and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized.

20. Declaration

The undersigned hereby declare that the terms of this Agreement have been completely read and fully understood and voluntarily accepted for the purpose of making the full and final compromise, adjustment and settlement of any and all claims between the Parties, disputed or otherwise, prior to the date of this Agreement, and for the express purpose of precluding forever any additional claims between the Parties arising out of or in any way connected with the Project interference with the TRIBE's Treaty rights, including construction and operations associated with the Project, except for claims

arising from the duties and obligations of the Parties under this Agreement.

21. **Dispute Resolution Process**

21.1 The Parties shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.

21.2 **Informal Resolution.** The informal resolution process begins at the staff level and is raised to the higher organizational levels, if necessary.

In the event that the Parties are unable to resolve the dispute, the Parties shall submit the matter to non-binding mediation facilitated by a mutually agreed upon, mediator. The Parties shall share equally in the cost of the mediator.

Each Party agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.

The Parties agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

22. **Lead and Designated Representatives**

Lead Representatives

- a. Muckleshoot Indian Tribe
Virginia Cross, Chair
Muckleshoot Indian Tribe
39015 - 172nd Avenue Southeast
Auburn, WA
98092 (253) 939-
3311

- b. SDOT
Peter Hahn
Director, Seattle Department of Transportation
700 Fifth Avenue, Suite 3900
PO Box 34996
Seattle, WA 98124-4996
206-684-5000

Designated Representatives

a. Muckleshoot Indian Tribe

Isabel Tinoco, Fisheries Director
Muckleshoot Indian Tribe
39015 - 172nd Avenue Southeast
Auburn, WA
98092 (253) 939-
3311

b. SDOT

Jessica Murphy
Project Manager, Seattle Department of Transportation
700 Fifth Avenue, Suite 3900
PO Box 34996
Seattle, WA 98124-4996
206-684-0178

23. Reservation of Rights, No Waiver of Claims

Except as provided in Section 25, by entering into this Agreement, the TRIBE does not waive any rights to exercise its Treaty rights, and any and all such rights are hereby expressly reserved. Nothing in this Agreement is intended to or shall be construed to constitute an admission by any Party that the geographic areas referenced in this Agreement corresponds to, defines or otherwise represents an accurate final legal description of the TRIBE's usual and accustomed fishing areas.

24. Indemnification

To the maximum extent authorized by law, the Parties shall indemnify and hold harmless one another and their employees and/or officers from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against a Party arising out of, in connection with, or incident another Party's own negligent performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the Parties, their employees and/or officers, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Parties, their employees and/or officers. The Parties agree that their obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Parties, by mutual negotiation, hereby waive, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

The provisions of this Section shall survive the termination of this Agreement.

25. Waiver of Sovereign Immunity and Venue

25.1 The TRIBE expressly agrees to a limited waiver of sovereign immunity. The waiver is limited to actions brought by SDOT for breach, termination, enforcement of Agreement provisions, including specifically Section 24 herein, interpretation, validity thereof, including the determination of the scope or applicability of this Agreement. This limited waiver is available solely to claims by SDOT and not by any other entity, entities, or any individual or third party, not a Party to this Agreement. The TRIBE agrees not to invoke sovereign immunity as a defense to a claim upon its insurance policy in connection with the enforcement of the rights of SDOT.

25.2 The TRIBE consents to the jurisdiction of the Washington State Superior Court in the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement if dispute resolution pursuant to Section 21 fails.

The Parties further agree that venue for any such action or proceedings arising out of this Agreement shall be in the superior court situated in King County, Washington.

26. Governing Law

The Parties agree that this Agreement and all questions concerning the performance of this Agreement shall be interpreted, construed and enforced in all respects in accordance with applicable laws of the State of Washington, without reference to rules relating to the choice of law.

IN WITNESS WHEREOF, the Parties hereto agree to the terms and conditions of this Agreement as of the day and year last written below.

<p>MUCKLESHOOT INDIAN TRIBE</p> <p>Date: <u>10-18-13</u></p> <p>By: <u><i>Virginia Cross</i></u></p> <p>Virginia Cross, Chairperson Muckleshoot Indian Tribe</p>	<p>CITY OF SEATTLE, DEPARTMENT OF TRANSPORTATION</p> <p>Date: <u>10-23-13</u></p> <p>By: <u><i>Peter E. Hahn</i></u></p> <p>Peter E. Hahn, Director Seattle Department of Transportation</p>
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Elliott Bay Seawall Replacement Project

Attachment A

Operational Protocols to Avoid Impacts to Treaty Fishing During In-Water Construction

1. Introduction

The following plan will guide the Elliott Bay Seawall Project (Project) as SDOT prepares for and carries out construction activities to replace the Elliott Bay Seawall along the City of Seattle waterfront.

This plan is designed to identify appropriate channels of communication and notification protocols for work in the project area to ensure that SDOT and the Muckleshoot Indian Tribe (TRIBE) are actively communicating and aware of each other's activities.

SDOT and the TRIBE agree to update these protocols each June of every year, or more frequently as appropriate.

Organizational Structure and Primary Points of Contact

The SDOT Project Manager is the SDOT responsible representative and primary point of contact for all matters related to the Project during construction. Secondary contact is the Resident Engineer.

SDOT contact information is as follows:

Name	Title	Desk	Email
Jessica Murphy	Project Manager	206-684-0178 Desk 206.214.7193 Cell	Jessica.murphy@seattle.gov
Jody Robinson	Resident Engineer	206.962.7667 Cell	jody.robinson@jacobs.com
Mike Mahovich	Muckleshoot Indian Tribe Fish Harvest Manager	(253) 876-3113	Mike.Mahovich@muckleshoot.nsn.us

2. Goals and Expected Outcomes

Goals

SDOT recognizes that the areas around the Elliott Bay Seawall Project are sensitive areas and an important resource to the TRIBE. Communication during in-water construction activities will be focused in these areas:

- Establish clear channels of communication to keep SDOT and the TRIBE informed of project activities and TRIBE fishing activities.
- Clearly communicate Project schedules and activities that may have an effect on TRIBE fishing activities. Provide timely notification of unexpected schedule changes.
- Maintain good relations during fish harvest openings and construction activities for the duration of the Project construction.

- Avoid adverse interactions with fish harvest activities and provide for the safety of TRIBE fishers, SDOT and its contractors.
- Identify processes to address any unavoidable or unanticipated impacts on TRIBE fishing activities that may occur during construction.

3. Communication Approach

How we will communicate

- Weekly Reports – During construction, SDOT will provide schedule updates every two weeks to identify work underway and work scheduled to occur. The update will be sent out via e-mail from the SDOT Project Manager or Designee.
- Notification Triggers – SDOT will provide written notification and verbal notification (telephone call) a minimum of one (1) week in advance of certain activities that are scheduled to occur in Elliott Bay. Those activities include:
 - i) Barge deliveries
 - ii) Installation of in-water containment systems and BMPs.
- A process is needed to communicate net move requests for net moves. This process will be jointly developed by both Parties.
- Ad hoc communication via e-mail and telephone conversation as needed.
- Urgent matters or changes to original schedules will be communicated in a timely manner via telephone/conference call between the identified points of contact.

Elliott Bay Fishery Seasons Approximate Timeframe

Chinook	July 15 through August 25
Pink (odd years)	August 25 through September 21
Coho	September 1 through October 31
Chum	October 21 through December 15
Steelhead	November 21 through December 31

4. Process related to Vessel Coordination Program and Compensating for Fishing Impacts

Fishing Impact Avoidance and Minimization

During the month of September for every construction year, no Project barge deliveries will be allowed to the project area. Work to install sheet piles, containment structures, and other in-water work will be primarily land-based but may be supported by small vessels. In September for every construction year, the TRIBE agrees that fishers will set nets at least 25 feet away from the project construction area.

For the months of October, November, and December, SDOT and the TRIBE will coordinate to minimize impacts treaty fishing per the protocols in this coordination plan. SDOT will provide compensation for a TRIBE Vessel Coordination Program to coordinate construction activities and TRIBE fishing activities, as included in the Vessel Coordination Program described in this agreement. The role of the TRIBE Vessel Coordination Program is described below.

Responsibilities for Schedule Coordination

Role of the TRIBE Vessel Coordination Program

- Notify the SDOT Project Manager no later than one (1) week in advance of a potential fishery, so that SDOT can notify the contractor of anticipated fishing activities.
- Coordinate with individual TRIBE fishers regarding verification and documentation of claims.
- Coordinate fishing activity with Project marine traffic such that construction activities and fishing gear conflicts are managed and minimized to the extent possible.
- Distribute and manage the gear stockpile and distribute gear to TRIBE fishers once the Gear Damage/Replacement Form is approved by all Parties.

Role of the SDOT Project Manager

- The Project Manager will provide oversight to ensure commitments as described in this document and agreement.
- The Project Manager will be the primary point of contact for the TRIBE for issues associated with this agreement.
- The Project Manager will approve invoices submitted by the TRIBE per this agreement.

- The Project Manager will coordinate construction activities between the contractor and the TRIBE to resolve any issues and disputes.

Role of the SDOT Resident Engineer

- The Resident Engineer will ensure schedule updates are transmitted to the TRIBE Vessel Coordination Program.
- The Resident Engineer will provide written and verbal notification to the TRIBE Vessel Coordination Program a minimum of one (1) week in advance of activities for activities described in Section 3.
- The Resident Engineer will invite the TRIBE Vessel Coordination Program to participate in a conference call one (1) week prior to commencing any activity identified as a notification trigger (above).
- The Resident Engineer will ensure that the TRIBE Vessel Coordination Program is informed of changes in schedules or other urgent matters.
- The Resident Engineer will ensure that the contractor complies with all environmental contract permits.

Process for Verifying Claims and Payment

In the event there is TRIBE gear damage or gear replacement, a net move is necessary, or related lost fishing time (if applicable) as a result of the Project activities, the process for verifying claims and payment is as follows:

1. The TRIBE Vessel Coordination Program completes and submits the appropriate net move, gear damage/replacement or lost fishing time form (Claim Form: Attachments B, C, and D) via email to the SDOT Project Manager. The Claim Form will serve as the documentation to verify a TRIBE fisher's claim for a net move occurrence, gear damage/replacement request, use of the gear/net stockpile or compensation for lost fishing time. TRIBE approved and signed Claim Forms are to be submitted to SDOT Project Manager for review and approval within ten (10) business days of the incident for which the claim is being submitted.
2. The SDOT Project Manager receives and verifies the appropriate Claim Form, then approves or rejects the Claim Form within five (5) business days of receipt of Claim Form and sufficient supporting documentation as described in the Claim Forms (Attachments B, C, and D). The SDOT Project Manager emails the approved Claim Form and supporting documents to SDOT Accounting or rejected Claim Form to the TRIBE Vessel Coordination Program. If the SDOT Project Manager is not available, the Resident Engineer can complete process steps as the SDOT Project Manager's designee (as noted in Section 1 of this document).

3. Upon receipt, SDOT Accounting will review and process the approved Claim Form within ten (10) business days of receipt from the Project Manger or designee. If sufficient, SDOT Accounting will process payment to be mailed, within ten (10) business days of receipt from the Project Manager or designee. If insufficient, SDOT Accounting will send the Claim Form and supporting documentation back to the SDOT Project Manager, along with documentation outlining deficiencies, within the ten (10) days of receipt. The SDOT Project Manager will send this list back to the TRIBE within five (5) days.
4. SDOT Accounting will authorize payment and mail checks to the address on the Claim Form.
5. If SDOT rejects the Claim Form, the Parties will try to resolve any issues at the lowest organizational level.
6. If gear replacement nets provided by the TRIBE are used, the TRIBE will also submit an Invoice (Attachment E) in addition to a Claim Form (Attachment C) via email to the SDOT Project Manager. The Parties will verify the inventory of nets described in Section 9.5. SDOT will not be liable for any lost or damaged nets or gear as stored in the stockpile under the TRIBE's management. Payment processing will follow steps 1 through 5 above.
7. The TRIBE will submit an Invoice (Attachment E) and supporting documentation for the Vessel Coordination Program and vessel purchase. Payment processing will follow steps 1 through 5 above.

V1



Muckleshoot Indian Tribe
Fisheries Division



Seattle Department of Transportation
Elliott Bay Seawall Project

INVOICE #: _____

NET MOVE FORM

For reimbursement under the terms of (add #)

AGENCY			
SDOT			
MONTH\DAY\YEAR	TIME: AM \ PM	PARTY REQUESTING MOVE	CONTACT INFO. PHONE #
LOCATION	NAME OF VESSEL OR BARGE	NAME OF TUG OR PILOT	
VESSEL DEPARTING FROM\DESTINATION TO			

FISHER TO BE PAID

(FISHER RESPONSIBLE FOR MOVING NET\GEAR)

FISHER ID. #	FULL NAME	CIRCLE ONE
		II III IV V Jr Sr NONE
FISHER ADDRESS		FISHER SIGNATURE
STREET ADDRESS		Fisher Signature* _____ Date _____
CITY STATE ZIP		VESSEL PROGRAM COORDINATOR SIGNATURE
Ph. # _____		I, _____ <i>Vessel Program Coordinator Name</i>
		have verified that the information provided on this form is accurate, and by signing below approve, authorize and direct payment on behalf of the Tribe, as noted on this form.
		Vessel Program Coordinator Signature* _____ Date _____

I, _____
Print SDOT Project Manager Name (First, Last)

have verified that the information provided on this form is accurate and approve the form by signing below.

Is this reimbursement approved? YES NO

If no, comments are as follows:

SDOT Project Manager Signature* _____ Date _____

Indicate estimated date for check delivery/pick up: _____

***By submitting and signing this form, the signatories agree to the following:**

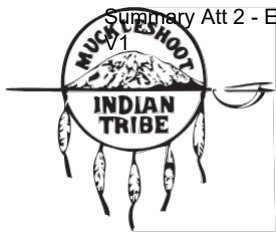
- The net move occurred as a result of Elliott Bay Seawall Replacement Project activities.
- This form will be considered the invoice for reimbursement to the Tribe, and payment made according to the terms of (agmt #).
- Backup documentation has been attached to this invoice, including, but not limited to, the description of event and additional information to support the net move invoice amount to be paid.

The Tribe authorizes and directs invoice amount to be made to the following:

Print Name (First, Last)

MIT Fishing ID #

Total invoice amount to be paid:
\$ _____



Muckleshoot Indian Tribe
Fisheries Division



Seattle Department of Transportation
Elliott Bay Seawall Replacement Program

GEAR DAMAGE/REPLACEMENT FORM

For reimbursement under the terms of **AGRMT #**

INVOICE #: _____

AGENCY RESPONSIBLE	LOCATION	DATE OF INCIDENT	TIME
SDOT			
NAME OF VESSEL OR BARGE	NAME OF TUG OR PILOT	VESSEL DESTINATION	
PICTURES OF DAMAGE		INDEPENDENT WITNESS TO DAMAGE	
<input type="checkbox"/> YES, ATTACHED <input type="checkbox"/> NO		FULL NAME _____ PHONE # _____	
FISHER TO BE COMPENSATED		TYPE OF GEAR LOST (CIRCLE ALL THAT APPLY)	
FISHER ID. # - _____ FULL NAME _____ ADDRESS _____ CITY _____ STATE _____ ZIP _____ PHONE _____ # _____ I, _____ <i>Print Name (First & Last)</i>		CIRCLE ONE II III IV V Jr Sr NONE	
		SET-NET	
		MESH SIZE _____ IN. GEAR BOUY BALL ANCHOR A.CHAIN J. LIGHT ROPE	DEPTH _____ FT. LENGTH _____ FT.
		DRIFT-NET	
		MESH SIZE _____ IN. GEAR BOUY BALL ANCHOR A.CHAIN J. LIGHT ROPE	DEPTH _____ FT. LENGTH _____ FT.
		ADDITIONAL GEAR LOST: _____ _____	
I agree I will not file any other claim for reimbursement of gear damages (as described in this form) from the City, provided this claim is approved by SDOT.		IS THE GEAR REPLACED BY GEAR IN THE STOCKPILE? <input type="checkbox"/> YES <input type="checkbox"/> NO	
FISHER SIGNATURE * _____ DATE _____		I, _____ <i>Print Vessel Program Coordinator Name (First & Last)</i> have verified that the information provided on this form is accurate, and by signing below approve, authorize and direct payment on behalf of the Tribe, as noted on this form.	
ATTACH TO THIS FORM: SIGNED FISHERS STATEMENT, SIGNED WITNESS STATEMENT IF ANY, ALL RELEVANT PICTURES OF DAMAGE.		VESSEL PROGRAM COORDINATOR SIGNATURE* _____	
		DATE _____	

I, _____
Print SDOT Project Manager Name (First, Last)

have verified that the information provided on this form is accurate and approve the form by signing below.

Is this reimbursement approved? YES NO

If no, comments are as follows:

SDOT Project Manager Signature* _____ Date _____

Indicate estimated date for check delivery/pick up: _____

***By submitting and signing this form, the signatories agree to the following:**

- The gear damage/replacement occurred as a result of Elliott Bay Seawall Replacement Project activities.
- This form will be considered the invoice for reimbursement to the Tribe, and payment made according to **(Agmt #)**
- Backup documentation has been attached to this invoice, including, but not limited to, a summary of detailed costs for gear damage/replacement (such as vendor's quote or actual invoice) to support the total invoice amount to be paid.

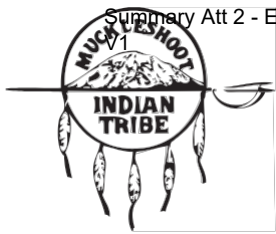
The Tribe authorizes and directs invoice amount to be made to the following:

Print Name (First, Last)

MIT Fishing ID #

Total invoice amount to be paid:

\$ _____



Muckleshoot Indian Tribe
Fisheries Division

Seattle Department of Transportation
Elliott Bay Seawall Replacement Program



LOST FISHING TIME FORM
For reimbursement under the terms **AGMT #**

INVOICE #: _____

DATE OF INCIDENT	
FISHER ID. # - _____	CIRCLE ONE II III IV V Jr Sr NONE
FULL NAME _____	
ADDRESS _____	
CITY _____ STATE _____ ZIP _____	
PHONE # _____	
I, _____ <i>Print Name (First & Last)</i>	
agree I will not file any other claim for reimbursement of gear damages (as described in this form) from the State.	
FISHER SIGNATURE *	DATE

DATE OF INCIDENT
ASSOCIATED GEAR DAMAGE INVOICE #

Calculation of lost fishing time: <i>Two (2) days of lost fishing time due to this gear damage event will be reimbursed. Calculation is based on the value of the average of the three highest catches recorded for the open fishing area during the period of concern on the day of the gear damage or loss and the following day.</i>		
Catch Record Data	Day 1	Day 2
1 _____		
2 _____		
3 _____		
Average total	\$ _____	
TOTAL AMOUNT DUE:	\$ _____	

I, _____ <i>Print Vessel Program Coordinator Name (First & Last)</i>	
have verified that the information provided on this form is accurate, and by signing below approve, authorize and direct payment on behalf of the Tribe, as noted on this form.	
VESSEL PROGRAM COORDINATOR SIGNATURE*	DATE

I, _____
Print SDOT Project Manager Name (First, Last)

have verified that the information provided on this form is accurate and approve the form by signing below.

Is this reimbursement approved? YES NO

If no, comments are as follows:

SDOT Project Manager Signature* _____ Date _____

Indicate estimated date for check delivery/pick up: _____

***By submitting and signing this form, the signatories agree to the following:**

- The lost fishing time occurred as a result of Elliott Bay Seawall Project activities.
- This form will be considered the invoice for reimbursement to the Tribe, and payment made according to the terms of **AGRMT #.**

The Tribe authorizes and directs invoice amount to be made to the following:

Print Name (First, Last)

MIT Fishing ID #

Total invoice amount to be paid:

\$ _____

**Attachment E
Invoice Template**

Date: XX/XX/13

TO:
City of Seattle
Department of Transportation
PO Box 23996
Attn: Accounts Payable
Seattle, WA 98124-4996

Invoice number: XXX
For the period: XX/XX/13thru XX/XX/13

Project: Elliott Bay Seawall Replacement Project



<u>Billing Summary by Task</u>	<u>This Invoice</u>
A. Vessel Coordination Program	\$0.00
B. Net/Gear Replacement Stockpile	\$0.00
Total All Tasks	\$0.00
TOTAL AMOUNT DUE THIS INVOICE	\$0.00

Amendment No. 2
to the
Memorandum of Agreement for the Elliott Bay Seawall Project
Between the City of Seattle Department of Transportation and the
Muckleshoot Indian Tribe

As provided in Section 12 of the Memorandum of Agreement for the Elliott Bay Seawall Project Between the City of Seattle Department of Transportation (“SDOT”) and the Muckleshoot Indian Tribe (“TRIBE”), dated October 23, 2013, the Parties agree to amend this Agreement by deleting Section 10.1 in its entirety and replacing it with a new Section 10.1, to read as follows:

10.1 Tribal Interpretive Center

The Parties have selected a mutually agreed upon location for the Tribal Interpretive Center: the Bakun Building property located at 1426 Alaskan Way, Seattle, WA 98101 (the “Property”). Subject to the City purchasing and taking ownership of the Property from the State of Washington Department of Transportation (“WSDOT”), the Parties agree that within the Bakun Building, 4,396 square feet of space on the 1st floor and 2,256 square feet of space on the mezzanine floor will be reserved for the Tribal Interpretive Center, for a total of 6,652 square feet of space (Exhibit A – Building Plan). The TRIBE will also have shared use of the 2,365 square-foot meeting/event space on the 2nd floor.

