

CITY OF SEATTLE

ORDINANCE 126323

COUNCIL BILL 120037

AN ORDINANCE relating to the AIDS Memorial Pathway project; authorizing the Director of the Seattle Office of Arts & Culture, on behalf of The City of Seattle, to accept a license agreement for the installation and maintenance of artworks that are part of The City of Seattle’s Municipal Art Collection on property owned by Central Puget Sound Regional Transit Authority, a regional transit authority of the State of Washington, and leaseholder MEPT Capitol Hill Station Joint Venture LLC, a Delaware limited liability company; and ratifying and confirming certain prior acts.

WHEREAS, the AIDS Memorial Pathway was born out of a desire to recognize those lost during the AIDS crisis in King County and our communities’ responses, and as such has taken the form of a project with the goals of creating a place of reflection and remembrance (of those who died, those who fought, and those who continue the fight); telling the history of Seattle/King County’s AIDS crisis and our diverse communities’ responses to it; and providing a call to action to end HIV/AIDS, as well as discrimination and stigma, and use lessons gained from the crisis to address other social injustices; and

WHEREAS, the AIDS Memorial Pathway and its fiscal sponsor Seattle Parks Foundation has commissioned three interdisciplinary, high quality, and original works of art for three locations near the confluence of Cal Anderson Park and the public plaza of the Capitol Hill Link Light Rail Station transit-oriented development project (CHTOD); and

WHEREAS, via Ordinance 126054, the City has accepted funds raised by the AIDS Memorial Pathway and its fiscal sponsor Seattle Parks Foundation to fabricate and complete the artworks “andingonnamisseverybody” by Chris Paul Jordan, “We’re Already Here” by Civilization, and “Ribbon of Light” by Horatio Law; and

1 WHEREAS, via Ordinance 126054, the City has an agreement to accept funding for long-term
2 maintenance and conservation once said artworks are installed; and

3 WHEREAS, via a contract between Sound Transit and MEPT Capitol Hill Station Joint Venture
4 LLC, a Delaware limited liability company, the City has reached an agreement which
5 includes a license to access to certain real property identified under King County
6 Recording No. 20180620001431, for the artwork installations
7 “andimgonnamisseyeverybody” by Chris Paul Jordan and “We’re Already Here” by
8 Civilization; and

9 WHEREAS, the City is planning to install the artworks by June 30, 2021; NOW, THEREFORE,

10 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

11 Section 1. The Public Artwork Installation License and Indemnity, dated August 19,
12 2020, granted by MEPT Capitol Hill Station Joint Venture LLC, a Delaware limited liability
13 company, and Central Puget Sound Regional Transit Authority, a regional transit authority of the
14 State of Washington, to the City to install, maintain, and upkeep artwork in the City’s collection,
15 attached as Attachment 1 to this ordinance, is accepted.

16 Section 2. The responsibility for artwork upkeep and maintenance shall be under the
17 purview of the Seattle Office of Arts & Culture’s Public Art program. The license to install,
18 maintain, and upkeep the artwork is placed under the jurisdiction of the Seattle Office of Arts
19 and Culture.

20 Section 3. Funding for artworks located on non-City property has been raised privately
21 and transmitted via donation to The City of Seattle for the express use of fabrication and
22 installation of the artworks, via Ordinance 126054.

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

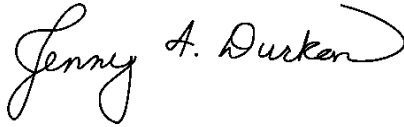
3 Section 5. This ordinance shall take effect and be in force 30 days after its approval by
4 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
5 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

6 Passed by the City Council the 3rd day of May, 2021,
7 and signed by me in open session in authentication of its passage this 3rd day of
8 May, 2021.

