

January 13, 2023

## MEMORANDUM

**To:** Public Assets and Homelessness Committee  
**From:** Lise Kaye, Analyst  
**Subject:** Council Bill 120484: Fifth Amendment to the Benaroya Hall Music Center Lease

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On January 18, the Public Assets and Homelessness Committee will consider (and possibly vote on) [Council Bill \(CB\) 120484](#), sponsored by Councilmember Lewis. CB 120484 would authorize the Director of the Department of Finance and Administrative Services (FAS), or the Director's designee, to execute a fifth amendment to the Lease and Concession Agreement ("the Lease") between the City of Seattle (the City), which owns Benaroya Hall, and the non-profit Benaroya Hall Music Center (BHMC). The amendment would restructure the Lease to 1) help mitigate the ongoing financial impacts to BHMC from the COVID-19 pandemic, 2) address BHMC's unfunded capital projects and 3) require BHMC to pay a minimum of \$1.2 million in "public benefit rent." Council cannot unilaterally revise the proposed fifth amendment to the lease, as any changes would require additional negotiation with BHMC.

This memorandum provides a brief background of the City's partnership with BHMC and describes the current cost sharing provisions, the City's response to BHMC's requests for financial aid during the COVID-19 pandemic, the proposed fifth amendment to the Lease, proposed technical amendments to the Lease, and potential policy considerations.

### Background

Opened in September 1998 on the block bordered by Second and Third Avenues and University and Union Streets, Benaroya Hall is the headquarters of the Seattle Symphony Orchestra and a venue for other performances. The total cost of the Hall was \$118.5 million, most of which was funded with donations. The City contributed about \$41 million, of which about \$25 million was in the form of debt financing. Per [Resolution 29438](#), the City owns the property and leases the building to BHMC, a non-profit corporation formed in 1995, of which the Seattle Symphony is its sole member. The City has one of three designated seats on the Benaroya Hall Board of Directors, which currently has 10 members .<sup>1</sup>

BHMC's initial 40-year Lease and Concession Agreement was effective on September 29, 1997, as authorized by Council passage of [Ordinance 118732](#). The Lease provides for two consecutive 15-year extensions and an option for BHMC to purchase the Hall as early as 2027. If the Lease is not renewed, the City would assume management of the facility, and any cost sharing arrangements would need to be negotiated with a new tenant or tenants. To date, the Council has approved four amendments to the Lease, as detailed in the legislative and financial history provided in Attachment A to this memo.

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<sup>1</sup> Interim Finance Director Jamie Carnell is the current City Representative on the Board.

The four previous amendments to the Lease primarily addressed cost sharing arrangements, including BHMC’s payment of debt service on City-issued bonds. The City first issued bonds for construction costs in 1996, refinanced them in 2004 and 2013, and paid them off in January 2020. BHMC has been paying the City for the debt service on the bonds according to a payment schedule agreed to by the City and BHMC through what the Fourth Amendment to the Lease refers to as “Base Concession Payments.” The City issued new bonds in 2014 to pay for \$1.1 million in capital improvements to Benaroya Hall (HVAC, sound and lighting equipment); the Fourth Amendment to the Lease refers to the portion of the Concession Payments used to repay these bonds as “2014 Alterations.” The 2014 Alterations Concession Payments continue through April 2024, and the Base Concession Payments continue through 2037, unless the Lease is amended.

City Aid to BHMC During the Pandemic

In 2020, the Executive responded as shown below to two requests from BHMC for financial support to help mitigate the financial impacts of the COVID-19 pandemic crisis on Benaroya Hall and the Seattle Symphony.

- June 8, 2020: One-time abatement of the \$107,650 2014 Alterations Concession Payment due in April 2020
- October 20, 2020: Deferral of Base Concession payments due in 2020 and 2021, totaling \$1,520,000; deferral of 2014 Alterations Concession Payments due in 2020, 2021 and 2022, totaling \$241,000; and option for BHMC to forego transfer of \$175,000 from operating funds to capital for 2020, 2021 and 2022<sup>2</sup>

Current Cost Sharing Between the City and BHMC

Table 1 shows BHMC’s and the City’s funding obligations in 2023 under the current lease.

*Table 1. 2023 Funding Requirements under the Current BHMC Lease*

	BHMC	City
Base Concession Payment <sup>3</sup>	\$760,000	
2014 Alterations Concession Payment <sup>4</sup>	\$117,500	
Capital Renewal Fund Contribution <sup>5</sup>	\$175,000	
Garden of Remembrance Capital Trust Fund and Concert Hall Payments <sup>6</sup>		\$687,196
<b>Total</b>	<b>\$1,055,500</b>	<b>\$687,196</b>

<sup>2</sup> BHMC did forgo the \$175,000 contribution in 2020 and 2021; as described later in this memo, the proposed Lease requires the 2022 Capital Renewal Fund contribution.

<sup>3</sup> Payable through 2037.