The Parties agree to develop a Space Management Plan and execute a lease agreement for the TRIBE’s occupancy of the Bakun Building for the Tribal Interpretive Center. The Parties will develop the Space Management Plan within six (6) months of the City taking ownership of the property, which Plan will become the basis for the lease agreement. The TRIBE will not be charged any rent for the use of the space. The lease agreement and its terms will be reevaluated every 15 years.

The TRIBE will be financially responsible for all aspects of the Tribal Interpretive Center, including coordination with other Tribes, design, development, staffing, operation, and interior maintenance.

The Parties agree that the Bakun Building and the planned allocation of interior space as described above meets in full the commitment made by the City to provide a Tribal Interpretive Center under this Agreement.

The Parties agree that this Amendment No. 2 is subject to and conditioned upon the City executing a purchase and sale agreement with the WSDOT for the Bakun property, closing on the transaction, and taking ownership of the property, on or before June 30, 2023.

IN WITNESS WHEREOF, the Parties hereto agree to the terms and conditions of this Amendment No. 2 as of the day and year last written below.

SIGNATORY PARTY:

THE CITY OF SEATTLE

By:  _____ Date: 12/02/2022 _____
Greg Spotts (Dec 2, 2022 06:04 PST)

Title: Director
Greg Spotts, Director
Seattle Department of Transportation

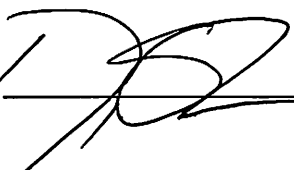
Contact Information:

Angela Brady, PE
Seattle Department of Transportation
Office of the Waterfront
800 Fifth Avenue, Suite 3100
PO Box 34996
Seattle, WA 98124-4996
Voice: (206) 684-3115
E-mail: Angela.Brady@seattle.gov

Note: Signatures continued on next page.

SIGNATORY PARTY:

Muckleshoot Indian Tribe

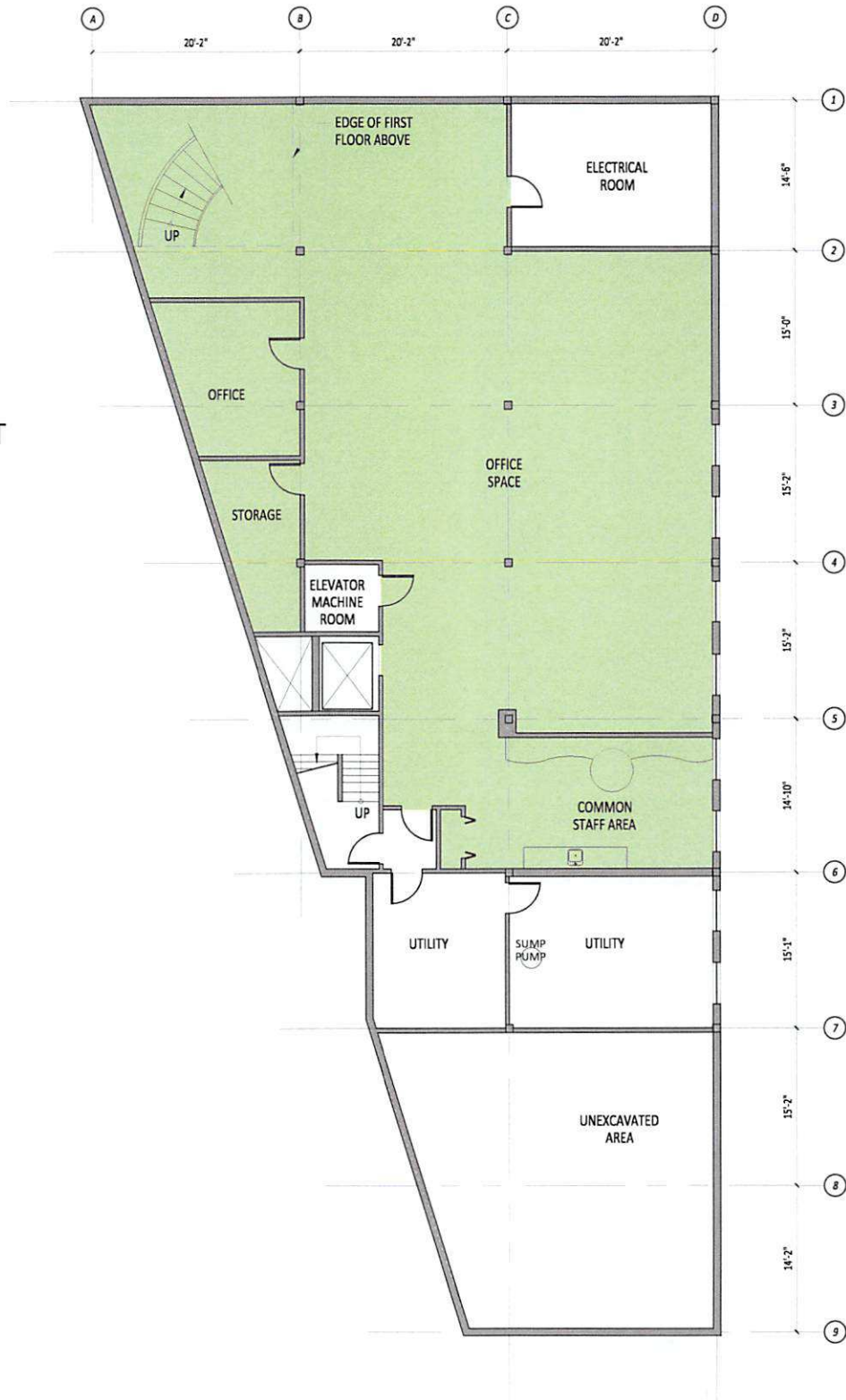
By:  _____ Date: 11-29-22 _____

Title: DONNY STEVENSON - VICE CHAIR _____
Jaison Elkins, Chairman
Muckleshoot Indian Tribe

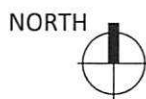
Exhibit A – Building Plan

DRAFT

WATERFRONT
OPERATIONS
3,055 SF



BAKUN BUILDING
BASEMENT



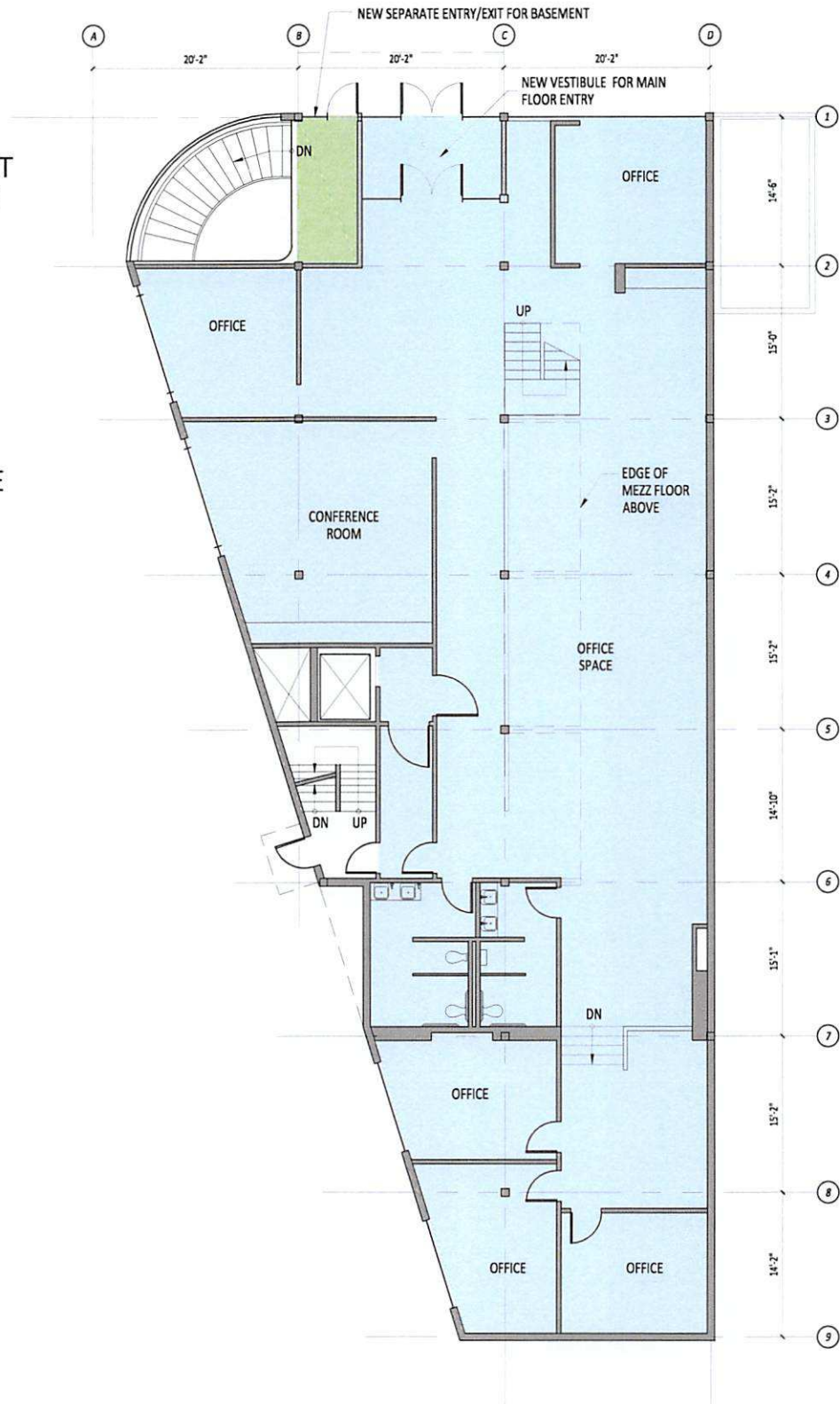
October 27, 2022

1/16" = 1'-0"

RON WRIGHT & ASSOCIATES/ARCHITECTS, P.S.
2003 WESTERN AVENUE, SUITE 610
SEATTLE, WA 98121
(206) 782-4248

WATERFRONT
OPERATIONS
90 SF

TRIBAL
INTERPRETIVE
CENTER
4,396 SF



BAKUN BUILDING
FIRST FLOOR



RON WRIGHT & ASSOCIATES/ARCHITECTS, P.S.
2003 WESTERN AVENUE, SUITE 610
SEATTLE, WA 98121
(206) 782-4248

October 27, 2022

1/16" = 1'-0"

TRIBAL
INTERPRETIVE
CENTER
2,256 SF



BAKUN BUILDING
MEZZANINE



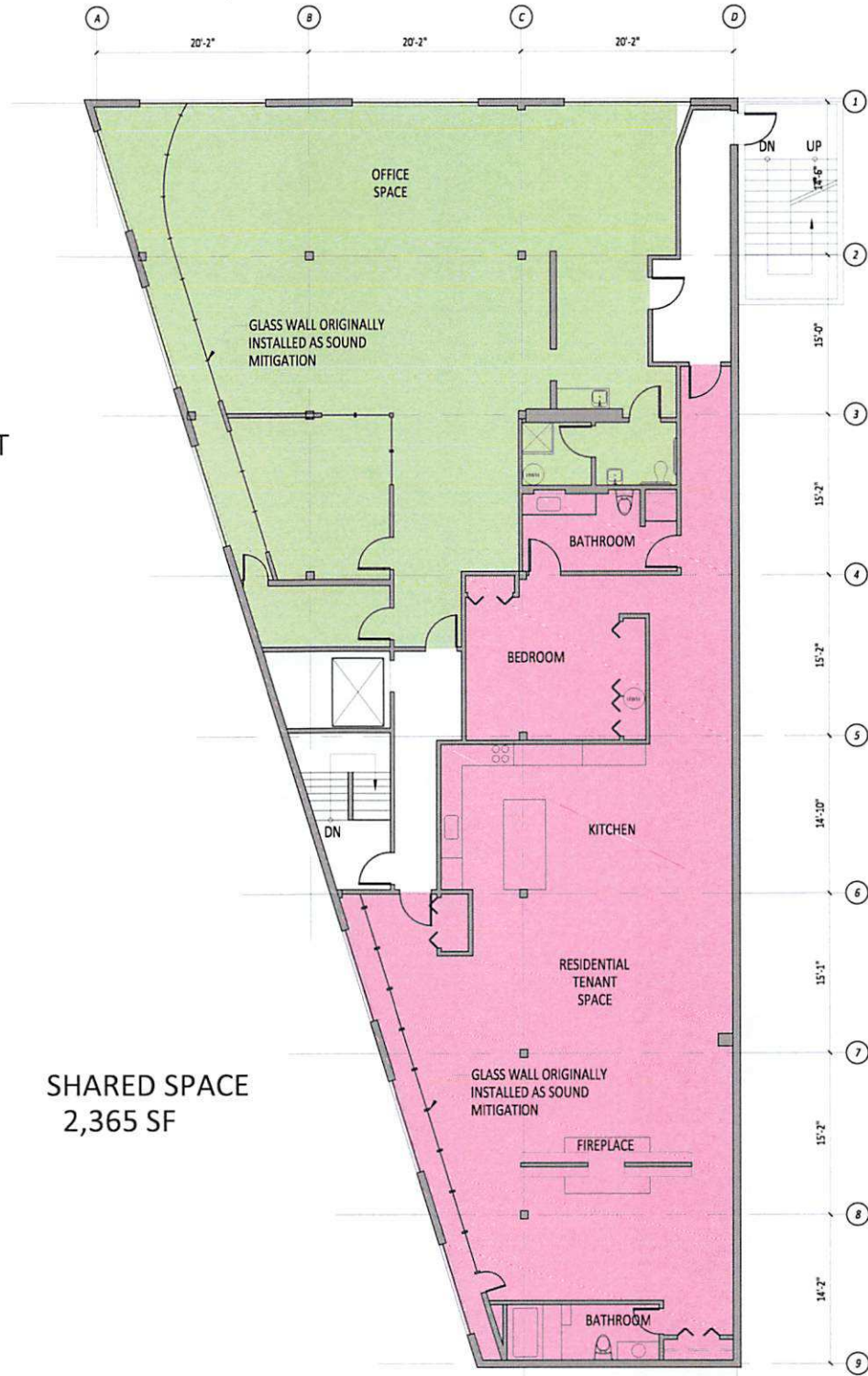
RON WRIGHT & ASSOCIATES/ARCHITECTS, P.S.
203 WESTERN AVENUE, SUITE 610
SEATTLE, WA 98121
(206) 782-4248

October 27, 2022

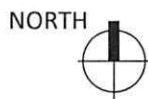
1/16" = 1'-0"

WATERFRONT
OPERATIONS
2,146 SF

SHARED SPACE
2,365 SF



BAKUN BUILDING
SECOND FLOOR



RON WRIGHT & ASSOCIATES/ARCHITECTS, P.S.
2003 WESTERN AVENUE, SUITE 610
SEATTLE, WA 98121
(206) 782-4248

October 27, 2022

1/16" = 1'-0"

Waterfront Operations and Tribal Interpretive Center

Project No:	MC-FA-OWMAINT	BSL Code:	BC-FA-GOVTFAC
Project Type:	Discrete	BSL Name:	General Government Facilities - General
Project Category:	New Facility	Location:	1426 Alaskan Way
Current Project Stage:	Stage 2 - Initiation, Project Definition, & Planning	Council District:	Council District 7
Start/End Date:	2023 - 2024	Neighborhood District:	Downtown
Total Project Cost:	\$13,000	Urban Village:	Downtown

This project holds budget to acquire the Integrus (Bakun) building located on the new Alaskan Way at Pike Street Hillclimb from WSDOT to provide for a facility to house the dedicated staff team for on-going maintenance and operations of the Waterfront Park. This building is located approximately 600 feet from the new maintenance area being provided under the Overlook Walk for vehicle storage and other maintenance activities. The building would also fulfill the City's permitting commitments to the Muckleshoot Tribe for construction of the Elliott Bay Seawall to provide space in a building along the Waterfront for a Tribal Interpretive Center rent free in perpetuity. The Tribe has indicated their interest in the space and that it could fulfill the conditions of the permit.

Resources	LTD Actuals	2022 Revised	2023	2024	2025	2026	2027	2028	Total
Real Estate Excise Tax I	-	-	13,000	-	-	-	-	-	13,000
Total:	-	-	13,000	-	-	-	-	-	13,000
Fund Appropriations / Allocations *	LTD Actuals	2022 Revised	2023	2024	2025	2026	2027	2028	Total
REET I Capital Fund	-	-	13,000	-	-	-	-	-	13,000
Total:	-	-	13,000	-	-	-	-	-	13,000

O&M Impacts: FAS, the Office of the Waterfront, and Seattle Center will develop an operations plan for the facility and will coordinate agreements among the building's multiple user departments and the Muckleshoot Tribe. The operations plan will include details on planned funding resources to meet the ongoing maintenance needs of the facility.

* Funds are appropriated through the Adopted Budget at the Budget Summary Level. All Amounts shown above are in thousands of dollars

2023 Seattle City Council Budget Action

Council Budget Action: Agenda

Tab	Action	Option	Version
FG	002	A	001-2023

Budget Action Title: Add \$500,000 GF (2023) and \$500,000 GF (2024) to FG for potential operating and maintenance costs of the Waterfront Operations and Tribal Interpretive Center

Ongoing: Yes Has Budget Proviso: No

Has CIP Amendment: No Has Attachment: No

Primary Sponsor: Budget Committee

Council Members:

Staff Analyst: Tom Mikesell

Council Bill or Resolution:

Date		Total	LH	TM	KS	AP	DJ	DS	AL	BC	SN
	Yes	0									
	No	0									
	Abstain	0									
	Absent	0									

Summary of Dollar Effect

See the following pages for detailed technical information

	2023 Increase (Decrease)	2024 Increase (Decrease)
General Fund		
General Fund Revenues	\$0	\$0
General Fund Expenditures	\$500,000	\$500,000
Net Balance Effect	\$(500,000)	\$(500,000)
Total Budget Balance Effect	\$(500,000)	\$(500,000)

Budget Action Description:

This Council Budget Action would add \$500,000 GF (2023) and \$500,000 GF (2024) to Finance General (FG) for the operating and maintenance (O&M) costs of the Waterfront Operations and Tribal Interpretive Center, pending development of an operations plan for the facility. The amount may be above the actual annual O&M costs for the Center and some of these funds may be available, after development of an operations plan, to absorb some of the capital costs associated with purchasing the building.

Budget Action Transactions

#	Transaction Description	Position Title	Number of Positions	FTE	Dept	BSL	Fund	Year	Revenue Amount	Expenditure Amount
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2023 Seattle City Council Budget Action

Council Budget Action: Agenda

Tab	Action	Option	Version
FG	002	A	001-2023

1	Reserve for TIC O&M costs		0	0	FG - FG000	FG - BO-FG-2QD00 - General Purpose	00100 - General Fund	2023	\$0	\$500,000
2	Reserve for TIC O&M costs		0	0	FG - FG000	FG - BO-FG-2QD00 - General Purpose	00100 - General Fund	2024	\$0	\$500,000

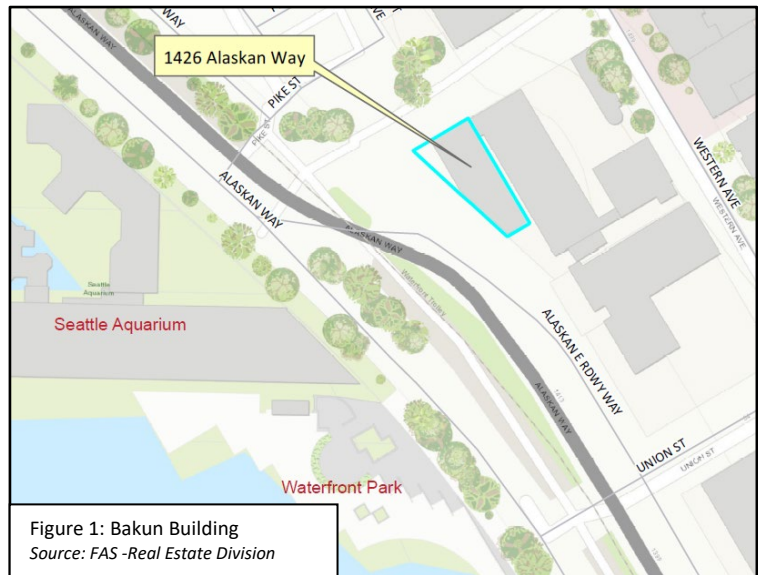
April 24, 2023

MEMORANDUM

To: Public Assets and Homelessness Committee
From: Eric McConaghy, Analyst
Subject: Bakun Building Purchase Authorization – Council Bill (CB) 120548

On May 3, 2023, the Public Assets and Homelessness Committee (Committee) will discuss and possibly vote on [Council Bill \(CB\) 120548](#): the Mayor’s proposed ordinance to authorize the purchase of an office building, known as the Bakun Building, from the Washington State Department of Transportation (WSDOT), located at 1426 Alaskan Way South near the Pike Street Hillclimb along Seattle’s Waterfront (Waterfront).