9 

10 President _____ of the City Council

11 Approved / returned unsigned / vetoed this 7th day of May, 2021.

12 

13 Jenny A. Durkan, Mayor

14 Filed by me this 7th day of May, 2021.

15 

16 Monica Martinez Simmons, City Clerk

17 (Seal)

- 1 Attachment:
- 2 Attachment 1 – Public Artwork Installation License and Indemnity Agreement (Capitol Hill
- 3 TOD – Site A)

**PUBLIC ARTWORK INSTALLATION LICENSE AND INDEMNITY AGREEMENT
(Capitol Hill TOD – Site A)**

THIS PUBLIC ARTWORK INSTALLATION LICENSE AND INDEMNITY AGREEMENT (this “*Agreement*”) is made, entered, and effective upon signature of all the Parties and approval by vote of the Seattle City Council (the “*Effective Date*”), by and between MEPT Capitol Hill Station Joint Venture LLC, a Delaware limited liability company (“*Licensor*”), and the City of Seattle, a municipal corporation (“*Licensee*”) (each individually a “*Party*,” and collectively, the “*Parties*”).

RECITALS

WHEREAS, Central Puget Sound Regional Transit Authority, a regional transit authority of the State of Washington (“*Sound Transit*”), is the owner of certain real property in the City of Seattle, County of King, State of Washington, as legally described in Exhibit A, attached hereto (the “*Site A Property*” or “*Site A*”);

WHEREAS, Licensor is the leasehold owner of the Site A Property pursuant to that certain Site A Ground Lease, dated June 20, 2018, by and between Sound Transit and the Licensor, a memorandum of which was recorded in the real property records of King County under Recording No. 20180620001431 (the “*Site A Ground Lease*”);

WHEREAS, the Licensee wishes to construct and maintain certain art installations (collectively, the “*AMP Art Installation*”) in certain locations on the Site A Property, and in certain locations on Sound Transit’s adjacent property, as more particularly depicted in Exhibit B attached hereto. The portions of Site A in which the AMP Art Installation will be located are depicted on Exhibit B (“*Site A Licensee Work Area*”);

WHEREAS, the Licensee has entered into two Artist Services Agreements with two artists (each an “*Artist*”) for the production of art installations. The first such Agreement is with Chris and Kenji, LLC and relate to the sculpture entitled “andimgonnamisseyverybody” by Christopher Paul Jordan. The second such Agreement is with Civilization entitled “We’re Already Here”. These art installations comprise the AMP Art Installation. “andimgonnamisseyverybody” will be located in area #1 on Exhibit B. “We’re Already Here” will be located in areas #2 and #3 on Exhibit B

WHEREAS, the AMP Art Installation requires that Licensee have continued access to certain portions of the Site A Property for purposes of public access, installation, operation, and continued maintenance and upkeep of the AMP Art Installation (“*Site A Art Installation Activities*”); and

WHEREAS, pursuant to the terms and conditions of this Agreement, Licensee has requested and Licensor has agreed to grant Licensee access to the Site A Property for performance of the Site A Art Installation Activities to and from and within the Site A Licensee Work Area.

AGREEMENT

NOW THEREFORE, intending to be legally bound, the Parties agree as follows:

1. RECITALS. The foregoing Recitals are incorporated fully herein and are made part hereof.
2. GRANT OF LICENSE. For and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration and intending to be legally bound, Licensor hereby grants to Licensee, and its employees, agents, contractors, subcontractors the authority to enter upon and use the Site A Property for the purpose of performing the Site A Art Installation Activities in the Site A Licensee Work Area and for public access to the Site A Licensee Work Area. This Agreement and all rights of Licensee hereunder are subject and subordinate to all matters of record against the Site A Property, including, without limitation, the Site A Ground Lease and that certain Site A Transit Oriented Development/Transit Operations Covenant and Reserved Use Rights and Ground Tenant’s Restricted Use Agreement, dated

June 20, 2018, by and between Sound Transit and Licensor, recorded in the real property records of King County under Recording No. 20180620001434.