<sup>4</sup> Two payments totaling \$117,500 due in 2023 and one payment of \$122,400 due in 2024 for a total of three payments remaining.

<sup>5</sup> The \$175,000 contribution is required through 2037.

<sup>6</sup> The Lease requires the City to reimburse a “Base Amount” to BHMC for operations and maintenance of the Concert Hall and Garden of Remembrance, adjusted annually by the Consumer Price Index. The 2023 Adopted Budget for FAS includes \$655,362 for the Concert Hall payment and \$31,834 for the Garden of Remembrance.

## CB 120484 – Proposed Fifth Lease Amendment

On March 11, 2022, BHMC updated FAS on the fiscal impact of the COVID-19 pandemic on BHMC and the Seattle Symphony and identified an estimated \$3.4 million operational deficit from 2022 to 2027. At the same time, BHMC also identified \$9.5 million in critical capital infrastructure expenses over the next five years. FAS and BHMC subsequently negotiated the terms of a fifth amendment to the Lease, leading to the Executive’s transmittal of CB 120484, which would authorize the FAS Director or the Director’s designee to execute the amendment. Table 2 compares BHMC’s Lease & Concession Payments under the existing and proposed Lease terms.

Table 2. BHMC’s Lease & Concession Payments Under Existing and Proposed Lease Terms

	Current Lease 4 <sup>th</sup> Amendment (2022 payments)	Proposed Lease 5 <sup>th</sup> Amendment (2023 payments)
Base Concession Payments	\$760,000	-
2014 Alterations Payments	\$117,925	\$117,550
Capital Renewal Fund	\$175,000	\$935,000
<b>Subtotal</b>	\$1,052,925	\$1,052,550
Public Benefit Rent (in kind)	-	\$1,200,000
<b>TOTAL</b>	\$1,052,925	\$2,252,550

The proposed amendment is intended to A) provide financial relief to BHMC to compensate for pandemic-related revenue impacts, B) provide a long-term revenue stream for capital improvements to Benaroya Hall, including major maintenance investments, and C) require \$1.2 million in annual Public Benefit Rent, which may include discounted tickets and facility rental rates. The proposed fifth amendment to the Lease would also recognize BHMC’s repayment of \$241,100 in deferred 2014 Alterations Concession Payments.<sup>7</sup>

### A. Financial Relief

The fifth amendment to the Lease would provide the following financial relief to BHMC

- Formally acknowledge that, on June 8, 2022, the City abated (forgave) \$107,650 in 2014 Alterations Concession Payments due from BHMC to the City on April 15, 2020.
- Abate two deferred concession payments of \$760,000 due in 2020 and 2021.
- Allow BHMC to forego its annual deposit of \$175,000 in operating revenue to the Capital Renewal Fund for 2020, 2021.
- Starting in 2022, cancel BHMC’s Base Concession Payment to the City (currently \$760,000 annually)

### B. BHMC Contributions to the Capital Renewal Fund

According to FAS, the fifth amendment to the Lease would provide up to \$15 million in capital project support through 2037. Of this, \$12.2 million would be funded by redirecting

<sup>7</sup> Four payments previously deferred from October 2020 to April 2022 for debt service on 2014 bonds.

the \$760,000 annual Base Concession Payment previously paid by BHMC to the City for the debt service on City bonds retired in 2020, and \$2.8 million would be funded by BHMC's currently required annual \$175,000 annual contribution to the Capital Renewal Fund. In total, this would reduce BHMC's capital need through 2037 from approximately \$20.5 million to \$5.5 million."

C. Public Benefits

The fifth amendment to the Lease would establish a minimum "public benefit rent" of \$1.2 million per year, payable by BHMC in enhanced public benefits through distribution of discounted tickets and community-oriented services including educational activities and other programs as approved by the FAS Director. CB 120484 would require an annual report and establishes remedies should BHMC fail to provide the required public benefit rent.

**Technical Amendments**

Councilmember Lewis has sponsored four technical amendments to CB 120484, as follows:

- Amendment 1: Corrects internal reference to the proposed lease amendment.
- Amendment 2: Clarifies effective dates of the retroactive amendments.
- Amendment 3: Changes signature block dates in CB 120484 and Attachment A (the Lease amendment) from 2022 to 2023
- Amendment 4: Changes the due date by one month for deferred 2014 Alterations

**Policy Issues**

1. Abatement and Redirection of Concession Payments

CB 120484 would abate approximately \$2 million in BHMC concession payments and provide up to \$15 million for unfunded capital investments in lieu of continued Base Concession Payments. This action would partially offset BHMC's estimated \$3.4 million operational deficit from 2022 to 2027 and provide a significant source of revenue to address Benaroya Hall's long term capital needs, for which the City is responsible. Alternately, Council could request that the City reopen negotiations with BHMC to repurpose some or all of this revenue. In the event that Council does not approve the fifth amendment, the terms of the fourth amendment would remain in effect. In that scenario, none of the Concession Payments would be abated and capital improvements to Benaroya Hall would likely be deferred, which could increase the City's future financial costs.