Approval of CB 120548 would allow the Seattle Department of Finance and Administrative Services (FAS) to acquire and rehabilitate the Bakun Building for a new Waterfront Operations and Tribal Interpretive Center. In November 2022, FAS and WSDOT entered into a Real Property Purchase and Sale Agreement (Attachment A to CB 120548) that is contingent upon approval by Council and the Mayor. The agreement includes a negotiated purchase price of \$8.6 million.



Background

The Mayor proposes the purchase and transformation of the Bakun Building to fulfill a provision of the 2013 Memorandum of Agreement (MOA) between the Muckleshoot Indian Tribe and the Seattle Department of Transportation (SDOT) related to construction permitting for the Elliot Bay Seawall project (Attachment 1). The MOA states that the City will provide the Muckleshoot Tribe with 10,000 square feet in a building along the Waterfront for a Tribal Interpretive Center rent-free.

The Muckleshoot Tribe and SDOT have signed an amendment to the 2013 MOA that identifies the Bakun Building as the location for the Tribal Interpretive Center and specifies the floor area reserved for the Tribal Interpretive Center and the shared use of a meeting/event space in the building (Attachment 2).

The Office of the Waterfront and Civic Projects (OWCP) proposes to use a portion of the space in the Bakun Building to house an operations center for maintenance and operations of the Waterfront Park. In addition to FAS, SDOT, and OWCP, the Seattle Center is engaged in the matter because authority to operate, maintain, and manage the Waterfront Park and Public Spaces will transition from Seattle Parks and Recreation to Seattle Center this summer as authorized by [Ordinance 126755](#), approved in January 2023. Therefore, Seattle Center employees would operate out of the new Waterfront Operations offices.

During the 2023–2024 budget deliberations last fall, Council swapped the Mayor’s proposed appropriation of \$13 million Real Estate Excise Tax I (REET I) for FAS to purchase and rehabilitate the Bakun Building with the same amount of appropriation supported by Limited Tax General Obligation (LTGO) bond proceeds in 2023 via [Council Budget Action \(CBA\) FAS 907-A-002](#). The CBA also added \$937,000 REET I in 2023 to pay debt service on the 2023 LTGO bonds, and it indicated that the appropriation authority for the purchase of the building would rely on future Council action to authorize the purchase.

Additionally, Council added appropriation to the 2023 Adopted Budget via [CBA FG-002-A-001-2023](#) for potential operating and maintenance costs: \$500,000 General Fund in both 2023 and 2024. FAS will manage the project to improve the building to make it ready for the Tribal Interpretive Center and the Waterfront Operations offices.

If CB 120548 is approved, FAS would complete the purchase with WSDOT by the end of June. The Mayor is also expected to propose future legislation that would authorize the lease agreement with the Muckleshoot Tribe before taking occupancy of the building.

Next Steps

If the Committee votes on CB 120548 on May 3, then Council could take final action as soon as May 9.

Attachments

1. Elliott Bay Seawall Project MOA with Muckleshoot Indian Tribe
2. MOA Amendment regarding Tribal Interpretive Center

cc: Esther Handy, Director
Aly Pennucci, Deputy Director
Brian Goodnight, Lead Analyst

ORIGINAL

**Memorandum of Agreement for the Elliott Bay Seawall Project
Between the City of Seattle Department of Transportation and the
Muckleshoot Indian Tribe**

IDENTIFICATION OF PARTIES AND PROJECT

This Memorandum of Agreement (Agreement) is entered into between the City of Seattle Department of Transportation (SDOT) and the Muckleshoot Indian Tribe (TRIBE). SDOT and the TRIBE are hereinafter collectively referred to as the “Parties” and individually “Party.” The Parties hereby agree, as allowed and limited by applicable law, to the following terms and conditions governing the Elliott Bay Seawall Project.

For purposes of this Agreement, the Elliott Bay Seawall Project (Project) is defined as the preferred alternative for the replacement of the Elliott Bay Seawall, as described in the Final Environmental Impact Statement (FEIS) issued by SDOT in March 2013, including any terms or conditions required by federal, state or local permits and other authorizations for the Project.

PURPOSE OF AGREEMENT

The purpose of this Agreement is to fully and fairly resolve the issues associated with the impacts of the Project on the TRIBE’s rights and interests, by delineating the commitments by all Parties related to avoiding, minimizing, and resolving the impacts of this Project on Treaty rights.

RECITALS

1. SDOT issued an FEIS in March, 2013, in which the preferred alternative was identified for replacement of Elliott Bay Seawall.
2. With regard to fishing activities, the TRIBE is a successor in interest to tribes and bands that were parties to the Treaty of Point Elliott, 12 Stat. 927, and the Treaty of Medicine Creek, 10 Stat. 1132, in which the Indian signatories reserved the right to fish at usual and accustomed grounds and stations. The TRIBE has adjudicated Treaty fishing and gathering rights, including the right to take fish at its usual and accustomed fishing grounds and stations. *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974; *Muckleshoot Indian Tribe v. Hall*, 698 F. Supp. 1504 (W.D.

Wash. 1988). The Project will be constructed within the TRIBE'S usual and accustomed area.

3. The construction of the Project and subsequent maintenance of the Project could affect the exercise of the TRIBES's Treaty rights.
4. SDOT and the TRIBE have a mutual interest in recognizing the TRIBE'S presence on the Seattle Waterfront.
5. SDOT and the TRIBE have met on a government-to-government basis to explore opportunities to modify the Project in order to avoid or minimize its potential impacts on the TRIBE's Treaty rights and have met to discuss measures to minimize and resolve the impacts from the Project on the TRIBE's Treaty rights.
6. This Agreement is the result of government-to-government consultation and reflects mutual commitments and undertakings of the Parties pertaining to the Project.
7. The Parties desire that this Agreement provide a non-exclusive means for TRIBE fishers to resolve claims against SDOT for damage to fishing gear, lost fishing time and for net moves, even though the TRIBE fishers are not parties to this Agreement nor are they intended to be third-party beneficiaries of this Agreement.

NOW, THEREFORE, the above recitals are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, **IT IS MUTUALLY AGREED AS FOLLOWS:**

TERMS AND CONDITIONS

8. Selected Alternative

SDOT intends to implement the Preferred Alternative for the Project, as described in the FEIS issued in March 2013. The Parties recognize that the building of the Project is subject to the availability of funds and the timely receipt of necessary federal, state and local regulatory approvals. The Parties recognize that the Project construction schedule may be modified during the design and construction process consistent with the requirements of SEPA.

Although the Project is not yet fully funded, this Agreement addresses the Project's impacts on the TRIBES's Treaty rights, including impacts from Project modifications and maintenance activities that do not materially increase the impacts on the TRIBE's Treaty rights beyond those described in the FEIS.

9. Treaty Impact Measures

The TRIBE has expressed concern about the impact of the Project on its Treaty rights

in areas that will be affected by the Project. The Parties agree that the Project is likely to impact the TRIBE's Treaty rights and that it is difficult to assess and quantify those potential impacts. The Parties believe that interference with the TRIBE's Treaty rights could result from construction activities such as material loading/offloading, barging activities, construction and maintenance activities of the seawall and habitat features. Impacts of proposed Project activities are described in the FEIS. Accordingly, the Parties agree the measures described in this Agreement are reasonable and appropriate to address the anticipated Project interference with the TRIBE's Treaty rights:

9.1 Impacts to Treaty Rights:

The Parties recognize that the Project will impact the TRIBE's Treaty rights. SDOT agrees to compensate the TRIBE Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000) in satisfaction of any and all claims, disputed or not, associated with the impact of the Project on the TRIBE's Treaty rights.

9.2 Fishing Coordination During Construction:

The TRIBE and SDOT have developed Operational Protocols (Attachment A), attached hereto and by this reference made a part of this Agreement, that coordinate Project in-water construction activities and TRIBE fishing activities, consistent with Treaty rights and with SDOT safety, security and other operational requirements. The Parties agree to update these protocols, as appropriate, to capture revised construction schedules, but no less often than annually in June of each year.

9.3 Vessel Coordination Program:

Between October and December for each year, the TRIBE shall provide staff, on-site, from 7 am to 7 pm at the locations of fishing activities in the Project area to coordinate fishing activity with construction equipment (e.g., barges) to minimize fishing gear conflicts with construction activities. Attachment A (Operational Protocols) describes the roles and responsibilities of the Vessel Coordination Program.

SDOT agrees to compensate the TRIBE One Hundred Fifteen Thousand Dollars (\$115,000.00) per year towards its vessel coordination program, in order to provide for its vessel coordination activities between October and December. Compensation under this program includes an annual inflation adjustment as described in Section 11.4. In the event the TRIBE does not expend the total amount each year for the coordination program, or if there is no fishery, the TRIBE agrees to use the remaining funds for fisheries purposes.

SDOT also agrees to compensate the TRIBE One Hundred Twenty-Five Thousand Dollars (\$125,000.00) in a onetime payment for a purchase of a vessel to help the TRIBE run the Vessel Coordination Program. At the end of Project construction, the TRIBE will retain the vessel.

For the duration of construction, the TRIBE agrees to request that TRIBE fishers avoid treaty fishing activity within twenty five (25) feet of the Elliott Bay Seawall construction zone during the month of September to avoid conflicts with seawall

construction activities. It is acknowledged that barging will take place in months when the vessel coordination program is not operational, however SDOT agrees that no ingress/egress of barges will take place during August and September, or in a manner that interferes with any of the TRIBE's test/evaluation fisheries during the month of July. As the test/evaluation fisheries times and locations are known in advance, the TRIBE will provide at least three (3) weeks advance notice to SDOT as to the time and location the test/evaluation fisheries are scheduled to occur.

9.4 Net Moves During Construction:

SDOT agrees to compensate the TRIBE fishers the rate of Three Hundred Fifty Dollars (\$350.00) for moving each set- or drift-net to accommodate the movement of a barge to or from the Project construction site or other Project-related marine vessel traffic.

SDOT will establish a process to facilitate payment to the TRIBE and individual fishers. In order for payment to be made to the TRIBE fisher, the process for this provision must be followed as detailed in Attachment A (Operational Protocols) and the Net Move Form (Attachment B), attached hereto and by this reference made a part of this Agreement.

9.5 Gear Damage / Replacement and Lost Fishing Time:

9.5.1 In the event that any TRIBE fisher's set- and drift- net and any other gear is damaged as a result of barge activities or other Project construction activities, SDOT shall replace the damaged gear and compensate the TRIBE fishers for lost fishing time as described in Section 9.5.2. For the purposes of this Section, gear is defined as any equipment used for the harvesting of fish, or shellfish, and includes vessels used for such harvesting, as permitted by applicable law.

In order for replacement gear or lost fishing time payment to be made to the TRIBE fisher, the process for documenting, approval, and payment for this provision must be followed as detailed in Attachment A (Operational Protocols) and the Gear Damage/Replacement and Lost Fishing Time Forms (Attachments C and D), attached hereto and by this reference made a part of this Agreement, must be completed and executed by all signatories on the forms.

To facilitate gear replacement and avoid the prolonged loss of fishing time, SDOT will provide an initial payment of Seventeen Thousand Five Hundred Dollars (\$17,500) for the TRIBE to acquire two coho set nets, two chum set nets, two shackles coho gear, and two shackles chum gear. The initial payment also includes compensation for the time and labor for the TRIBE to hang the nets. The stockpiled nets/gear will be used to replace gear damaged by Project activities. In the event the stockpile of nets and gear is used according to the process outlined in Attachment A (Operational Protocols), SDOT will provide additional funds for actual costs incurred by the TRIBE, to replenish the stockpile for the duration of the Project, upon submission of an invoice by the TRIBE, as described in Attachment A (Operational Protocols). Approved and fully executed Gear Damage/Replacement Forms (Attachment C), will serve as supporting documentation for the invoice. At the end of Project construction, the TRIBE will retain any remaining nets and gear.

In the event the TRIBE is not able to replace damaged gear with the stockpiled nets and gear, SDOT agrees to compensate the TRIBE fishers for the replacement value of the gear, as described Attachment A (Operational Protocols). As with net moves and gear replacement, compensation for damaged gear requires the process to be followed as detailed in Attachment A (Operational Protocols) and the Gear Damage/Replacement Form (Attachment C).

9.5.2 Lost Fishing Time: In the event that a TRIBE fisher's net or gear is damaged, SDOT will also compensate the TRIBE fisher for two (2) lost days of fishing time. Compensation for lost fishing time shall be based on the value of the average of the three highest catches recorded for the open fishing area during the period of concern, the day of the gear damage or loss and the following day. The process for this provision is documented in Attachment A (Operational Protocols) and the Lost Fishing Time Form (Attachment D), must be completed and executed by all signatories on the form.

10 Tribal Access and Representation

10.1 Interpretive Center:

If the Central Waterfront Program is fully funded, SDOT will provide a minimum of 10,000 square feet of space, suitable for an interpretive center, at a mutually agreeable location in a building within the Central Waterfront Program footprint for a Tribal Interpretive Center, without charging rent for use of the space. If space cannot be allocated within a building, then SDOT will use its best efforts to provide an alternative mutually agreeable location. The TRIBE will be financially responsible for all aspects of the Center, including coordination with other Tribes, design, development, staffing, operation and interior maintenance.

The Interpretive Center needs to be open within six (6) months of the completion of the Central Waterfront Program construction of the space, unless SDOT agrees to a later time. The TRIBE will have 6 months after SDOT notifies the TRIBE that a specific location has been identified for this purpose to decide whether or not to proceed with development of the Interpretive Center and to notify SDOT of its decision. Within 6 months of the TRIBE notice of intent to proceed with the Interpretive Center, the TRIBE shall submit an implementation plan to SDOT for review, which will become the basis of the lease agreement between the TRIBE and SDOT. This lease agreement and its terms will be reevaluated every 15 years.

10.2 Content for Interpretive Signs/Kiosks:

SDOT will coordinate with the TRIBE as identified in the Section 106 MOA to develop culturally appropriate content for inclusion in interpretive signs or kiosks that will be installed permanently along the waterfront. As stated in the Section 106 MOA, SDOT will allocate \$25,000 for implementation of the signs and kiosks.

10.3 Annual Canoe Journey:

SDOT will work with Seattle Parks and the TRIBE over the next twelve (12) months to identify and provide a suitable location for the annual canoe journey that may include overnight camping. SDOT and Parks will take steps to reduce the amount of time and effort involved for the Tribe to get permits and permissions to use City property for the landing.

11. Payments

11.1 Annual Payments

For the first payment for the Vessel Coordination Program (as described in Section 9.3), the TRIBE will invoice SDOT after execution of this agreement. Payment will be made within 60 calendar days of receipt of invoice by SDOT. For subsequent annual payment for the Vessel Coordination Program, made only in years the Project is in construction, the TRIBE will invoice SDOT no earlier than December 1st of the previous year. Payment will be made by SDOT to the TRIBE within 30 calendar days of receipt of invoice by SDOT.

11.2 Onetime Payment

For the onetime lump sum payment for the impacts to Treaty Rights (as described in Section 9.1), purchase of a vessel (as described in Section 9.3) and the Gear Replacement stockpile (as described in Section 9.5), the TRIBE will invoice SDOT after the commencement of in-water construction. Payment will be made by SDOT to the TRIBE within 60 calendar days of receipt of invoice by SDOT.

11.3 Each invoice will include the Agreement title, the day, month, and year. Invoice templates for all Treaty impact measures are attached to this Agreement, as follows:

11.3.1 The Invoice Template (Attachment E), attached hereto and by this reference made a part of this Agreement, provides an example invoice for Annual Payments (as noted in Section 9.3) and for replenishing the stockpiled nets/gear as needed (as described in Section 9.5).

11.3.2 The Net Move Form, Gear damage/Replacement Form and Lost Fishing Time Forms (Attachments B, C and D) serve as invoices for Net Moves During Construction (as described in Section 9.4) and Gear Damage / Replacement and Lost Fishing Time (as described in Section 9.5).

11.3.3 All invoices will be processed as outlined in the Operational Protocols (Attachment A).

11.3.4 SDOT agrees to make payment to the TRIBE within the timelines outlined in this agreement.

11.4 All amounts noted in this Agreement shall be in 2013 dollars using the June 2013 Consumer Price Index for All Urban Consumers, U.S. City Average, all items (Index), as published by the United States Department of Labor, Bureau of Labor Statistics, as the base year. The initial annual payment of \$115,000 for 2013 shall be made as indicated in section 11.1. For subsequent years, payments will be adjusted for inflation based on the June Index for the year the payment is due, as compared to the June 2013 base Index.

12. Amendment

This Agreement may be amended by written agreement of the Parties. Such amendments shall be signed by the Parties' Lead Representatives, as noted in Section 22.

13. Technical Attachments

All Attachments to this Agreement may be modified with the written approval of the Parties' Designated Representatives, as noted in Section 22.

14. No Objection to Project

The TRIBE agrees that it will not object to or otherwise oppose the Project in any federal, state, or local regulatory, administrative, or judicial proceedings associated with the permitting, financing, and construction of the Project, including any permit modifications or NEPA/SEPA reevaluations for the Project that do not materially increase the impacts of the Project on the TRIBE's Treaty rights beyond those described in the FEIS. Upon the execution of this Agreement, the TRIBE agrees to transmit a letter via electronic mail to the US Army Corps of Engineers, referencing the Project, stating that the TRIBE does not oppose the issuance of federal permit approval for the Project. This letter will be sent no later than one (1) business days following receipt of an executed Agreement.

15. Release

The Parties agree that the terms of this Agreement constitute a full and fair settlement regarding actual or potential interference with the TRIBE's Treaty rights including, but not limited to, potential interference with TRIBE fishing access resulting from the Project.

Except for those obligations which SDOT undertakes in this Agreement, the TRIBE, its successors or assigns, hereby release and forever discharge SDOT, their agents and contractors from any and all claims, demands and causes of action of any nature whatsoever against SDOT for damages or equitable or other non-monetary relief associated with the impact of the Project on its Treaty rights. This release does not pertain to claims or causes of action resulting from the Project for other than anticipated potential impacts to the TRIBE's Treaty rights.

16. Integration and Severability

This Agreement constitutes a single integrated contract that expresses the entire agreement of the Parties hereto. Any prior representations or agreements, whether oral

or written, in regard to this Agreement or its subject matter are hereby superseded in their entirety by this Agreement. If any provision of this Agreement is held invalid, it shall be considered severable from the remainder, and the remaining provisions shall be given full force and effect, provided that such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement.

17. Termination

In the event that SDOT makes material modifications to the Project that may increase the adverse impact of the Project on the TRIBE's access to its usual and accustomed Treaty fishing grounds and stations, then the TRIBE may withdraw from this Agreement after providing at least thirty (30) calendar days written notice to SDOT and after complying with the dispute resolution requirements of Section 21 of this Agreement. Any dispute about whether modifications to the Project are "material" or whether they result in increased adverse impacts to TRIBE's access to its usual and accustomed Treaty fishing grounds and stations shall be resolved in accordance with the dispute resolution provisions of Section 21. In the event that the TRIBE withdraws from this Agreement pursuant to this Section, the TRIBE agrees to enter into additional negotiations with SDOT regarding the extent of the modified Project's increased adverse impact to TRIBE's access to its usual and accustomed Treaty fishing grounds and stations. In the event that the Parties enter into a subsequent agreement regarding the Project impact to the TRIBE's Treaty fishing access rights, any mitigation or compensation already provided to the TRIBE by SDOT shall be included in any new agreement negotiated by the Parties.

18. Agreement Binding

The terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

19. Authority to Sign

The TRIBE represents, warrants, and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized. As part of this Agreement, the TRIBE will furnish a copy of the resolution of the Tribal Council granting authority of the undersigned to execute this Agreement on behalf of the TRIBE no later than five (5) business days following execution of this Agreement.

SDOT represents warrants and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized.

20. Declaration

The undersigned hereby declare that the terms of this Agreement have been completely read and fully understood and voluntarily accepted for the purpose of making the full and final compromise, adjustment and settlement of any and all claims between the Parties, disputed or otherwise, prior to the date of this Agreement, and for the express purpose of precluding forever any additional claims between the Parties arising out of or in any way connected with the Project interference with the TRIBE's Treaty rights, including construction and operations associated with the Project, except for claims

arising from the duties and obligations of the Parties under this Agreement.

21. **Dispute Resolution Process**

21.1 The Parties shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.

21.2 **Informal Resolution.** The informal resolution process begins at the staff level and is raised to the higher organizational levels, if necessary.

In the event that the Parties are unable to resolve the dispute, the Parties shall submit the matter to non-binding mediation facilitated by a mutually agreed upon, mediator. The Parties shall share equally in the cost of the mediator.