- (a) Licensee shall obtain all necessary permits and approvals from the City of Seattle and any other governmental agencies (as applicable) as necessary for the performance of the Site A Art Installation Activities. Except for the Site A Art Installation Activities, Licensee agrees not to make any changes or alterations to the Site A Property without the prior written consent of the Licensor.
- (b) Licensee shall be required to obtain Licensor's prior written approval of the selection of the portion of the AMP Art Installation located on Site A. The portion of the AMP Art Installation located on Site A shall strictly comply with the parameters set forth in **Exhibit C**, attached hereto. In addition, the Parties and Sound Transit acknowledge and agree that the AMP Art Installation located on Site A shall be considered an "Alteration" generally under the Site A Ground Lease and a "Significant Alteration" under Section 5.4 of the Site A Ground Lease. Accordingly, the portion of the AMP Art Installation located on Site A shall also require the prior written approval of Sound Transit in accordance with Section 5.4 and other applicable terms of the Site A Ground Lease. Licensee shall execute the portion of the AMP Art Installation located on Site A as the Licensor's agent under the terms governing "Significant Alterations" under the Site A Ground Lease.
- (c) In connection with the Site A Art Installation Activities, Licensee shall not interfere with Licensor's use or operation of the Site A Property outside of the Site A Licensee Work Area, except as may be otherwise permitted pursuant to this Agreement. The Site A Art Installation Activities shall occur on days and at times designated and approved in advance by Licensor. The Parties shall reasonably coordinate and cooperate with each other in connection with the Site A Art Installation Activities.
- (d) In connection with the Site A Art Installation Activities, Licensee shall obtain Licensor's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed, before: (i) making any material modifications to the Site A Property that will affect the aesthetics or any common or structural element of the Site A Property ("**Material Modifications**"); or (ii) performing any of the AMP Art Installation Maintenance and Repairs (as defined in Section 6, below). If Licensor fails to approve or deny the request for Material Modifications or the AMP Art Installation Maintenance and Repairs (as defined in Section 6, below) within forty-five (45) days, then the request shall be deemed disapproved. If Licensor affirmatively denies such request, it shall provide the reason for such denial in writing.
- (e) In connection with the Site A Art Installation Activities, the Parties shall provide each other Party with written notification of any and all on-site construction meetings, walk-throughs, or inspections in advance of such meetings, walk-throughs, and/or inspections in order to provide each Party an opportunity to be present to participate in such meetings, walk-throughs, and/or inspections. In addition, each Party shall deliver copies of any and all design and construction documents in such Party's possession or control relating to the Site A Art Installation Activities.
- (f) The Parties shall provide each other Party with copies of any warranties provided by contractors, manufacturers, and suppliers in connection with the Site A Art Installation Activities. The Parties shall use commercially reasonable efforts to enforce any such warranties, and each Party shall reasonably cooperate (at no out-of-pocket cost to Licensor) in connection with such enforcement.

3. STAFFING; SIGNAGE; WAY-FINDING; UTILITIES; PROJECT COSTS.

- (a) To the extent applicable, the Parties agree to negotiate the following in good faith: (i) staffing issues, if any; (ii) placement of signage associated with the AMP Art Installation (e.g., artists' cards or descriptions of artwork); and (iii)

way-finding issues associated with pedestrian traffic between Cal Anderson Park, the Site A Property, and the AMP Art Installation.

(b) As of the Effective Date, Licensee has advised Licensor that no utility support will be required for the AMP Art Installation. However, in the event Licensee later determines that such utility support is required, Licensee shall notify Licensor thereof and the Parties shall negotiate in good faith in an effort to have Licensor provide such utilities and to have Licensee pay or reimburse Licensor for the cost of installing and furnishing such utilities.

(c) Licensee and Licensor acknowledge that, in order to prepare the Site A Property to accommodate the AMP Art Installation and related Site A Art Installation Activities, Licensor is providing foundation support and plinths, lighting for the wall of the vent tower, a thickened matt foundation for two locations of protest signs, and lighting to the light poles for lighting of the protest signs (the "*Site A Project Modifications*"). Licensor acknowledges that the Site A Project Modifications will be completed at the request of The AMP AIDS Memorial Pathway, not Licensee. Accordingly, Licensor and Licensee hereby agree to the following: (i) Licensor and/or The AMP AIDS Memorial Pathway shall assume all costs (including design, permitting and construction costs) associated with such Site A Project Modifications, (ii) Licensee shall assume costs for the fabrication and installation of "embeds", and (iii) Licensor agrees to install "embeds" provided by Licensee's contractor.