Options:

- A. Approve CB 120484 as proposed, thereby abating BHMC's 2020 and 2021 concession payments and redirecting future payments to BHMC's Capital Renewal Fund.
- B. Do not approve CB 120484, and possibly request consideration of alternative Concession Payment terms.

2. Public Benefit Rent

CB 120484 would restructure BHMC’s rent obligations to require \$1.2 million in “minimum public rent,” intended to provide enhanced public benefits through community-oriented services and distribution of discounted tickets. The FAS Director would approve the public benefit rent programs and their valuation, and BHMC would provide an annual program report to the Director. FAS has not completed a Racial Equity Toolkit for this proposal, however according to the Executive, advancing Seattle's Race and Social Justice Initiative was a primary policy consideration in developing this Lease amendment. FAS intends to monitor whether BHMC’s resources under the program are being distributed equitably and are responsive to the City’s Race and Social Justice Initiative.

Options:

- A. Approve CB 120484 as proposed, including the Public Benefit Rent provisions.
- B. Request FAS to complete a Racial Equity Toolkit for this proposal and report findings and recommendations, as warranted, for modifications to the Public Benefit Rent provisions.

**Attachments:**

- A. Legislative and Related Financial History of the City of Seattle Agreements with BHMC

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

**Attachment A.**

**Legislative and Related Financial History of the City of Seattle Agreements with BHMC**

Date	Ordinance	Agreement
October 1995	<a href="#">Ordinance 117855</a>	<b>Master Agreement</b> with Symphony regarding development and construction of new concert hall, including provisions for City sale of TDRs (the transfer of development rights) and cost sharing of anticipated revenue from the sale(s).
June 1996	<a href="#">Ordinance 118112</a>	<b>First Amendment to Master Agreement</b> pertaining to sale of TDRs and full funding of the concert hall project.
June 1996	<a href="#">Ordinance 118162</a>	The City issued \$25 million in Limited Tax General Obligation (“LTGO”) bonds to pay for a portion of the cost of acquiring and constructing Benaroya Hall and the addition of a garage. BHMC Concession Payments were initially based on the City’s borrowing costs but not directly tied to the bonds. (These bonds were refinanced in 2004 and again in 2013.)
September 1997	<a href="#">Ordinance 118732</a>	<b>Lease and Concession Agreement</b> detailing how revenue from sale of TDRs and funds from other sources would be allocated and expended.
June 1998	<a href="#">Ordinance 119051</a>	<b>Second Amendment to Master Agreement</b> and Restatement of Lease and Concession Agreement (aka <b>First Amendment to Lease and Concession Agreement</b> ) providing City bond financing for construction costs to be repaid through BHMC Concession Payments Concession payments aligned with projected parking revenues which were less than the City’s debt service schedule.
June 2005	Not memorialized in any formal amendment <sup>1</sup>	Reduced BHMC annual payments into the Capital Renewal Fund from \$245,000 to \$150,000 based on actual costs and current capital replacement schedule.

<sup>1</sup> The fourth recital in Ordinance 122555 explained that, while no formal amendment had been entered into to memorialize this modification, BHMC had been making annual deposits of \$150,000 to the Capital Renewal Fund since July 1, 2005.

Date	Ordinance	Agreement
November 2006	Not memorialized in any formal amendment but “approved by the Mayor and City council through adoption of the 2007 budget” according to the sixth recital in <a href="#">Ordinance 122555</a>	Increased the City’s reimbursement of maintenance and operations costs for the Garden of Remembrance from \$60,000 to \$120,000, effective July 1, 2007.
November 2007	<a href="#">Ordinance 122555</a>	<b>Second Amendment to the Lease and Concession Agreement</b> adjusting BHMC’s debt service repayment to reflect a more favorable interest rate from the 2004 refinance of Concert Hall Bonds.
2008- 2012	N/A	City suspended collection of Concession Payments, to mitigate financial impacts to BHMC from the Great Recession.
November 2012	<a href="#">Ordinance 124029</a>	<b>Third Amendment to the Lease and Concession Agreement</b> restructuring the Concession Payments to achieve a constant annual payment amount from 2019 – 2037, coterminous with the lease, instead of the original escalating debt service over a shorter term.
2013	N/A	1996 Concert Hall Bonds refinanced a second time, with savings passed on to BHMC via reduced Concession Payment.
November 2013	<a href="#">Ordinance 124341</a>	Approved the issuance of LTGO bonds for multiple purposes, including \$1.1 million in capital improvements to Benaroya Hall (HVAC, sound and lighting equipment). Debt service for the Benaroya Hall elements would be repaid from BHMC’s concession contract payments. Section 16C of Ordinance 124341 provided the authority to enter into a <b>Fourth Amendment to the Lease and Concession Agreement</b> . The Amended Concession Payment Schedule distinguished between Base Concession Payments and these additional Bonds, referred to as the “2014 Alterations.”