Each Party agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.

The Parties agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

22. **Lead and Designated Representatives**

Lead Representatives

a. Muckleshoot Indian Tribe
Virginia Cross, Chair
Muckleshoot Indian Tribe
39015 - 172nd Avenue Southeast
Auburn, WA
98092 (253) 939-
3311

b. SDOT
Peter Hahn
Director, Seattle Department of Transportation
700 Fifth Avenue, Suite 3900
PO Box 34996
Seattle, WA 98124-4996
206-684-5000

Designated Representatives

a. Muckleshoot Indian Tribe

Isabel Tinoco, Fisheries Director
Muckleshoot Indian Tribe
39015 - 172nd Avenue Southeast
Auburn, WA
98092 (253) 939-
3311

b. SDOT

Jessica Murphy
Project Manager, Seattle Department of Transportation
700 Fifth Avenue, Suite 3900
PO Box 34996
Seattle, WA 98124-4996
206-684-0178

23. **Reservation of Rights, No Waiver of Claims**

Except as provided in Section 25, by entering into this Agreement, the TRIBE does not waive any rights to exercise its Treaty rights, and any and all such rights are hereby expressly reserved. Nothing in this Agreement is intended to or shall be construed to constitute an admission by any Party that the geographic areas referenced in this Agreement corresponds to, defines or otherwise represents an accurate final legal description of the TRIBE's usual and accustomed fishing areas.

24. **Indemnification**

To the maximum extent authorized by law, the Parties shall indemnify and hold harmless one another and their employees and/or officers from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against a Party arising out of, in connection with, or incident another Party's own negligent performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the Parties, their employees and/or officers, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Parties, their employees and/or officers. The Parties agree that their obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Parties, by mutual negotiation, hereby waive, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

The provisions of this Section shall survive the termination of this Agreement.

25. Waiver of Sovereign Immunity and Venue

25.1 The TRIBE expressly agrees to a limited waiver of sovereign immunity. The waiver is limited to actions brought by SDOT for breach, termination, enforcement of Agreement provisions, including specifically Section 24 herein, interpretation, validity thereof, including the determination of the scope or applicability of this Agreement. This limited waiver is available solely to claims by SDOT and not by any other entity, entities, or any individual or third party, not a Party to this Agreement. The TRIBE agrees not to invoke sovereign immunity as a defense to a claim upon its insurance policy in connection with the enforcement of the rights of SDOT.

25.2 The TRIBE consents to the jurisdiction of the Washington State Superior Court in the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement if dispute resolution pursuant to Section 21 fails.

The Parties further agree that venue for any such action or proceedings arising out of this Agreement shall be in the superior court situated in King County, Washington.

26. Governing Law

The Parties agree that this Agreement and all questions concerning the performance of this Agreement shall be interpreted, construed and enforced in all respects in accordance with applicable laws of the State of Washington, without reference to rules relating to the choice of law.

IN WITNESS WHEREOF, the Parties hereto agree to the terms and conditions of this Agreement as of the day and year last written below.

<p>MUCKLESHOOT INDIAN TRIBE</p> <p>Date: <u>10-18-13</u></p> <p>By: <u><i>Virginia Cross</i></u></p> <p>Virginia Cross, Chairperson Muckleshoot Indian Tribe</p>	<p>CITY OF SEATTLE, DEPARTMENT OF TRANSPORTATION</p> <p>Date: <u>10-23-13</u></p> <p>By: <u><i>Peter E. Hahn</i></u></p> <p>Peter E. Hahn, Director Seattle Department of Transportation</p>
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Elliott Bay Seawall Replacement Project

Attachment A

Operational Protocols to Avoid Impacts to Treaty Fishing During In-Water Construction

1. Introduction

The following plan will guide the Elliott Bay Seawall Project (Project) as SDOT prepares for and carries out construction activities to replace the Elliott Bay Seawall along the City of Seattle waterfront.

This plan is designed to identify appropriate channels of communication and notification protocols for work in the project area to ensure that SDOT and the Muckleshoot Indian Tribe (TRIBE) are actively communicating and aware of each other's activities.

SDOT and the TRIBE agree to update these protocols each June of every year, or more frequently as appropriate.

Organizational Structure and Primary Points of Contact

The SDOT Project Manager is the SDOT responsible representative and primary point of contact for all matters related to the Project during construction. Secondary contact is the Resident Engineer.

SDOT contact information is as follows:

Name	Title	Desk	Email
Jessica Murphy	Project Manager	206-684-0178 Desk 206.214.7193 Cell	Jessica.murphy@seattle.gov
Jody Robinson	Resident Engineer	206.962.7667 Cell	jody.robinson@jacobs.com
Mike Mahovich	Muckleshoot Indian Tribe Fish Harvest Manager	(253) 876-3113	Mike.Mahovich@muckleshoot.nsn.us

2. Goals and Expected Outcomes

Goals

SDOT recognizes that the areas around the Elliott Bay Seawall Project are sensitive areas and an important resource to the TRIBE. Communication during in-water construction activities will be focused in these areas:

- Establish clear channels of communication to keep SDOT and the TRIBE informed of project activities and TRIBE fishing activities.
- Clearly communicate Project schedules and activities that may have an effect on TRIBE fishing activities. Provide timely notification of unexpected schedule changes.
- Maintain good relations during fish harvest openings and construction activities for the duration of the Project construction.

- Avoid adverse interactions with fish harvest activities and provide for the safety of TRIBE fishers, SDOT and its contractors.
- Identify processes to address any unavoidable or unanticipated impacts on TRIBE fishing activities that may occur during construction.

3. Communication Approach

How we will communicate

- Weekly Reports – During construction, SDOT will provide schedule updates every two weeks to identify work underway and work scheduled to occur. The update will be sent out via e-mail from the SDOT Project Manager or Designee.
- Notification Triggers – SDOT will provide written notification and verbal notification (telephone call) a minimum of one (1) week in advance of certain activities that are scheduled to occur in Elliott Bay. Those activities include:
 - i) Barge deliveries
 - ii) Installation of in-water containment systems and BMPs.
- A process is needed to communicate net move requests for net moves. This process will be jointly developed by both Parties.
- Ad hoc communication via e-mail and telephone conversation as needed.
- Urgent matters or changes to original schedules will be communicated in a timely manner via telephone/conference call between the identified points of contact.

Elliott Bay Fishery Seasons Approximate Timeframe

Chinook	July 15 through August 25
Pink (odd years)	August 25 through September 21
Coho	September 1 through October 31
Chum	October 21 through December 15
Steelhead	November 21 through December 31

4. Process related to Vessel Coordination Program and Compensating for Fishing Impacts

Fishing Impact Avoidance and Minimization

During the month of September for every construction year, no Project barge deliveries will be allowed to the project area. Work to install sheet piles, containment structures, and other in-water work will be primarily land-based but may be supported by small vessels. In September for every construction year, the TRIBE agrees that fishers will set nets at least 25 feet away from the project construction area.

For the months of October, November, and December, SDOT and the TRIBE will coordinate to minimize impacts treaty fishing per the protocols in this coordination plan. SDOT will provide compensation for a TRIBE Vessel Coordination Program to coordinate construction activities and TRIBE fishing activities, as included in the Vessel Coordination Program described in this agreement. The role of the TRIBE Vessel Coordination Program is described below.

Responsibilities for Schedule Coordination

Role of the TRIBE Vessel Coordination Program

- Notify the SDOT Project Manager no later than one (1) week in advance of a potential fishery, so that SDOT can notify the contractor of anticipated fishing activities.
- Coordinate with individual TRIBE fishers regarding verification and documentation of claims.
- Coordinate fishing activity with Project marine traffic such that construction activities and fishing gear conflicts are managed and minimized to the extent possible.
- Distribute and manage the gear stockpile and distribute gear to TRIBE fishers once the Gear Damage/Replacement Form is approved by all Parties.

Role of the SDOT Project Manager

- The Project Manager will provide oversight to ensure commitments as described in this document and agreement.
- The Project Manager will be the primary point of contact for the TRIBE for issues associated with this agreement.
- The Project Manager will approve invoices submitted by the TRIBE per this agreement.

- The Project Manager will coordinate construction activities between the contractor and the TRIBE to resolve any issues and disputes.

Role of the SDOT Resident Engineer

- The Resident Engineer will ensure schedule updates are transmitted to the TRIBE Vessel Coordination Program.
- The Resident Engineer will provide written and verbal notification to the TRIBE Vessel Coordination Program a minimum of one (1) week in advance of activities for activities described in Section 3.
- The Resident Engineer will invite the TRIBE Vessel Coordination Program to participate in a conference call one (1) week prior to commencing any activity identified as a notification trigger (above).
- The Resident Engineer will ensure that the TRIBE Vessel Coordination Program is informed of changes in schedules or other urgent matters.
- The Resident Engineer will ensure that the contractor complies with all environmental contract permits.

Process for Verifying Claims and Payment

In the event there is TRIBE gear damage or gear replacement, a net move is necessary, or related lost fishing time (if applicable) as a result of the Project activities, the process for verifying claims and payment is as follows:

1. The TRIBE Vessel Coordination Program completes and submits the appropriate net move, gear damage/replacement or lost fishing time form (Claim Form: Attachments B, C, and D) via email to the SDOT Project Manager. The Claim Form will serve as the documentation to verify a TRIBE fisher's claim for a net move occurrence, gear damage/replacement request, use of the gear/net stockpile or compensation for lost fishing time. TRIBE approved and signed Claim Forms are to be submitted to SDOT Project Manager for review and approval within ten (10) business days of the incident for which the claim is being submitted.
2. The SDOT Project Manager receives and verifies the appropriate Claim Form, then approves or rejects the Claim Form within five (5) business days of receipt of Claim Form and sufficient supporting documentation as described in the Claim Forms (Attachments B, C, and D). The SDOT Project Manager emails the approved Claim Form and supporting documents to SDOT Accounting or rejected Claim Form to the TRIBE Vessel Coordination Program. If the SDOT Project Manager is not available, the Resident Engineer can complete process steps as the SDOT Project Manager's designee (as noted in Section 1 of this document).

3. Upon receipt, SDOT Accounting will review and process the approved Claim Form within ten (10) business days of receipt from the Project Manger or designee. If sufficient, SDOT Accounting will process payment to be mailed, within ten (10) business days of receipt from the Project Manager or designee. If insufficient, SDOT Accounting will send the Claim Form and supporting documentation back to the SDOT Project Manager, along with documentation outlining deficiencies, within the ten (10) days of receipt. The SDOT Project Manager will send this list back to the TRIBE within five (5) days.
4. SDOT Accounting will authorize payment and mail checks to the address on the Claim Form.
5. If SDOT rejects the Claim Form, the Parties will try to resolve any issues at the lowest organizational level.
6. If gear replacement nets provided by the TRIBE are used, the TRIBE will also submit an Invoice (Attachment E) in addition to a Claim Form (Attachment C) via email to the SDOT Project Manager. The Parties will verify the inventory of nets described in Section 9.5. SDOT will not be liable for any lost or damaged nets or gear as stored in the stockpile under the TRIBE's management. Payment processing will follow steps 1 through 5 above.
7. The TRIBE will submit an Invoice (Attachment E) and supporting documentation for the Vessel Coordination Program and vessel purchase. Payment processing will follow steps 1 through 5 above.



Muckleshoot Indian Tribe
Fisheries Division



Seattle Department of Transportation
Elliott Bay Seawall Project

INVOICE #: _____

NET MOVE FORM

For reimbursement under the terms of (add #)

AGENCY			
SDOT			
MONTH\DAY\YEAR	TIME: AM \ PM	PARTY REQUESTING MOVE	CONTACT INFO. PHONE #
LOCATION	NAME OF VESSEL OR BARGE	NAME OF TUG OR PILOT	
VESSEL DEPARTING FROM\DESTINATION TO			

FISHER TO BE PAID

(FISHER RESPONSIBLE FOR MOVING NET\GEAR)

FISHER ID. #	FULL NAME	CIRCLE ONE
		II III IV V Jr Sr NONE
FISHER ADDRESS		FISHER SIGNATURE
STREET ADDRESS		Fisher Signature* _____ Date _____
		VESSEL PROGRAM COORDINATOR SIGNATURE
CITY STATE ZIP		I, _____ <i>Vessel Program Coordinator Name</i>
Ph. # _____		have verified that the information provided on this form is accurate, and by signing below approve, authorize and direct payment on behalf of the Tribe, as noted on this form.
		Vessel Program Coordinator Signature* _____ Date _____

I, _____
Print SDOT Project Manager Name (First, Last)

have verified that the information provided on this form is accurate and approve the form by signing below.

Is this reimbursement approved? YES NO

If no, comments are as follows:

SDOT Project Manager Signature* _____ Date _____

Indicate estimated date for check delivery/pick up: _____

***By submitting and signing this form, the signatories agree to the following:**

- The net move occurred as a result of Elliott Bay Seawall Replacement Project activities.
- This form will be considered the invoice for reimbursement to the Tribe, and payment made according to the terms of (agmt #).
- Backup documentation has been attached to this invoice, including, but not limited to, the description of event and additional information to support the net move invoice amount to be paid.

The Tribe authorizes and directs invoice amount to be made to the following:

Print Name (First, Last)

MIT Fishing ID #

Total invoice amount to be paid:
\$ _____



Muckleshoot Indian Tribe
Fisheries Division



Seattle Department of Transportation
Elliott Bay Seawall Replacement Program

GEAR DAMAGE/REPLACEMENT FORM

For reimbursement under the terms of **AGRMT #**

INVOICE #: _____

AGENCY RESPONSIBLE	LOCATION	DATE OF INCIDENT	TIME																		
SDOT																					
NAME OF VESSEL OR BARGE	NAME OF TUG OR PILOT	VESSEL DESTINATION																			
PICTURES OF DAMAGE		INDEPENDENT WITNESS TO DAMAGE																			
<input type="checkbox"/> YES, ATTACHED <input type="checkbox"/> NO		FULL NAME _____ PHONE # _____																			
FISHER TO BE COMPENSATED		TYPE OF GEAR LOST (CIRCLE ALL THAT APPLY)																			
FISHER ID. # - _____ FULL NAME _____ ADDRESS _____ CITY _____ STATE _____ ZIP _____ PHONE _____ # _____ I, _____ <i>Print Name (First & Last)</i>		<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p style="text-align: center; margin: 0;">CIRCLE ONE</p> <p style="text-align: center; margin: 0;">II III IV V Jr Sr NONE</p> </div> <table style="width:100%; border-collapse: collapse;"> <tr style="background-color: #cccccc;"> <th colspan="3">SET-NET</th> </tr> <tr> <td style="width:33%;">MESH SIZE _____ IN.</td> <td style="width:33%;">DEPTH _____ FT.</td> <td style="width:33%;">LENGTH _____ FT.</td> </tr> <tr> <td>GEAR BOUY BALL</td> <td>ANCHOR</td> <td>A.CHAIN J. LIGHT ROPE</td> </tr> <tr style="background-color: #cccccc;"> <th colspan="3">DRIFT-NET</th> </tr> <tr> <td>MESH SIZE _____ IN.</td> <td>DEPTH _____ FT.</td> <td>LENGTH _____ FT.</td> </tr> <tr> <td>GEAR BOUY BALL</td> <td>ANCHOR</td> <td>A.CHAIN J. LIGHT ROPE</td> </tr> </table> ADDITIONAL GEAR LOST: _____		SET-NET			MESH SIZE _____ IN.	DEPTH _____ FT.	LENGTH _____ FT.	GEAR BOUY BALL	ANCHOR	A.CHAIN J. LIGHT ROPE	DRIFT-NET			MESH SIZE _____ IN.	DEPTH _____ FT.	LENGTH _____ FT.	GEAR BOUY BALL	ANCHOR	A.CHAIN J. LIGHT ROPE
SET-NET																					
MESH SIZE _____ IN.	DEPTH _____ FT.	LENGTH _____ FT.																			
GEAR BOUY BALL	ANCHOR	A.CHAIN J. LIGHT ROPE																			
DRIFT-NET																					
MESH SIZE _____ IN.	DEPTH _____ FT.	LENGTH _____ FT.																			
GEAR BOUY BALL	ANCHOR	A.CHAIN J. LIGHT ROPE																			
I agree I will not file any other claim for reimbursement of gear damages (as described in this form) from the City, provided this claim is approved by SDOT.		IS THE GEAR REPLACED BY GEAR IN THE STOCKPILE? <input type="checkbox"/> YES <input type="checkbox"/> NO																			
FISHER SIGNATURE * _____ DATE _____		I, _____ <i>Print Vessel Program Coordinator Name (First & Last)</i> have verified that the information provided on this form is accurate, and by signing below approve, authorize and direct payment on behalf of the Tribe, as noted on this form.																			
ATTACH TO THIS FORM: SIGNED FISHERS STATEMENT, SIGNED WITNESS STATEMENT IF ANY, ALL RELEVANT PICTURES OF DAMAGE.		VESSEL PROGRAM COORDINATOR SIGNATURE* _____ DATE _____																			

I, _____
Print SDOT Project Manager Name (First, Last)

have verified that the information provided on this form is accurate and approve the form by signing below.

Is this reimbursement approved? YES NO

If no, comments are as follows:

SDOT Project Manager Signature* _____ Date _____

Indicate estimated date for check delivery/pick up: _____

***By submitting and signing this form, the signatories agree to the following:**

- The gear damage/replacement occurred as a result of Elliott Bay Seawall Replacement Project activities.
- This form will be considered the invoice for reimbursement to the Tribe, and payment made according to **(Agmt #)**
- Backup documentation has been attached to this invoice, including, but not limited to, a summary of detailed costs for gear damage/replacement (such as vendor's quote or actual invoice) to support the total invoice amount to be paid.

The Tribe authorizes and directs invoice amount to be made to the following:

Print Name (First, Last)

MIT Fishing ID #

Total invoice amount to be paid:

\$ _____



Muckleshoot Indian Tribe
 Fisheries Division
Seattle Department of Transportation
 Elliott Bay Seawall Replacement Program



LOST FISHING TIME FORM
 For reimbursement under the terms **AGMT #**

INVOICE #: _____

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

FISHER ID. # - _____	CIRCLE ONE II III IV V Jr Sr NONE
FULL NAME _____	
ADDRESS _____	
CITY _____	STATE _____ ZIP _____
PHONE # _____	
I, _____	
<i>Print Name (First & Last)</i>	
agree I will not file any other claim for reimbursement of gear damages (as described in this form) from the State.	
FISHER SIGNATURE *	DATE

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

DATE OF INCIDENT	
ASSOCIATED GEAR DAMAGE INVOICE #	

Calculation of lost fishing time: <i>Two (2) days of lost fishing time due to this gear damage event will be reimbursed. Calculation is based on the value of the average of the three highest catches recorded for the open fishing area during the period of concern on the day of the gear damage or loss and the following day.</i>		
Catch Record Data	Day 1	Day 2
1	_____	_____
2	_____	_____
3	_____	_____
Average total	\$ _____	_____
TOTAL AMOUNT DUE:	\$ _____	_____

I, _____	
<i>Print Vessel Program Coordinator Name (First & Last)</i>	
have verified that the information provided on this form is accurate, and by signing below approve, authorize and direct payment on behalf of the Tribe, as noted on this form.	
VESEL PROGRAM COORDINATOR SIGNATURE*	DATE

I, _____
Print SDOT Project Manager Name (First, Last)

have verified that the information provided on this form is accurate and approve the form by signing below.

Is this reimbursement approved? YES NO

If no, comments are as follows:

SDOT Project Manager Signature* _____ Date _____

Indicate estimated date for check delivery/pick up: _____

***By submitting and signing this form, the signatories agree to the following:**

- The lost fishing time occurred as a result of Elliott Bay Seawall Project activities.
- This form will be considered the invoice for reimbursement to the Tribe, and payment made according to the terms of **AGRMT #.**

The Tribe authorizes and directs invoice amount to be made to the following:

Print Name (First, Last)

MIT Fishing ID #

Total invoice amount to be paid:

\$ _____

**Attachment E
Invoice Template**

Date: XX/XX/13

TO:
City of Seattle
Department of Transportation
PO Box 23996
Attn: Accounts Payable
Seattle, WA 98124-4996

Invoice number: XXX
For the period: XX/XX/13thru XX/XX/13

Project: Elliott Bay Seawall Replacement Project

<u>Billing Summary by Task</u>	<u>This Invoice</u>
A. Vessel Coordination Program	\$0.00
B. Net/Gear Replacement Stockpile	\$0.00
Total All Tasks	\$0.00
TOTAL AMOUNT DUE THIS INVOICE	\$0.00

Amendment No. 2
to the
Memorandum of Agreement for the Elliott Bay Seawall Project
Between the City of Seattle Department of Transportation and the
Muckleshoot Indian Tribe

As provided in Section 12 of the Memorandum of Agreement for the Elliott Bay Seawall Project Between the City of Seattle Department of Transportation (“SDOT”) and the Muckleshoot Indian Tribe (“TRIBE”), dated October 23, 2013, the Parties agree to amend this Agreement by deleting Section 10.1 in its entirety and replacing it with a new Section 10.1, to read as follows:

10.1 Tribal Interpretive Center

The Parties have selected a mutually agreed upon location for the Tribal Interpretive Center: the Bakun Building property located at 1426 Alaskan Way, Seattle, WA 98101 (the “Property”). Subject to the City purchasing and taking ownership of the Property from the State of Washington Department of Transportation (“WSDOT”), the Parties agree that within the Bakun Building, 4,396 square feet of space on the 1st floor and 2,256 square feet of space on the mezzanine floor will be reserved for the Tribal Interpretive Center, for a total of 6,652 square feet of space (Exhibit A – Building Plan). The TRIBE will also have shared use of the 2,365 square-foot meeting/event space on the 2nd floor.

The Parties agree to develop a Space Management Plan and execute a lease agreement for the TRIBE’s occupancy of the Bakun Building for the Tribal Interpretive Center. The Parties will develop the Space Management Plan within six (6) months of the City taking ownership of the property, which Plan will become the basis for the lease agreement. The TRIBE will not be charged any rent for the use of the space. The lease agreement and its terms will be reevaluated every 15 years.

The TRIBE will be financially responsible for all aspects of the Tribal Interpretive Center, including coordination with other Tribes, design, development, staffing, operation, and interior maintenance.

The Parties agree that the Bakun Building and the planned allocation of interior space as described above meets in full the commitment made by the City to provide a Tribal Interpretive Center under this Agreement.

The Parties agree that this Amendment No. 2 is subject to and conditioned upon the City executing a purchase and sale agreement with the WSDOT for the Bakun property, closing on the transaction, and taking ownership of the property, on or before June 30, 2023.

IN WITNESS WHEREOF, the Parties hereto agree to the terms and conditions of this Amendment No. 2 as of the day and year last written below.

SIGNATORY PARTY:

THE CITY OF SEATTLE

By:  Date: 12/02/2022
Greg.Spotts (Dec 2, 2022 06:04 PST)

Title: Director
Greg Spotts, Director
Seattle Department of Transportation


Contact Information:

Angela Brady, PE
Seattle Department of Transportation
Office of the Waterfront
800 Fifth Avenue, Suite 3100
PO Box 34996
Seattle, WA 98124-4996
Voice: (206) 684-3115
E-mail: Angela.Brady@seattle.gov

Note: Signatures continued on next page.

SIGNATORY PARTY:

Muckleshoot Indian Tribe

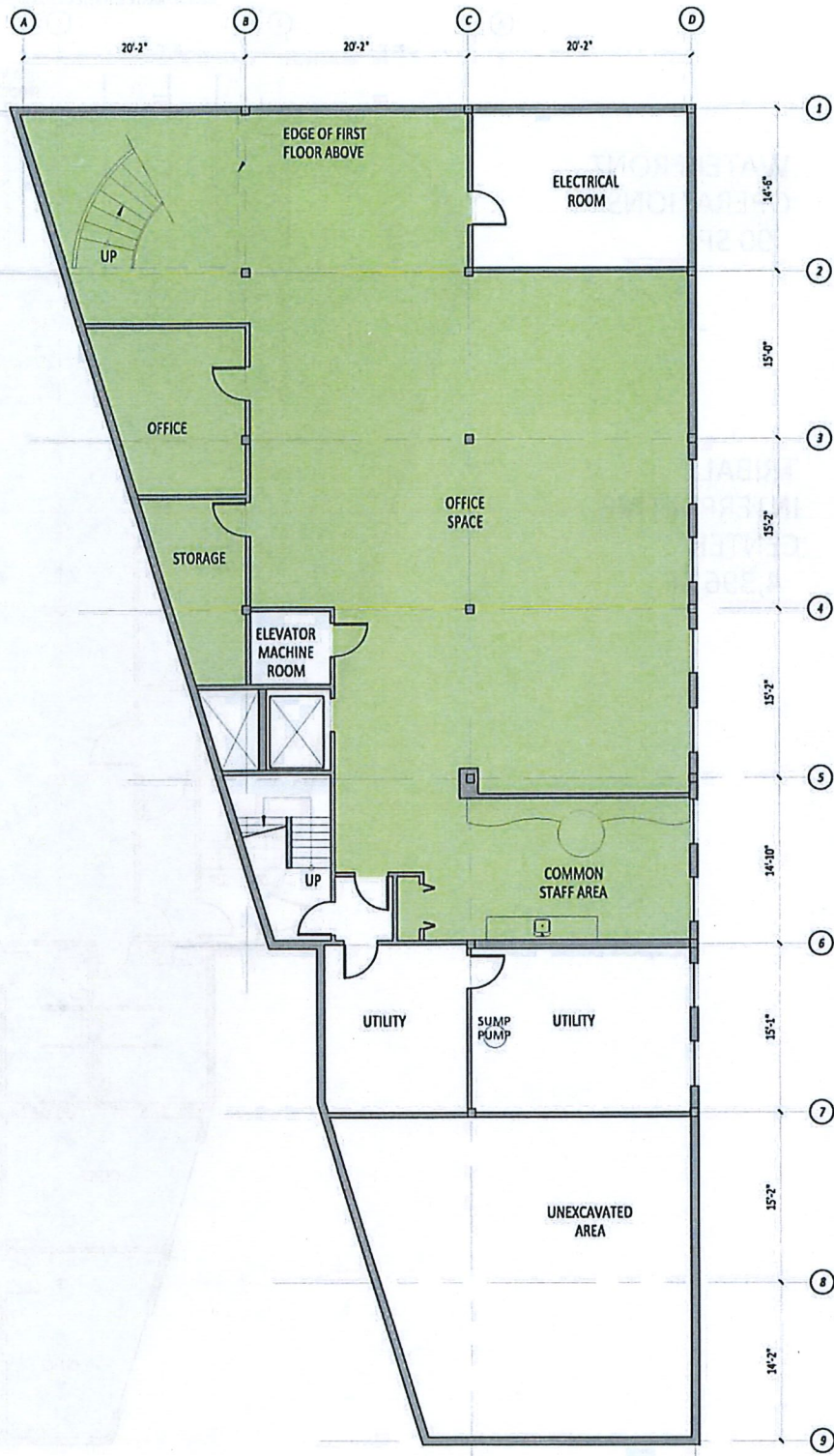
By:  _____ Date: 11-29-22 _____

Title: DONNY STEVENSON - VICE CHAIR _____
Jaison Elkins, Chairman
Muckleshoot Indian Tribe

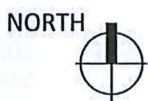
Exhibit A – Building Plan

DRAFT

WATERFRONT OPERATIONS
3,055 SF



BAKUN BUILDING
BASEMENT



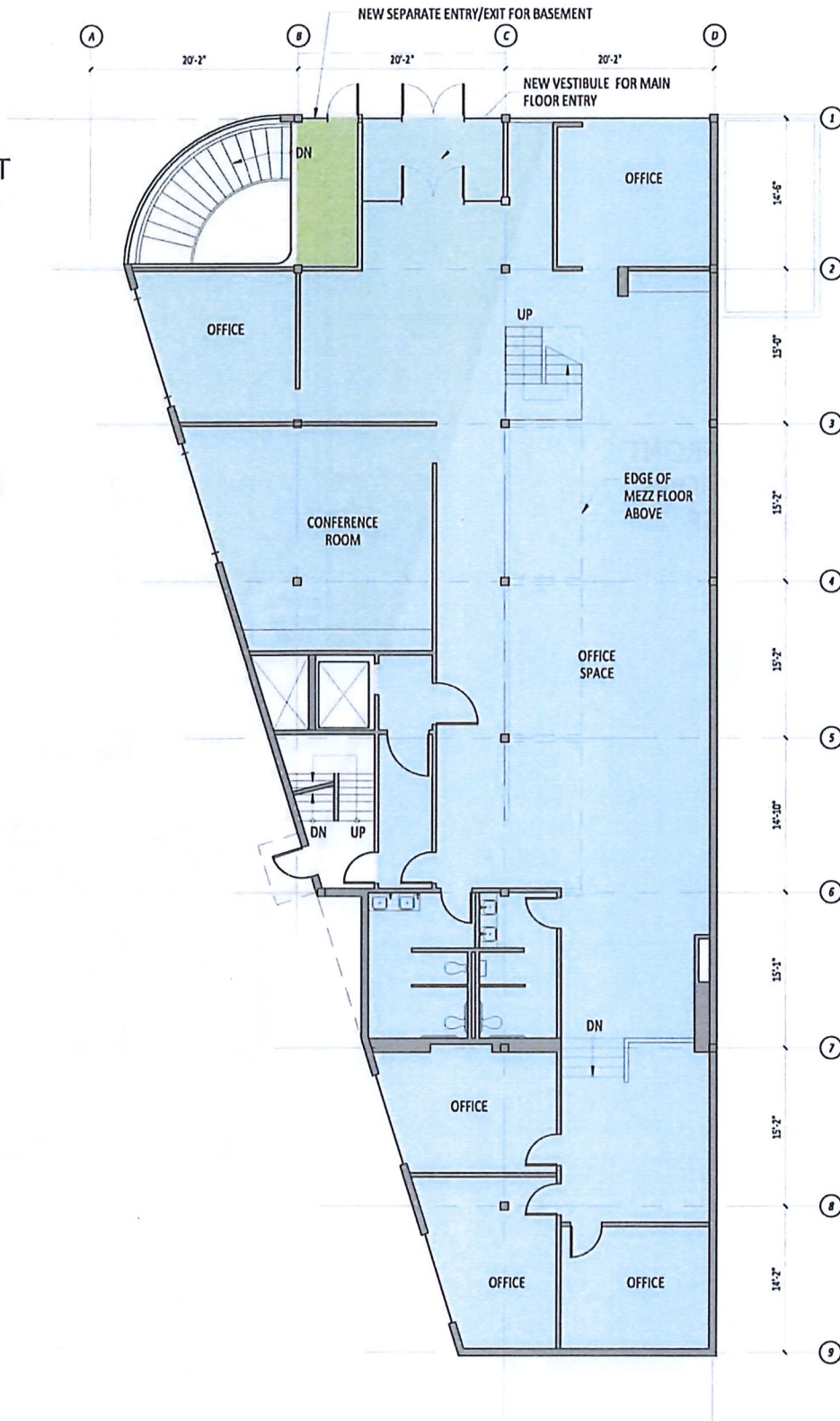
October 27, 2022

1/16" = 1'-0"

RON WRIGHT & ASSOCIATES/ARCHITECTS, P.S.
2003 WESTERN AVENUE, SUITE 610
SEATTLE, WA 98121
(206) 782-4248

WATERFRONT OPERATIONS
90 SF

TRIBAL INTERPRETIVE CENTER
4,396 SF



BAKUN BUILDING
FIRST FLOOR

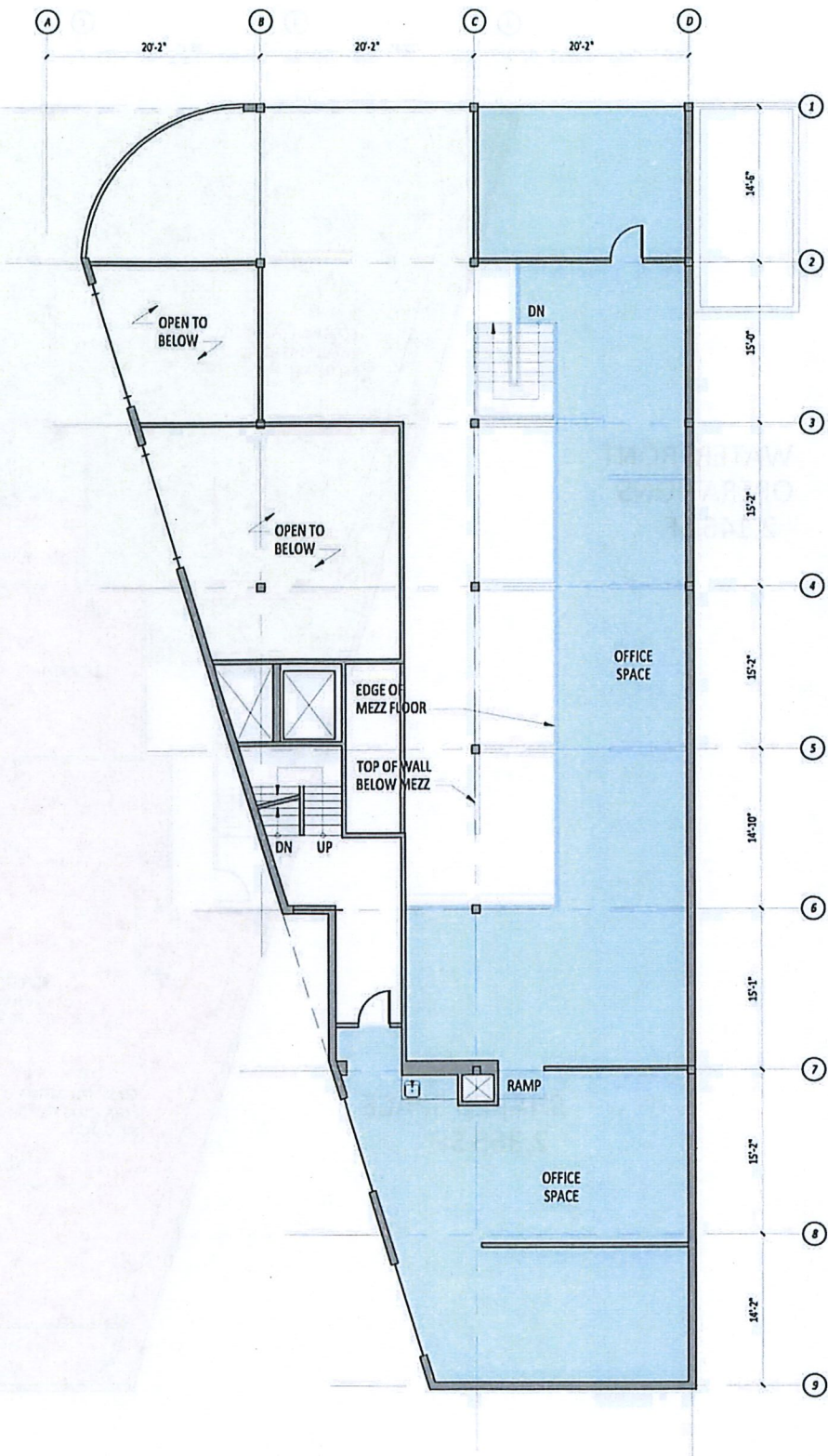


RON WRIGHT & ASSOCIATES/ARCHITECTS, P.S.
2003 WESTERN AVENUE, SUITE 610
SEATTLE, WA 98121
(206) 782-4248

October 27, 2022

1/16" = 1'-0"

TRIBAL
INTERPRETIVE
CENTER
2,256 SF



BAKUN BUILDING
MEZZANINE



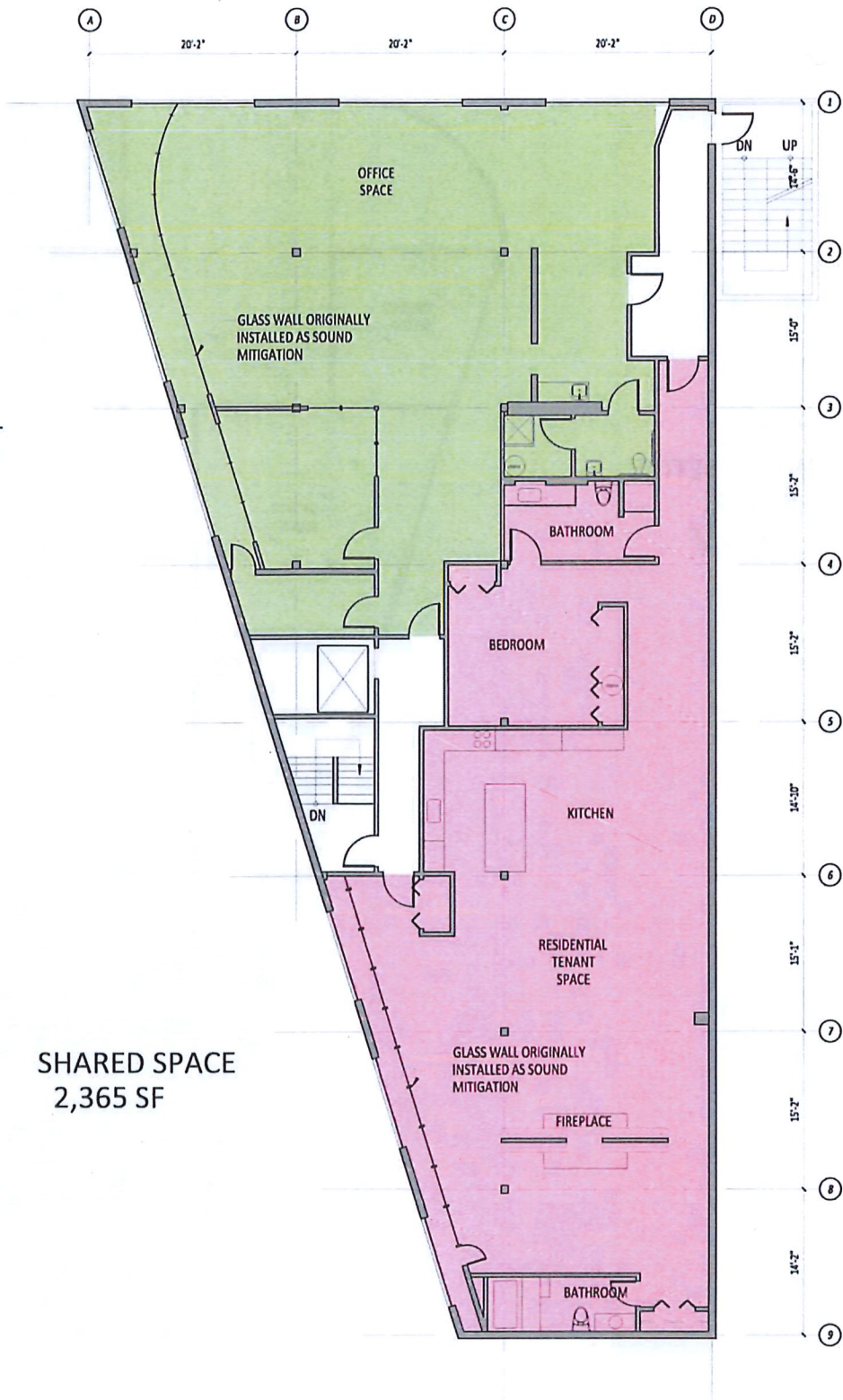
October 27, 2022

1/16" = 1'-0"

RON WRIGHT & ASSOCIATES/ARCHITECTS, P.S.
2003 WESTERN AVENUE, SUITE 610
SEATTLE, WA 98121
(206) 782-4248

WATERFRONT OPERATIONS
2,146 SF

SHARED SPACE
2,365 SF



BAKUN BUILDING
SECOND FLOOR



RON WRIGHT & ASSOCIATES/ARCHITECTS, P.S.
2003 WESTERN AVENUE, SUITE 610
SEATTLE, WA 98121
(206) 782-4248

October 27, 2022

1/16" = 1'-0"



Bakun Building Acquisition

Marshall Foster, Seattle Center Interim Director

Angela Brady, Office of the Waterfront and Civic Projects Acting Director

Karen Gruen, FAS Real Estate Services Division Director/Deputy Operating Officer

BAKUN BUILDING INFORMATION

- Currently owned by the Washington State Department of Transportation (WSDOT)
- Built in 1925
- Building is 16,129 SF, on a 4,372 SF Lot
- Zoned for Pike Market Mixed 85 – but limited height due to easement
- 4 levels (basement, first floor, mezzanine, top floor with apartment)



SDOT TRIBAL COMMITMENT

- The Seattle Department of Transportation (SDOT) has an outstanding commitment to the Muckleshoot Tribe to provide space for a Tribal Interpretive Center on the waterfront, a requirement of the Elliott Bay Seawall Project (EBSP) permit in a Memorandum of Agreement (MOA).
- The Muckleshoot Tribe has confirmed that the Bakun Building meets the City's commitment and has formalized their acceptance in an amendment to the original MOA.
- After the City acquires the Bakun facility, the Seattle Center will work with The Muckleshoot Tribe on space planning. Under the agreement, the Tribe is responsible for space improvements.



WATERFRONT PARK OPERATIONS

- Operations and Management of an ongoing highly programmed/active urban public space
- Full time dedicated staff team that can deliver a high quality and inclusive park experience

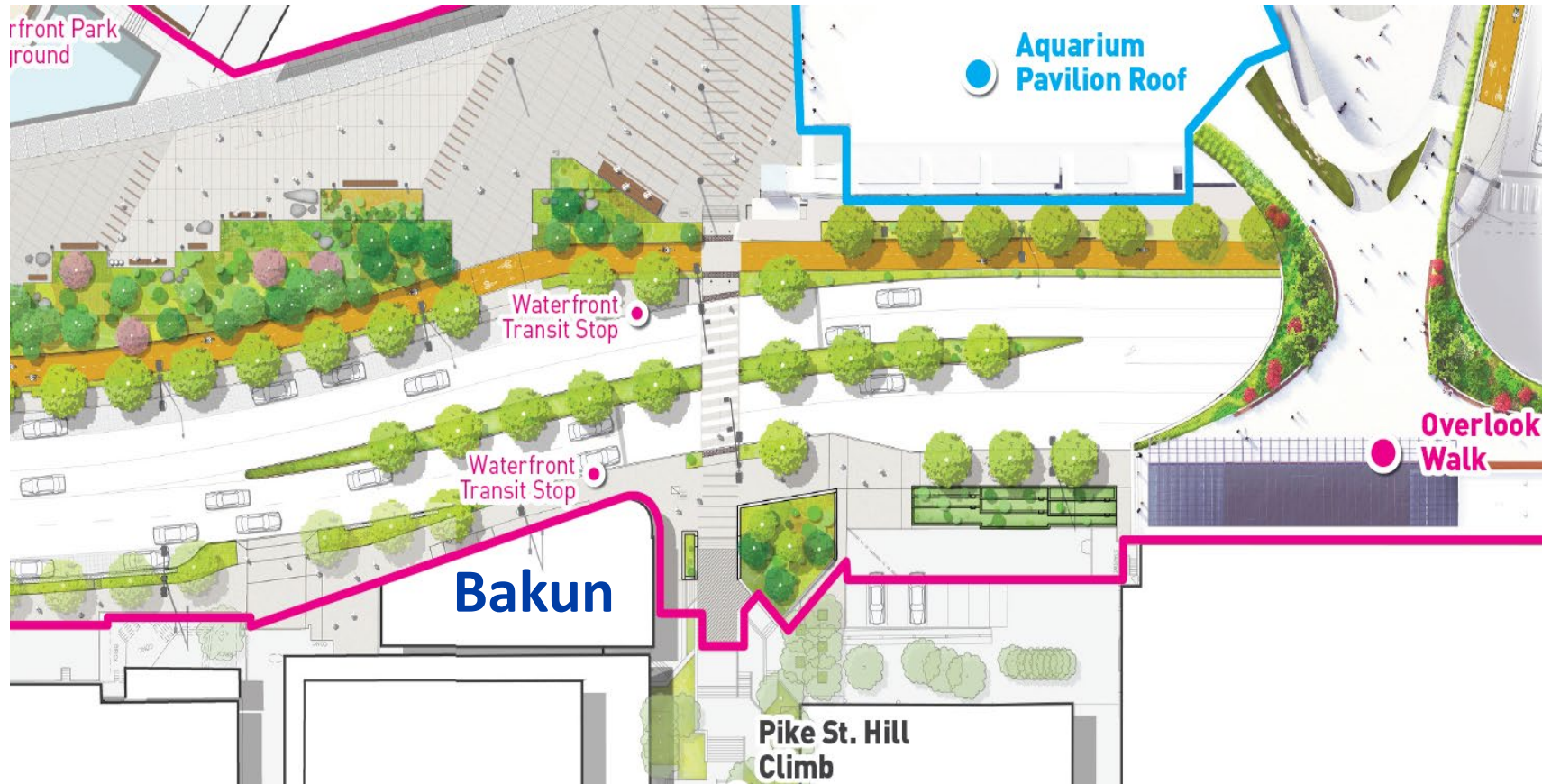


WATERFRONT OPERATIONS CENTER

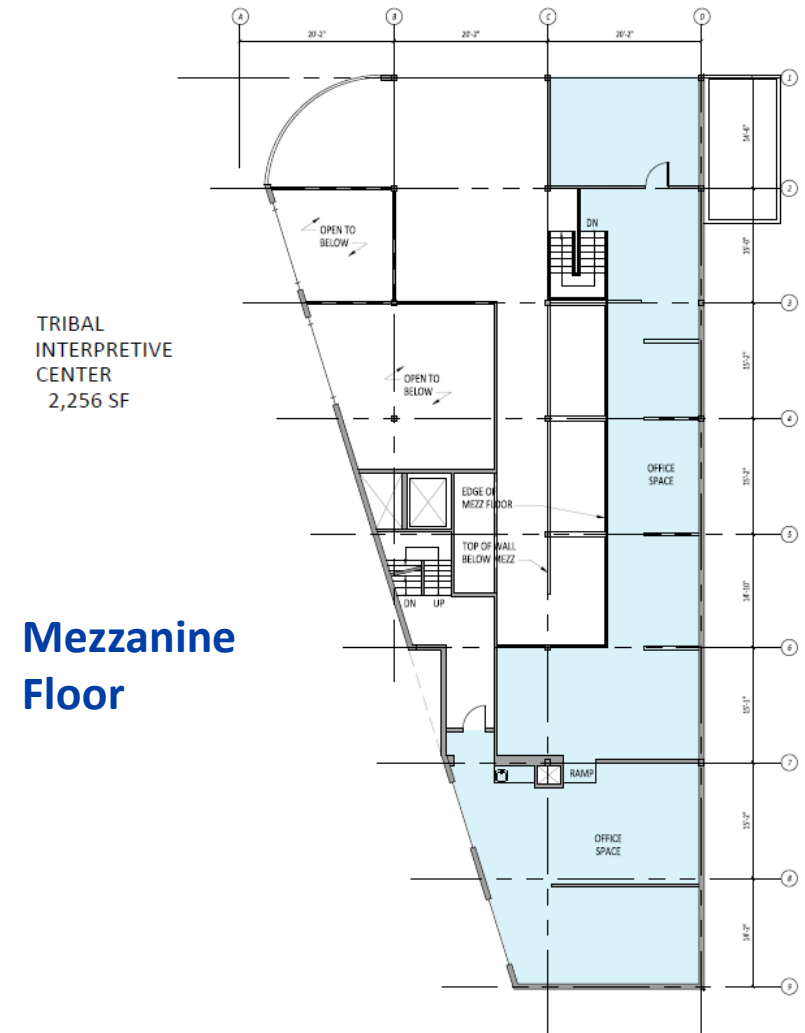
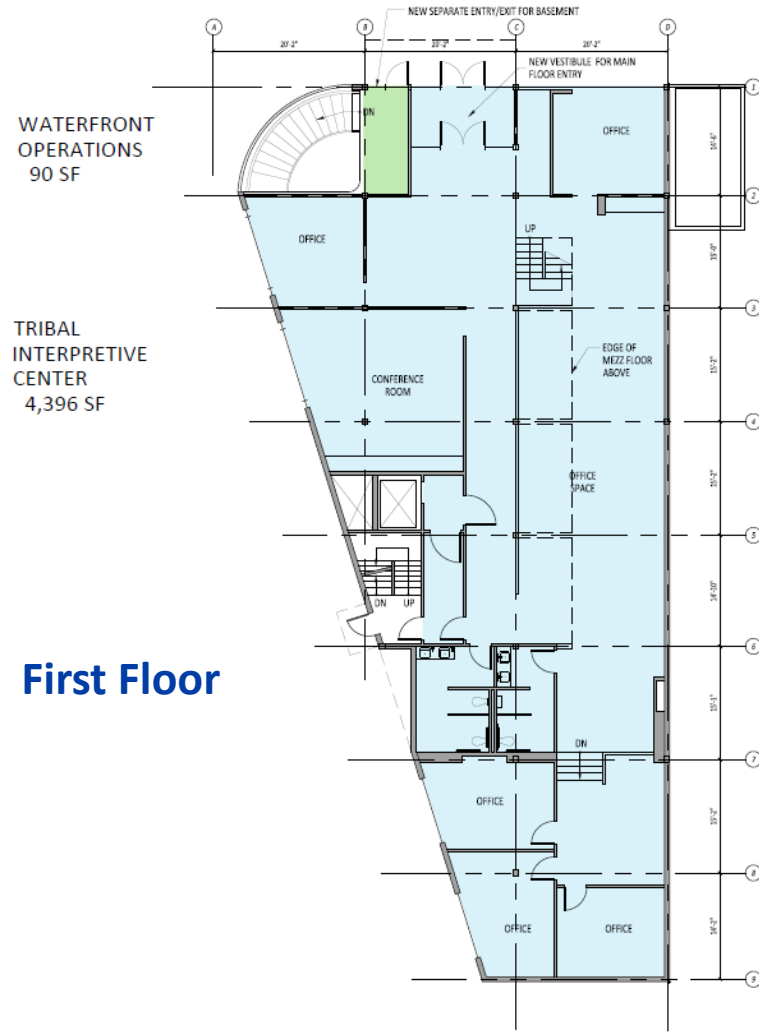
- Seattle Center will manage Waterfront Park Operations starting July 1, 2023
- Waterfront city staff hired in phases 2023-2025: 43 FTE
 - Waterfront Administrative Team (4 FTE)
 - Emergency Services Unit (20 FTE)
 - Waterfront Operations Team (19 FTE)



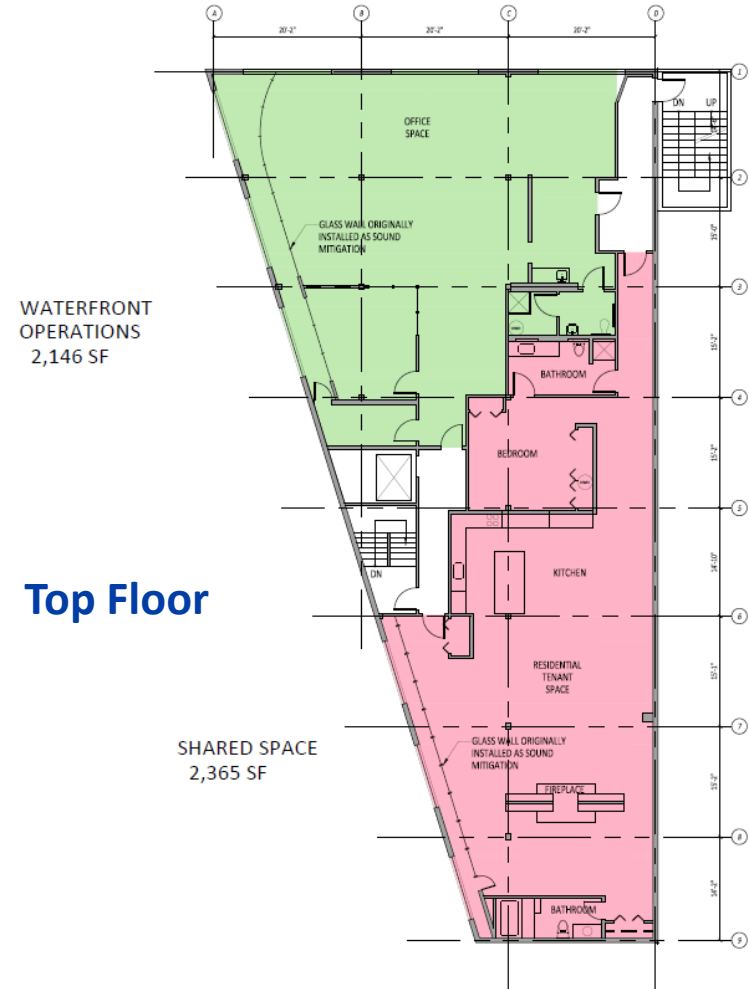
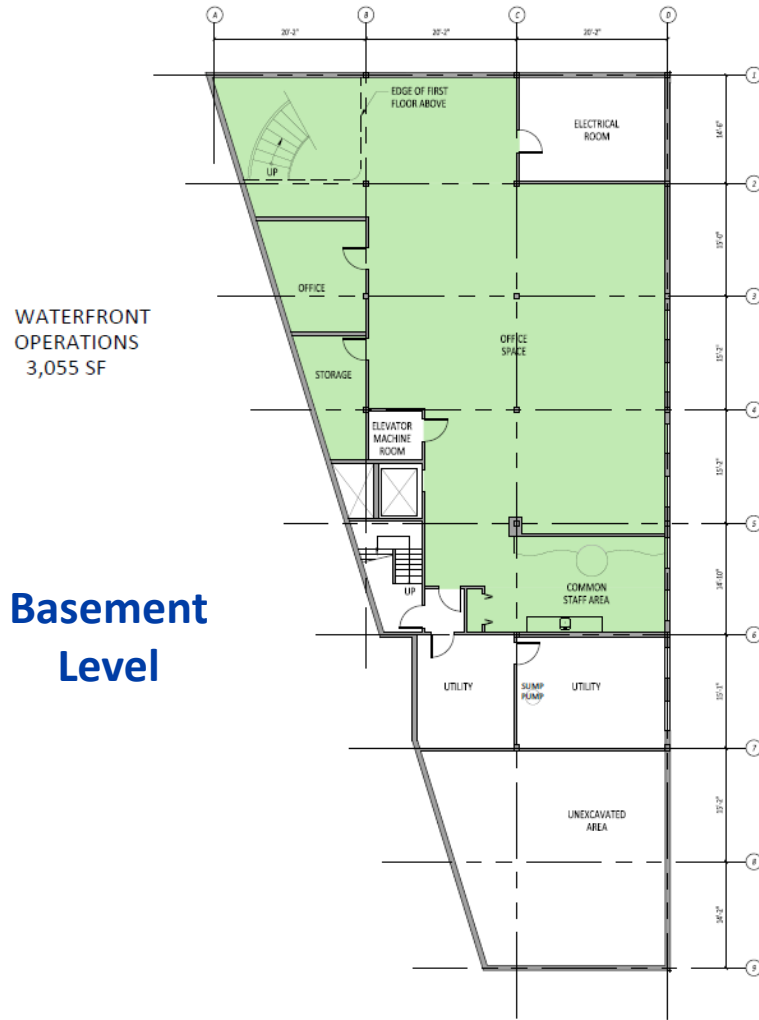
BAKUN LOCATION



BAKUN- TRIBAL INTERPRETIVE CENTER



BAKUN - WATERFRONT OPERATIONS



DEPARTMENT ROLES

Department	Division	Role
FAS	Real Estate	Due diligence for transaction
	Facility Ops	Property Management services
	Capital Development	Building renovation and tenant improvements, manage the \$4.3M capital project
SDOT/Office of Waterfront (OWCP)		Tribal relationship. Signed MOA with Muckleshoot Tribe for the Elliott Bay Seawall Project
Seattle Center (CEN)		Pursuant to ORD 126755 , CEN staffs and manages the Waterfront Park
		Operations & Maintenance Crews for the Waterfront Park

BAKUN FUNDING ESTIMATES

Budget (\$ Millions)*	Item
\$8.7	Purchase Price
\$1.8	Occupancy repairs and communications systems building-wide, elevator, fire protection, HVAC, windows, IT connections, entry controls, restrooms, ADA improvements, system upgrades, roof repairs
\$1.0	Seismic upgrades
\$1.0	Waterfront Operations Hub Tenant Improvements for City-occupied space
\$0.5	Contingency and closing costs
\$13.0	Total Budget

NEXT STEPS

Council Consideration of Acquisition Legislation	Now
Purchase from WSDOT	No later than June 30, 2023
Capital Improvements: Design and Permitting	Now through Q4 2023
Capital Improvements: Construction	Q1-Q4 2024
Space Planning with Muckleshoot Tribe	Early 2024
Waterfront Operations Center Occupancy	Q1 2025



Seattle
Finance &
Administrative Services

QUESTIONS?





Legislation Text

File #: CB 120559, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to current use taxation; approving applications for current use taxation of properties located 4200 Baker Avenue NW and 2317 S Norman Street under the King County Public Benefit Rating System.

WHEREAS, the King County Department of Natural Resources and Parks has forwarded two applications to the City Council for classification under the King County Public Benefit Rating System (PBRs); and

WHEREAS, GROW, a non-profit corporation, has applied for PBRs rating for open space on property that they own located at 4200 Baker Avenue NW (E22CT021S) and 2317 S Norman Street (E22CT030S); and

WHEREAS, the PBRs is administered in accordance with RCW 84.34.037, chapter 458-30 WAC, and King County Code Chapter 20.36 providing for assessment practices to reflect current use of property, rather than “highest and best use,” as an incentive for property owners to maintain open space; and

WHEREAS, RCW 84.34.037(1) states that an application for PBRs shall be acted upon after public hearings and affirmative acts by the county and city legislative bodies affirming the entirety of an application without modification or both bodies affirm an application with identical modifications; and

WHEREAS, the Seattle City Council held a public hearing on the applications on May 3, 2023; and

WHEREAS, the Seattle City Council concurs with the recommendations of the King County Department of Natural Resources and Parks as contained in the reports of the applications attached to this ordinance;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council approves the following applications for the public benefit rating system

subject to the conditions enumerated in the attached reports:

A. E22CT021S: Application of GROW for property located at 4200 Baker Avenue NW, for open space purposes, 0.13 acres as described in Attachment 1 to this ordinance, the King County Department of Natural Resources and Parks (DNRP) report on application E22CT021S.

B. E22CT030S: Application of GROW for property located at 2317 S Norman Street, for open space purposes, 0.13 acres as described in Attachment 2 to this ordinance, the DNRP report on application E22CT030S.

Section 2. This ordinance approving applications for current use taxation pursuant to chapter 84.34 RCW, and not subject to mayoral approval or disapproval, shall take effect and be in force 30 days from and after its passage and approval by the City Council.

Passed by the City Council the _____ day of _____, 2023, and signed by me in open session in authentication of its passage this _____ day of _____, 2023.

President _____ of the City Council

Filed by me this _____ day of _____, 2023.

Elizabeth M. Adkisson, Interim City Clerk

(Seal)

Attachments:

Attachment 1 - King County Department of Natural Resources and Parks (DNRP) report on application E22CT021S

Attachment 2 - DNRP report on application E22CT030S

**KING COUNTY
DEPARTMENT OF NATURAL RESOURCES AND PARKS
WATER AND LAND RESOURCES DIVISION**

**Report to the City of Seattle for
Property Enrollment in the Public Benefit Rating System (PBRs)**

May 3, 2023

APPLICANT: GROW, Inc.

File No. E22CT021S

A. GENERAL INFORMATION:

1. Owner: GROW, Inc.
PO Box 19748
Seattle, WA 98109
2. Property location: 4200 Baker Avenue NW
Seattle, WA 98107
3. Zoning: NR3
4. STR: NE-13-25-03
5. PBRs categories requested by applicant:

Open space resources

*Public recreation area

Bonus categories

*Unlimited public access

*Conservation easement or historic easement

*Easement and access

NOTE: *Staff recommends credit be awarded for these PBRs categories. Enrollment in PBRs for property within an incorporated area requires approval by impacted granting authorities following public hearing(s). For this application, the granting authorities are the King County Council and the City of Seattle. King County will hear this application on May 11, 2023.

6. Parcel: 661000-0465
Total acreage: 0.13
Requested PBRs: 0.13
Home site/excluded area: 0.00
Recommended PBRs: 0.13

NOTE: The portion recommended for enrollment in PBRS is the entire property. In the event the Assessor’s official parcel size is revised, PBRS acreage should be administratively adjusted to reflect that change.

B. FACTS:

1. Zoning in the vicinity: Properties in the vicinity are zoned NR3 and LR1.
2. Development of the subject property and resource characteristics of open space area: The property contains a community p-patch garden (known as Hazel Heights), with walking paths, a cistern and tool shed. The open space consists of the entire property.
3. Site use: The property is used as a community garden.
4. Access: The property is accessed from Baker Avenue.
5. Appraised value for 2022 (based on Assessor’s information dated 3/17/2023):

<u>Parcel #661000-0465</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$810,000	\$0	\$810,000
Tax applied	\$6,576	\$0	\$6,576

NOTE: Participation in PBRS reduces the **appraised land value** for the **portion** of the property enrolled resulting in a lower taxable value.

C. REQUIREMENTS SPECIFIED BY KING COUNTY CODE (KCC):

KCC 20.36.010 Purpose and intent.

It is in the best interest of the county to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the county and its citizens.

It is the intent of this chapter to implement RCW Chapter 84.34, as amended, by establishing procedures, rules and fees for the consideration of applications for public benefit rating system assessed valuation on "open space land" and for current use assessment on "farm and agricultural land" and "timber land" as those lands are defined in RCW 84.34.020. The provisions of RCW chapter 84.34, and the regulations adopted thereunder shall govern the matters not expressly covered in this chapter.

KCC 20.36.100 Public benefit rating system for open space land – definitions and eligibility.

- A. To be eligible for open space classification under the public benefit rating system, property must contain one or more qualifying open space resources and have at least five points as determined under this section. The department will review each application and recommend award of credit for current use of property that is the subject of the

application. In making such recommendation, the department will utilize the point system described in section B. and C. below.

- B. The following open space resources are each eligible for the points indicated:
1. Public recreation area – five points
 2. Aquifer protection area – five points
 3. Buffer to public or current use classified land – three points
 4. Equestrian-pedestrian-bicycle trail linkage – thirty-five points
 5. Active trail linkage – fifteen or twenty-five points
 6. Farm and agricultural conservation land – five points
 7. Forest stewardship land – five points
 8. Historic landmark or archaeological site: buffer to a designated site – three points
 9. Historic landmark or archaeological site: designated site – five points
 10. Historic landmark or archaeological site: eligible site – three points
 11. Rural open space – five points
 12. Rural stewardship land – five points
 13. Scenic resource, viewpoint, or view corridor – five points
 14. Significant plant or ecological site – five points
 15. Significant wildlife or salmonid habitat – five points
 16. Special animal site – three points
 17. Surface water quality buffer – five points
 18. Urban open space – five points
 19. Watershed protection area – five points
- C. Property qualifying for an open space category in subsection B. of this section may receive credit for additional points as follows:
1. Resource restoration - five points
 2. Additional surface water quality buffer - three or five points
 3. Contiguous parcels under separate ownership - two points
 4. Conservation easement of historic easement – fifteen points
 5. Public access - points dependent on level of access
 - a. Unlimited public access - five points
 - b. Limited public access - sensitive areas - five points
 - c. Environmental education access – three points
 - d. Seasonal limited public access - three points
 - e. None or members only – zero points
 6. Easement and access – thirty-five points

D. 2020 COMPREHENSIVE PLAN POLICIES AND TEXT:

E-101 In addition to its regulatory authority, King County should use incentives to protect and restore the natural environment whenever practicable. Incentives shall be monitored and periodically reviewed to determine their effectiveness in terms of protecting natural resources.

NOTE: Monitoring of participating lands is the responsibility of both department PBRS staff and the landowner. This issue is addressed in the Resource Information document (page 4) and detailed below in Recommendation #B11.

E-112a The protection of lands where development would pose hazards to health, property, important ecological functions or environmental quality shall be achieved through acquisition, enhancement, incentive programs and appropriate regulations. The following critical areas are particularly susceptible and shall be protected in King County:

- a. Floodways of 100-year floodplains;
- b. Slopes with a grade of 40% or more or landslide hazards that cannot be mitigated;
- c. Wetlands and their protective buffers;
- d. Aquatic areas, including streams, lakes, marine shorelines and their protective buffers;
- e. Channel migration hazard areas;
- f. Critical Aquifer Recharge Areas;
- g. Fish and Wildlife Habitat Conservation Areas; and
- h. Volcanic hazard areas.

E-421 Terrestrial and aquatic habitats should be conserved and enhanced to protect and improve conditions for fish and wildlife.

NOTE: PBRS is an incentive program provided to encourage voluntary protection of open space resources and maintain high quality resource lands.

E-429 King County should provide incentives for private landowners who are seeking to remove invasive plants and noxious weeds and replace them with native plants, such as providing technical assistance or access to appropriate native plants.

NOTE: Participation in PBRS requires landowners address invasive plant and noxious weed control and removal within enrolled portions of a property. Replacement with native vegetation is also encouraged via the implementation of approved forest stewardship, rural stewardship or resource restoration plans.

E-443 King County should promote voluntary wildlife habitat enhancement projects by private individuals and businesses through educational, active stewardship, and incentive programs.

E-476 King County should identify upland areas of native vegetation that connect wetlands to upland habitats and that connect upland habitats to each other. The county should seek protection of these areas through acquisition, stewardship plans, and incentive programs such as the Public Benefit Rating System and the Transfer of Development Rights Program.

E-504 King County should protect native plant communities by encouraging management and control of nonnative invasive plants, including aquatic plants. Environmentally sound methods of vegetation control should be used to control noxious weeds.

NOTE: Lands participating in PBRS provide valuable resource protection and promote the preservation or enhancement of native vegetation. Addressing nonnative vegetation (invasive plant species), through control and eradication is a PBRS requirement.

E-449 King County shall promote retention of forest cover and significant trees using a mix of regulations, incentives, and technical assistance.

R-605 Forestry and agriculture best management practices are encouraged because of their multiple benefits, including natural resource preservation and protection.

NOTE: The implementation of an approved forest stewardship, farm management or rural stewardship plan benefits natural resources, such as wildlife habitat, stream buffers and groundwater protection, as well as fosters the preservation of sustainable resources.

E. PBRS CATEGORIES REQUESTED and DEPARTMENT RECOMMENDATIONS:

Open space resource

- Public recreation area

The property is used as a community p-patch. Gardeners actively use the p-patch and the general public may view and enjoy the garden from the street or by walking through. Credit for this category is recommended.

Bonus categories

- Unlimited public access

The property is used as a community p-patch and the owner provides year-round and unlimited public access. Gardeners actively use the p-patch and the general public may view and enjoy the garden from the street or by walking through. Credit for this category is recommended.

- Conservation easement or historic easement

The landowner worked with the City of Seattle in 2004 to establish a conservation easement (recording #20040816002896) for the property, which protects valuable recreational resources in perpetuity. Credit for this category is recommended.

- Easement and access

The property qualifies for an open space resource category (public recreation area), provides unlimited public access and has a conservation easement (recording #20040816002896) in place in perpetuity. Credit for this category is recommended.

NOTE: It is important to note that enrollment in the PBRS program requires the control and removal of invasive plant species. This issue is addressed in the Resource Information document (page 3) and below in Recommendation #B7.

CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS:

1. Approval of the subject request would be consistent with the specific purpose and intent of KCC 20.36.010.
2. Approval of the subject request would be consistent with policy E-101 of the King County Comprehensive Plan.
3. Of the points recommended, the subject request meets the mandatory criteria of KCC 20.36.100 as indicated:

Open space resource

Public recreation area	5
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Bonus categories

Unlimited public access	5
Conservation easement or historic easement	18
Easement and access	35

TOTAL 63 points

PUBLIC BENEFIT RATING

For the purpose of taxation, 63 points result in 10% of market value and a 90% reduction in taxable value for the portion of land enrolled.

B. RECOMMENDATION:

APPROVE the request for current use taxation "Open space" classification with a Public Benefit Rating of 63 points, subject to the following requirements:

**Requirements for Property Enrolled in the
Public Benefit Rating System Current Use Taxation Program**

1. Compliance with these requirements is necessary to continue to receive the tax benefits from the King County Public Benefit Rating System (PBRs) current use taxation program for the property enrolled in the program (Property). Failure to abide by these requirements can result in removal of current use designation and subject the property owner (Owner) to the penalty, tax, and interest provisions of RCW 84.34 and assessment at true and fair value. The King County Department of Assessments (DoA) and the Water and Land Resources Division, Director's Office, Agriculture, Forestry and Incentives Unit (AFI) or its successor may re-evaluate the Property to determine whether removal of the open space designation is appropriate. Removal shall follow the process in RCW 84.34.108.

2. Revisions to these requirements may only occur upon mutual written approval of the Owner and granting authority. These conditions shall apply so long as the Property retains its open space designation. If a conservation easement acceptable to and approved by King County is granted by the Owner or the Owner's successors in interest to the Department of Natural Resources and Parks, King County or a grantee approved by King County, these requirements may be superseded by the terms of such easement, upon written approval by King County.
3. The open space classification for this Property will continue so long as it meets the open space purposes for which it was initially approved. Classification as open space will be removed upon a determination by King County that the Property no longer meets the open space purposes for which it was initially approved. A change in circumstances which diminishes the extent of public benefit from that approved by the King County Council in the open space taxation agreement will be cause for removal of the current use assessment classification. It is the Owner's responsibility to notify the DoA and the AFI Unit or its successor of a change in circumstance with regard to the Property.
4. When a portion of the open space Property is withdrawn or removed from the program, the AFI Unit or its successor and the DoA shall re-evaluate the remaining Property to determine whether it may continue to qualify under the program. If the remaining portion meets the criteria for priority resources, it may continue under current use taxation.
5. Except as provided for in sections 6 and 7 below, no alteration of the open space land or resources shall occur without prior approval by the AFI Unit or its successor. **Any unapproved alteration may constitute a departure from an approved open space use and be deemed a change of use, and subject the Property to the additional tax, interest, and penalty provisions of RCW 84.34.080.** "Alteration" means any human-induced action that adversely impacts the existing condition of the open space Property or resources including but not limited to the following: *(Walking, horseback riding, passive recreation or actions taken in conjunction with a resource restoration plan, or other similar approved activities are permitted.)*
 - a. erecting structures;
 - b. grading;
 - c. filling;
 - d. dredging;
 - e. channelizing;
 - f. modifying land or hydrology for surface water management purposes;
 - g. cutting, pruning, limbing or topping, clearing, planting, introducing, relocating or removing vegetation, however, selective cutting may be permitted for firewood;
 - h. applying herbicides or pesticides or any hazardous or toxic substance;
 - i. discharging pollutants excepting stormwater;
 - j. paving, construction, application of gravel;
 - k. storing of equipment, household supplies, play equipment, or compost;
 - l. engaging in any other activity that adversely impacts the existing vegetation, hydrology, wildlife, wildlife habitat, or other open space resources.

6. Notwithstanding the provisions of Section 5 trees posing a hazard to structures or major roads may be removed. Any trees removed must be replaced.
7. If an area of the Property becomes or has become infested with noxious weeds, the Owner may be required to submit a control and enhancement plan to the AFI Unit or its successor in order to remove such weeds. If an area of the Property becomes or has become invaded by non-native species, the Owner may be required to submit, or may voluntarily submit, an enhancement plan to the AFI Unit or its successor, in order to replace such species with native species or other appropriate vegetation.
8. There shall be no motorized vehicle driving or parking allowed on the open space Property, except for medical, public safety or police emergencies.
9. Grazing of livestock is prohibited on the open space Property.
10. Public access shall be permitted upon any area of the open space Property that is designated for public access.
11. An owner of property enrolled in the program may be required to submit a monitoring report on an annual or less frequent basis as requested by program staff. This report must include a brief description of how the property still qualifies for each awarded resource category. It must also include photographs from established points on the property and any observations by the owner. The owner must submit this report to the department by email or by other mutually agreed upon method. An environmental consultant need not prepare this report.
12. Enrollment in PBRs does not exempt the Owner from obtaining any required permit or approval for activity or use on the Property.

TRANSMITTED to the parties listed hereafter:

Eric Todderud, applicant representative
Lish Whitson, Legislative Analyst, Seattle City Council, Central Staff
Elenore Bonyeau, King County Department of Assessments



BAKER AVE NW

6610000465

NW 42ND ST

2021 Aerial Photo

120

**KING COUNTY
DEPARTMENT OF NATURAL RESOURCES AND PARKS
WATER AND LAND RESOURCES DIVISION**

**Report to the City of Seattle for
Property Enrollment in the Public Benefit Rating System (PBRs)**

May 3, 2023

APPLICANT: GROW, Inc.

File No. E22CT030S

A. GENERAL INFORMATION:

1. Owner: GROW, Inc.
PO Box 19748
Seattle, WA 98109
2. Property location: 2317 S Norman Street
Seattle, WA 98144
3. Zoning: LR1
4. STR: SW-04-24-03
5. PBRs categories requested by applicant:

Open space resources

- *Public recreation area
- Equestrian-pedestrian-bicycle trail linkage
- Significant plant or ecological site
- Urban open space

Bonus categories

- *Unlimited public access
- *Conservation easement or historic easement
- *Easement and access

NOTE: *Staff recommends credit be awarded for these PBRs categories. Enrollment in PBRs for property within an incorporated area requires approval by impacted granting authorities following public hearing(s). For this application, the granting authorities are the King County Council and the City of Seattle. King County will hear this application on May 11, 2023.

6. Parcel:	765860-0065
Total acreage:	0.07
Requested PBRS:	0.07
Home site/excluded area:	0.00
Recommended PBRS:	0.07

NOTE: The portion recommended for enrollment in PBRS is the entire property. In the event the Assessor’s official parcel size is revised, PBRS acreage should be administratively adjusted to reflect that change.

B. FACTS:

1. Zoning in the vicinity: Properties in the vicinity are zoned LR1.
2. Development of the subject property and resource characteristics of open space area: The property contains a community p-patch garden (known as Judkins Park), with walking paths and tool shed. The open space consists of the entire property.
3. Site use: The property is used as a community garden.
4. Access: The property is accessed from S Norman Street.
5. Appraised value for 2022 (based on Assessor’s information dated 3/17/2023):

<u>Parcel #765860-0065</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
Assessed value	\$471,000	\$0	\$471,000
Tax applied	\$3,824	\$0	\$3,824

NOTE: Participation in PBRS reduces the **appraised land value** for the **portion** of the property enrolled resulting in a lower taxable value.

C. REQUIREMENTS SPECIFIED BY KING COUNTY CODE (KCC):

KCC 20.36.010 Purpose and intent.

It is in the best interest of the county to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the county and its citizens.

It is the intent of this chapter to implement RCW Chapter 84.34, as amended, by establishing procedures, rules and fees for the consideration of applications for public benefit rating system assessed valuation on "open space land" and for current use assessment on "farm and agricultural land" and "timber land" as those lands are defined in RCW 84.34.020. The provisions of RCW chapter 84.34, and the regulations adopted thereunder shall govern the matters not expressly covered in this chapter.

KCC 20.36.100 Public benefit rating system for open space land – definitions and eligibility.

- A. To be eligible for open space classification under the public benefit rating system, property must contain one or more qualifying open space resources and have at least five points as determined under this section. The department will review each application and recommend award of credit for current use of property that is the subject of the application. In making such recommendation, the department will utilize the point system described in section B. and C. below.
- B. The following open space resources are each eligible for the points indicated:
1. Public recreation area – five points
 2. Aquifer protection area – five points
 3. Buffer to public or current use classified land – three points
 4. Equestrian-pedestrian-bicycle trail linkage – thirty-five points
 5. Active trail linkage – fifteen or twenty-five points
 6. Farm and agricultural conservation land – five points
 7. Forest stewardship land – five points
 8. Historic landmark or archaeological site: buffer to a designated site – three points
 9. Historic landmark or archaeological site: designated site – five points
 10. Historic landmark or archaeological site: eligible site – three points
 11. Rural open space – five points
 12. Rural stewardship land – five points
 13. Scenic resource, viewpoint, or view corridor – five points
 14. Significant plant or ecological site – five points
 15. Significant wildlife or salmonid habitat – five points
 16. Special animal site – three points
 17. Surface water quality buffer – five points
 18. Urban open space – five points
 19. Watershed protection area – five points
- C. Property qualifying for an open space category in subsection B. of this section may receive credit for additional points as follows:
1. Resource restoration - five points
 2. Additional surface water quality buffer - three or five points
 3. Contiguous parcels under separate ownership - two points
 4. Conservation easement of historic easement – fifteen points
 5. Public access - points dependent on level of access
 - a. Unlimited public access - five points
 - b. Limited public access - sensitive areas - five points
 - c. Environmental education access – three points
 - d. Seasonal limited public access - three points
 - e. None or members only – zero points
 6. Easement and access – thirty-five points

D. 2020 COMPREHENSIVE PLAN POLICIES AND TEXT:

E-101 In addition to its regulatory authority, King County should use incentives to protect and restore the natural environment whenever practicable. Incentives shall be monitored and periodically reviewed to determine their effectiveness in terms of protecting natural resources.

NOTE: Monitoring of participating lands is the responsibility of both department PBRS staff and the landowner. This issue is addressed in the Resource Information document (page 4) and detailed below in Recommendation #B11.

E-112a The protection of lands where development would pose hazards to health, property, important ecological functions or environmental quality shall be achieved through acquisition, enhancement, incentive programs and appropriate regulations. The following critical areas are particularly susceptible and shall be protected in King County:

- a. Floodways of 100-year floodplains;
- b. Slopes with a grade of 40% or more or landslide hazards that cannot be mitigated;
- c. Wetlands and their protective buffers;
- d. Aquatic areas, including streams, lakes, marine shorelines and their protective buffers;
- e. Channel migration hazard areas;
- f. Critical Aquifer Recharge Areas;
- g. Fish and Wildlife Habitat Conservation Areas; and
- h. Volcanic hazard areas.

E-421 Terrestrial and aquatic habitats should be conserved and enhanced to protect and improve conditions for fish and wildlife.

NOTE: PBRS is an incentive program provided to encourage voluntary protection of open space resources and maintain high quality resource lands.

E-429 King County should provide incentives for private landowners who are seeking to remove invasive plants and noxious weeds and replace them with native plants, such as providing technical assistance or access to appropriate native plants.

NOTE: Participation in PBRS requires landowners address invasive plant and noxious weed control and removal within enrolled portions of a property. Replacement with native vegetation is also encouraged via the implementation of approved forest stewardship, rural stewardship or resource restoration plans.

E-443 King County should promote voluntary wildlife habitat enhancement projects by private individuals and businesses through educational, active stewardship, and incentive programs.

E-476 King County should identify upland areas of native vegetation that connect wetlands to upland habitats and that connect upland habitats to each other. The county should seek protection of these areas through acquisition, stewardship plans, and incentive programs such as the Public Benefit Rating System and the Transfer of Development Rights Program.

E-504 King County should protect native plant communities by encouraging management and control of nonnative invasive plants, including aquatic plants. Environmentally sound methods of vegetation control should be used to control noxious weeds.

NOTE: Lands participating in PBRS provide valuable resource protection and promote the preservation or enhancement of native vegetation. Addressing nonnative vegetation (invasive plant species), through control and eradication is a PBRS requirement.

E-449 King County shall promote retention of forest cover and significant trees using a mix of regulations, incentives, and technical assistance.

R-605 Forestry and agriculture best management practices are encouraged because of their multiple benefits, including natural resource preservation and protection.

NOTE: The implementation of an approved forest stewardship, farm management or rural stewardship plan benefits natural resources, such as wildlife habitat, stream buffers and groundwater protection, as well as fosters the preservation of sustainable resources.

E. PBRS CATEGORIES REQUESTED and DEPARTMENT RECOMMENDATIONS:

Open space resources

- Public recreation area
The property is used as a community p-patch. Gardeners actively use the p-patch and the general public may view and enjoy the garden from the street or by walking through. Credit for this category is recommended.
- Equestrian-pedestrian-bicycle trail linkage
In order to be eligible for this category, a recorded trail easement must be located on the property. In addition, the property owner must allow the public to use such a trail as an off-road trail linkage for equestrian, pedestrian or other nonmotorized uses or to provide a trail link from a public right of way to a recognized trail system. Credit for this category cannot be recommended.
- Significant plant or ecological site
Qualification for this category requires the existence of a rare plant species or ecosystem identified by the Washington Department of Natural Resources' Natural Heritage Program, existence of which must be confirmed by an expert. Although a community garden, such a species or ecosystem does not exist on the property. Credit for this category cannot be recommended.

- Urban open space
In order to be eligible for this category, a property must be located within the urban growth area and be enrolling 0.50 acres or more of natively vegetated open space. The property is located inside of the urban growth area but consists of a maintained p-patch garden. Credit for this category cannot be recommended.

Bonus categories

- Unlimited public access
The property is used as a community p-patch and the owner provides year-round and unlimited public access. Gardeners actively use the p-patch and the general public may view and enjoy the garden from the street or by walking through. Credit for this category is recommended.
- Conservation easement or historic easement
The landowner worked with the City of Seattle in 2002 to establish a conservation easement (recording #20020201002543) for the property, which protects valuable recreational resources in perpetuity. Credit for this category is recommended.
- Easement and access
The property qualifies for an open space resource category (public recreation area), provides unlimited public access and has a conservation easement (recording #20020201002543) in place in perpetuity. Credit for this category is recommended.

NOTE: It is important to note that enrollment in the PBRS program requires the control and removal of invasive plant species. This issue is addressed in the Resource Information document (page 3) and below in Recommendation #B7.

CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS:

1. Approval of the subject request would be consistent with the specific purpose and intent of KCC 20.36.010.
2. Approval of the subject request would be consistent with policy E-101 of the King County Comprehensive Plan.
3. Of the points recommended, the subject request meets the mandatory criteria of KCC 20.36.100 as indicated:

Open space resources

Public recreation area	5
Equestrian-pedestrian-bicycle trail linkage	0
Significant plant or ecological site	0
Urban open space	0

Bonus categories

Unlimited public access	5
Conservation easement or historic easement	18

TOTAL 63 points**PUBLIC BENEFIT RATING**

For the purpose of taxation, 63 points result in 10% of market value and a 90% reduction in taxable value for the portion of land enrolled.

B. RECOMMENDATION:

APPROVE the request for current use taxation "Open space" classification with a Public Benefit Rating of 63 points, subject to the following requirements:

**Requirements for Property Enrolled in the
Public Benefit Rating System Current Use Taxation Program**

1. Compliance with these requirements is necessary to continue to receive the tax benefits from the King County Public Benefit Rating System (PBRS) current use taxation program for the property enrolled in the program (Property). Failure to abide by these requirements can result in removal of current use designation and subject the property owner (Owner) to the penalty, tax, and interest provisions of RCW 84.34 and assessment at true and fair value. The King County Department of Assessments (DoA) and the Water and Land Resources Division, Director's Office, Agriculture, Forestry and Incentives Unit (AFI) or its successor may re-evaluate the Property to determine whether removal of the open space designation is appropriate. Removal shall follow the process in RCW 84.34.108.
2. Revisions to these requirements may only occur upon mutual written approval of the Owner and granting authority. These conditions shall apply so long as the Property retains its open space designation. If a conservation easement acceptable to and approved by King County is granted by the Owner or the Owner's successors in interest to the Department of Natural Resources and Parks, King County or a grantee approved by King County, these requirements may be superseded by the terms of such easement, upon written approval by King County.
3. The open space classification for this Property will continue so long as it meets the open space purposes for which it was initially approved. Classification as open space will be removed upon a determination by King County that the Property no longer meets the open space purposes for which it was initially approved. A change in circumstances which diminishes the extent of public benefit from that approved by the King County Council in the open space taxation agreement will be cause for removal of the current use assessment classification. It is the Owner's responsibility to notify the DoA and the AFI Unit or its successor of a change in circumstance with regard to the Property.

4. When a portion of the open space Property is withdrawn or removed from the program, the AFI Unit or its successor and the DoA shall re-evaluate the remaining Property to determine whether it may continue to qualify under the program. If the remaining portion meets the criteria for priority resources, it may continue under current use taxation.
5. Except as provided for in sections 6 and 7 below, no alteration of the open space land or resources shall occur without prior approval by the AFI Unit or its successor. **Any unapproved alteration may constitute a departure from an approved open space use and be deemed a change of use, and subject the Property to the additional tax, interest, and penalty provisions of RCW 84.34.080.** "Alteration" means any human-induced action that adversely impacts the existing condition of the open space Property or resources including but not limited to the following: (*Walking, horseback riding, passive recreation or actions taken in conjunction with a resource restoration plan, or other similar approved activities are permitted.*)
 - a. erecting structures;
 - b. grading;
 - c. filling;
 - d. dredging;
 - e. channelizing;
 - f. modifying land or hydrology for surface water management purposes;
 - g. cutting, pruning, limbing or topping, clearing, planting, introducing, relocating or removing vegetation, however, selective cutting may be permitted for firewood;
 - h. applying herbicides or pesticides or any hazardous or toxic substance;
 - i. discharging pollutants excepting stormwater;
 - j. paving, construction, application of gravel;
 - k. storing of equipment, household supplies, play equipment, or compost;
 - l. engaging in any other activity that adversely impacts the existing vegetation, hydrology, wildlife, wildlife habitat, or other open space resources.
6. Notwithstanding the provisions of Section 5 trees posing a hazard to structures or major roads may be removed. Any trees removed must be replaced.
7. If an area of the Property becomes or has become infested with noxious weeds, the Owner may be required to submit a control and enhancement plan to the AFI Unit or its successor in order to remove such weeds. If an area of the Property becomes or has become invaded by non-native species, the Owner may be required to submit, or may voluntarily submit, an enhancement plan to the AFI Unit or its successor, in order to replace such species with native species or other appropriate vegetation.
8. There shall be no motorized vehicle driving or parking allowed on the open space Property, except for medical, public safety or police emergencies.
9. Grazing of livestock is prohibited on the open space Property.

10. Public access shall be permitted upon any area of the open space Property that is designated for public access.
11. An owner of property enrolled in the program may be required to submit a monitoring report on an annual or less frequent basis as requested by program staff. This report must include a brief description of how the property still qualifies for each awarded resource category. It must also include photographs from established points on the property and any observations by the owner. The owner must submit this report to the department by email or by other mutually agreed upon method. An environmental consultant need not prepare this report.
12. Enrollment in PBRs does not exempt the Owner from obtaining any required permit or approval for activity or use on the Property.

TRANSMITTED to the parties listed hereafter:

Eric Todderud, applicant representative
Lish Whitson, Legislative Analyst, Seattle City Council, Central Staff
Elenore Bonyeau, King County Department of Assessments

S NORMAN ST

2021 Aerial Photo

7658600065

24TH AVES

130



SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Legislative	Lish Whitson/206-615-1674	N/A

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to current use taxation; approving applications for current use taxation of properties located 4200 Baker Avenue NW and 2317 S Norman Street under the King County Public Benefit Rating System.

Summary and Background of the Legislation: This bill approves two applications for current use taxation under the King County Public Benefit Rating System (PBRS) pursuant to RCW 84.34. Both applications are from the community gardening non-profit GROW, Inc., which owns these properties and dedicates them for use as P-Patches through the City’s P-Patch program. The applications are:

- A. E22CT021S: Application of GROW, Inc. for property located at 4200 Baker Avenue NW, for open space purposes, 0.13 acres.
- B. E22CT030S: Application of GROW, Inc. for property located at 2317 S Norman Street, for open space purposes, 0.13 acres.

2. CAPITAL IMPROVEMENT PROGRAM

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

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes X No

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?
The legislation would have the effect of shifting property taxes levied against these properties to all other properties in the City. There would be no impact to the City’s revenue.

Are there financial costs or other impacts of *not* implementing the legislation?
None

4. OTHER IMPLICATIONS

- a. **Does this legislation affect any departments besides the originating department?**
No

b. Is a public hearing required for this legislation?

Yes, a public hearing will be held.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

Notice of the public hearing in *The Daily Journal of Commerce* is required under State law.

d. Does this legislation affect a piece of property?

Maps of the property effected are included in Attachments 1 and 2 to the bill.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

The bill would slightly shift the tax burden from these properties to all other properties in the City. The effect on any particular property would be minimal, however this program is only available to properties that are large enough to contain public open space. Implementation of the PBRs is a King County function and any Language Access Plan would be undertaken by King County.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

No

2. 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.

These two properties are P-patches, which provide space for gardeners to grow food to support their households, allowing those households to be more resilient. The PBRs is a County-wide program implementing a State-wide program that helps to maintain open spaces in non-developed use, particularly in rural and forested areas, helping to increase the State's resiliency.

g. 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)?

Not applicable

Summary Attachments:

None

April 25, 2023

MEMORANDUM

To: Public Assets & Homelessness Committee
From: Lish Whitson, Analyst
Subject: CB 120559: Applications for Current Use Taxation for 2023

On May 3, the Public Assets & Homelessness Committee (Committee) will hold a public hearing and may vote on two applications for current use taxation for two P-Patch properties owned by GROW, a non-profit organization that supports organic gardening and P-Patches:

E22CT021S: Application of GROW for the Hazel Heights P-Patch located at 4200 Baker Avenue NW, for open space purposes, 0.13 acres.

E22CT030S: Application of GROW for a portion of the Judkins P-Patch located at 2317 S Norman Street, for open space purposes, 0.13 acres.

These applications and King County Department of Natural Resources and Parks (DNRP) reports on the applications are filed in [Clerk File 322586](#)¹. [Council Bill \(CB\) 120559](#) would approve both applications.

Because property taxes in Washington State are levied to raise a specified total amount of revenue in a given year, and that total amount is then divided by the appraised value of all properties in the City, reductions in the appraised value of these properties would not decrease the amount of revenue the City receives but would instead result in an adjustment to the tax due from all other properties in the City.

This memorandum explains the Washington State current use taxation program and King County's Public Benefit Rating System (PBRs), outlines the process and criteria for reviewing current use taxation applications, and describes the applications.

Current Use Taxation

The [Revised Code of Washington \(RCW\) Chapter 84.34](#) provides an incentive to maintain open space on private land as open space by taxing them based on their current use, rather than on the assessed value of the highest and best use for the property. Among the categories of property that can apply for current use taxation are designated landmark structures and property preserved as open space.

¹ This is a "non-referred Clerk File." Some people have had difficulty reaching these files through the City Clerk's web site. The link (<http://clerk.seattle.gov/search/clerk-files/322586>) should work in a private browser.

To receive current use taxation, a property within the City of Seattle is required to receive approval from the Metropolitan King County Council and the City Council. Consideration of an application for current use taxation is based on a “[public benefit rating system](#)” (PBRS) promulgated by King County pursuant to [RCW 84.34.035](#).

Applications for current use taxation are filed with King County’s Department of Natural Resources and Parks (DNRP) and reviewed by DNRP staff. DNRP assigns points to open spaces under the PBRS based on the type of open space in the application. Among the types of open spaces that could be found in Seattle are: public recreation areas; buffers to public lands; linkages to pedestrian or bicycle trails; designated historic landmark sites; view corridors; urban open spaces; or plant, wildlife, or salmonid habitats. Bonuses are provided for restoration of open space resources, conservation easements, and allowing public access to the open space.

An open space must receive at least five points under the PBRS to qualify for current use taxation. Open spaces with higher point totals under the PBRS receive larger discounts on property taxes. A property receiving five points will receive a 50 percent reduction on property taxes for that portion of the property that is set aside for open space. A property receiving between 35 and 52 points under the PBRS will receive a 90 percent property tax reduction.

Only portions of property set aside for open space are eligible for property tax reductions. Buildings and improvements, such as parking areas or driveways, are excluded from the calculation of the property tax reduction.

If a property is enrolled in the PBRS, the owners must maintain the open space in the same or better condition as it was when approved for enrollment. If the open space becomes degraded, the owner may be required to restore it. If an owner fails to maintain the open space use, and it would no longer qualify for a PBRS rating that it originally received, DNRP may remove the current use classification and levy deferred taxes, interest and penalties.

Properties stay in the program until (1) an owner withdraws the property from the program; (2) it is removed because it no longer meets the PBRS criteria; or (3) a change of use occurs that results in the property being disqualified. When a property is removed, the landowner is required to pay the difference between the amount of tax paid as open space and the amount that would have been paid for up to a maximum seven years, plus interest and a 20 percent penalty.

Council Action on Current Use Taxation applications

[RCW 84.34.037](#) provides requirements for Council consideration of a current use application:

1. The Council must hold a public hearing; and
2. Decisions to grant current use tax relief must be made either by (1) a “granting authority” composed of three members of the County’s legislative body and three members of the City’s legislative body; or (2) separate affirmative acts by both the County and City legislative bodies where both bodies take the same action regarding the application.

The granting authority may choose to approve the application in part or in whole. The granting or denial of a current use application is a legislative act and “is reviewable only for arbitrary and capricious decision-making.”

Under RCW 84.34.037, the granting authority should consider the following factors:

1. The resulting revenue loss or tax shift;
2. Whether granting the application will:
 - a. Conserve or enhance natural cultural, or scenic resources;
 - b. Protect, streams, stream corridors, wetlands, natural shorelines and aquifers;
 - c. Protect soil resources and unique or critical wildlife and native plant habitat;
 - d. Promote conservation principles by example or by offering educational opportunities;
 - e. Enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces;
 - f. Enhance recreation opportunities;
 - g. Preserve historic and archaeological sites;
 - h. Preserve visual quality along highway, road, and street corridors or scenic vistas; or
 - i. Affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the property.

King County’s PBRS has been developed to allow for a consistent rating of open spaces based on these factors.

Hazel Heights P-Patch

GROW has applied for current use taxation for the Hazel Heights P-Patch located on the northeast corner of 42nd Avenue NW and Baker Avenue NW in the Fremont neighborhood, Council District 6.

The applicants have dedicated the 5,500 square foot lot to P-Patch purposes, leaving the parcel as publicly accessible open space. The DNRP report on the application (Attachment 1 to CB 120483) describes the open space as follows:

Under the PBRs, as shown in Attachment 1 to the bill, the application was granted a total of 63 points by DNRP:

- 5 points would be granted for the property's use as a public recreation area.
- 5 points would be granted because GROW provides unlimited public access to the property.
- 18 points would be granted because there is a conservation easement placed on the property, requiring it to be used for community garden and open space purposes. The City of Seattle's P-Patch program is the beneficiary of the easement, which was granted to the City in 2004.
- 35 points are granted for the easement and access because the property provides both unlimited public access and that access is protected through an easement.

This would result in a current use value set at 10 percent of market value and a 90 percent reduction in taxable value for the portion of the land enrolled. In 2022, the appraised value of the land for this property was \$810,000. Approval of the application would reduce the appraised value of the portion of the land 90 percent. Using the 2022 appraised value, that would result in a reduction to approximately \$81,000 in taxable value.

Judkins P-Patch

GROW has also applied for current use taxation for a portion of the Judkins P-Patch Community Garden, located at 2317 S Norman Street, on S Norman Street between 23rd Avenue S and 24th Avenue S. The Judkins P-Patch is located one block east of Judkins Park and one block north of Thurgood Marshall Elementary School.

The P-Patch occupies property owned by GROW and the City of Seattle. The GROW-owned portion of the P-Patch fronts on S Norman Street and connects to a parcel fronting on 24th Avenue S which is owned by the City of Seattle

The Judkins P-Patch is a 24-plot community garden that opened in 1986. According to the King County Assessor, the parcel owned by GROW is 3,000 square feet and the City's property is 8,430 square feet.

Under the PBRs, as shown in Attachment 2 to the bill, the application was granted a total of 63 points by DNRP:

- 5 points would be granted for the property's use as a public recreation area.
- 5 points would be granted because GROW provides unlimited public access to the property.
- 18 points would be granted because there is a conservation easement placed on the property, requiring it to be used for community garden and open space purposes. The City of Seattle's P-Patch program is the beneficiary of the easement, which was granted to the City in 2002.
- 35 points are granted for the easement and access because the property provides both unlimited public access and that access is protected through an easement.

This would result in a current use value set at 10 percent of market value and a 90 percent reduction in taxable value for the portion of the land enrolled. In 2022, the appraised value of the land for this property was \$471,000. Approval of the application would reduce the appraised value of the portion of the land by 90 percent. Using the 2022 appraised value, that would result in a reduction to approximately \$424,000 in taxable value.

The Department of Neighborhoods has submitted a letter in support of GROW (see Exhibit 1.)

Next Steps

The Committee will hold a public hearing, discuss, and may vote on CB 120559 at its May 3 meeting. Note that a vote the same day as a public hearing requires that the Council rules be waived.

A vote in favor of the bill on May 3 would allow the City Council to vote on the bill at its May 9 meeting. If the Council passes the bill, and the King County Council concurs, King County will incorporate the lower taxable values in their 2024 tax rolls.

Exhibits

1. Letter from Seattle Department of Neighborhoods

cc: Esther Handy, Director
Aly Pennucci, Deputy Director
Yolanda Ho, Supervising Analyst



Seattle
Neighborhoods

December 1, 2021

To Whom It May Concern,

GROW is a registered 501 (C) (3) nonprofit organization formerly known as Friends of P-Patch, P-Patch Trust, and originally as P-Patch Advisory Council. GROW has actively supported the development of community gardens and worked in collaboration with the City of Seattle's P-Patch Program for almost 40 years. With support from GROW, the P-Patch Program has successfully increased the number of community gardens located across Seattle and annually provides need-based plot fee assistance to hundreds of low-income gardeners. The Seattle Department of Neighborhoods (DON) presently leases seven properties from GROW for use as P-Patch community gardens. DON and GROW also collaborate on events, communications, programming and planning efforts designed to increase public access and involvement with the P-Patch Program.

Hazel Heights P-Patch was established in 2010 and is located on the west side of the Fremont neighborhood, on a hillside overlooking the Ship Canal and Olympic Mountains. Features of the 2,000 square foot garden include 19 terraced planting beds for P-Patch Program participants, an 8,000-gallon rainwater cistern, a Giving Garden, a tool shed, a beehive, a native flora and fauna refuge, grapevines, herb beds, a berry patch, and fig and apple trees. Hazel Heights benefits from an active community of gardeners, volunteers, neighbors, and supporters. Ongoing projects include weekly Giving Garden harvests (monthly during winter), along with donations from individual gardening plots. In 2021, Hazel Heights gardeners donated more than 500 pounds of organic produce to local food banks.

The P-Patch Program values GROW's ongoing support of the thriving gardening community at Hazel Heights. For more information about the P-Patch Program and/or Hazel Heights, please visit our website at www.seattle.gov/neighborhoods/ppatch.

Sincerely,

Kenya Y. Freddie
Supervisor, P-Patch Community Gardening Program
Office: 206.733.9243 / Cell: 206.809.4421



SEATTLE CITY COUNCIL
CENTRAL STAFF

Current Use Taxation Applications

LISH WHITSON, LEGISLATIVE ANALYST

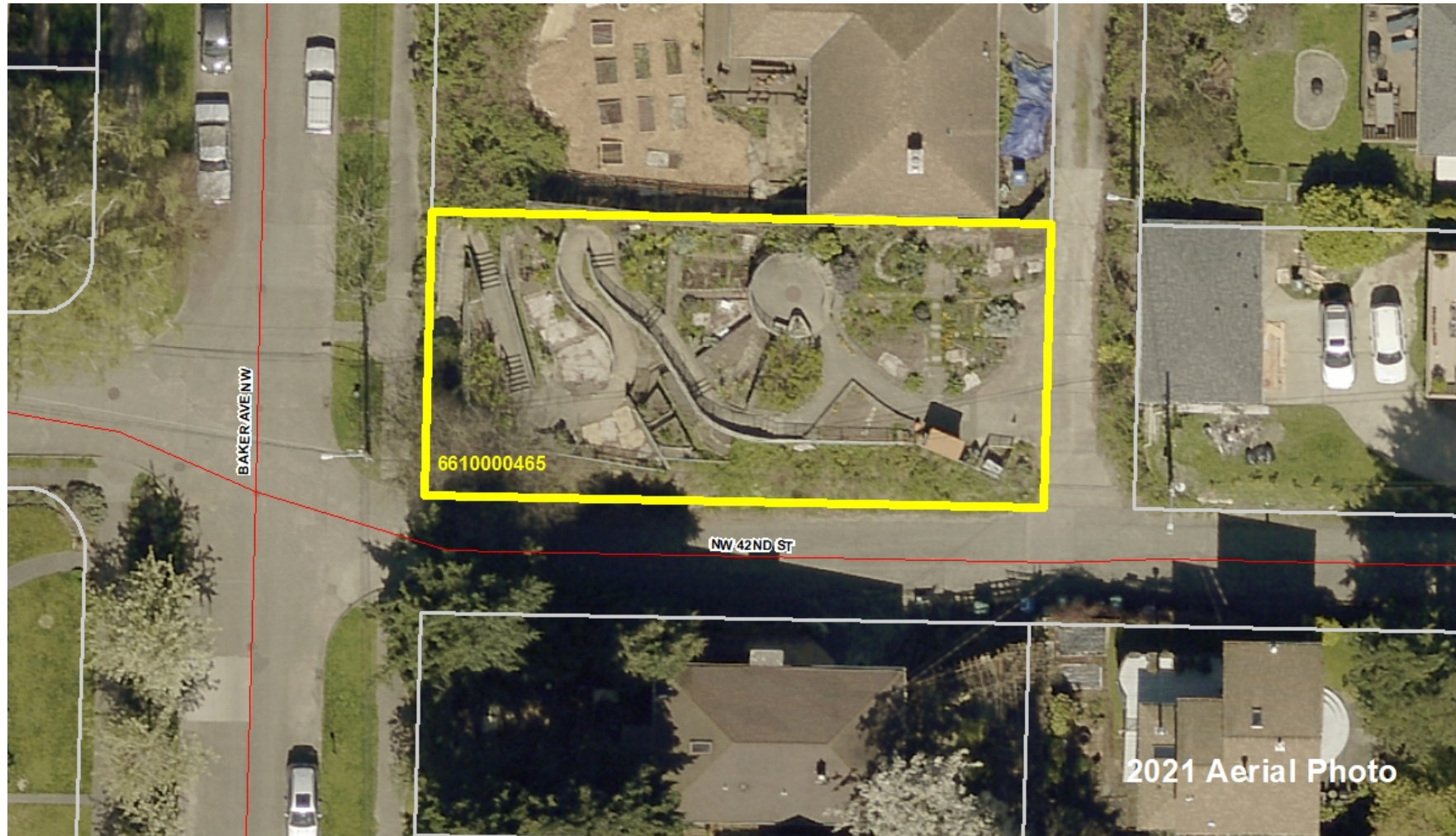
PUBLIC ASSETS AND HOMELESSNESS COMMITTEE

MAY 3, 2023

CB 120559

- Would approve applications from GROW for “current use” taxation for two P-Patches
 - Reduces property taxes in exchange for open space preservation
 - Authorized under Revised Code of Washington (RCW) 84.34
 - Open space, forest land, farmland, and landmarks are eligible
 - King County uses a “Public Benefit Rating System” (PBRs) to assess the relative benefits of applications
- Requires public hearings and approval from King County Council and Seattle City Council
- The King County Council’s Transportation, Economy and Environment Committee will consider both applications in May

Hazel Heights P-Patch - 4200 Baker Avenue NW



Hazel Heights P-Patch - 4200 Baker Avenue NW

- Application for maintaining P-Patch as open space
- Receives 63 points under the PBRS for:
 - Public Recreation Area 5 points
 - Unlimited public assess 5 points
 - Conservation easement or historic easement 18 points
 - Easement and access 35 points
- If approved, would result in 10% of market value and a 90% reduction in taxable value for the 0.13 acres of land enrolled

Judkins Park P-Patch – 2317 S Norman Street



Judkins Park P-Patch – 2317 S Norman Street

- Application for maintaining P-Patch as open space
- Receives 63 points under the PBRs for:
 - Public Recreation Area 5 points
 - Unlimited public access 5 points
 - Conservation easement or historic easement 18 points
 - Easement and access 35 points
- If approved, would result in 10% of market value and a 90% reduction in taxable value for the 0.07 acres of land enrolled

Questions?