4. EFFECTIVE DATE; TERMINATION DATE. Subject to Section 9(b), this Agreement shall take effect on the Effective Date and shall continue in effect until the earlier of: (a) such date that the Licensor or its assignee, or a subsequent assignee is no longer the leasehold owner of the Site A Property; (b) such date that the Site A Ground Lease terminates or expires; (c) such date that Licensor's intended use of the Site A Property changes and Licensor determines in its sole discretion that removal of the portion of the AMP Art Installation on Site A is necessary, with thirty (30) days' notice to Licensee; (d) such date that Licensee determines in its sole discretion that removal of the portion of the AMP Art Installation on Site A is necessary, with thirty (30) days' notice to Licensor; or (e) another mutually agreed-upon termination date (collectively, the "*License Term*"). Notwithstanding the foregoing, in the event of the termination of the Site A Ground Lease for any reason, Sound Transit and Licensee shall negotiate in good faith a new license agreement on terms substantially similar to those set forth in this Agreement.

5. NON-TRANSFERABLE; NON-EXCLUSIVE. This Agreement shall be non-transferable by Licensee. This Agreement is non-exclusive in that Licensor reserves the privilege of coming upon Site A Property, including without limitation the Site A Licensee Work Area, for any lawful purpose, provided such entry shall not unreasonably interfere with Licensee carrying out the activities or the purpose of this Agreement. Licensor shall be permitted to grant other licenses for the Site A Property, including without limitation the Site A Licensee Work Area, so long as the licenses are consistent and do not unreasonably interfere with the rights granted herein.

6. MAINTENANCE; COMPLIANCE WITH LAWS. Licensee shall, at its sole cost and expense, perform the Site A Art Installation Activities in the manner required by the laws of the State of Washington and any local regulations or ordinances. Licensee shall, at its sole cost and expense: be responsible for any and all maintenance, repairs and replacements needed to keep the AMP Art Installation located on Site A in good working order, appearance, and condition, and Licensee shall use reasonable efforts to ensure any and all maintenance, repairs, and replacements are performed in accordance with any maintenance plan provided by the artist to preserve the longevity of the art and to avoid damage (collectively, the "*AMP Art Installation Maintenance and Repairs*"). If Licensee fails or refuses to perform the AMP Art Installation Maintenance and Repairs within sixty (60) days after written notice from Licensor demanding that Licensee to do so, then Licensor may (a) perform such AMP Art Installation Maintenance and Repairs, and in connection therewith, Licensor shall use reasonable efforts to ensure that such maintenance and repair is performed in accordance with any maintenance plan provided by the artist to preserve the longevity of the art and to avoid damage, provided that any such maintenance plan shall be reasonable in scope and cost, and provided further that Licensee shall reimburse Licensor for the actual cost of any AMP Art Installation Maintenance and Repairs performed by Licensor within thirty (30) days after invoice therefor, or (b) give written notice to Licensee, stating that this Agreement shall terminate on the date specified in such notice, which shall be at least ten (10) days after the giving of such notice of termination, and upon the date specified in such notice of

termination, this Agreement shall expire and terminate. If the AMP Art Installation located on Site A is removed pursuant to this Section 6, Licensor may remove the plinths or cap them to hide the embedded areas, remove and replace the core drilled pavers, and restore the area directly supporting the AMP Art Installation to the condition as when Licensee acquired possession, and Licensee shall reimburse Licensor for the actual cost thereof within thirty (30) days after invoice therefor.

7. COSTS; ALTERATIONS. Licensee agrees that it shall be solely responsible for any and all costs and expenses relating to the performance of the Site A Art Installation Activities, including, without limitation, design, construction, permitting, and engineering expenses. Subject to RCW 4.24.115 and other applicable law, Licensee shall be responsible for the cost of any and all damage to the Site A Property that arises out of (directly or indirectly), relates to, or is caused by the Site A Art Installation Activities, other than to the extent damages arise out of Licensor's negligence.

8. OWNERSHIP OF ART INSTALLATION. Licensee shall retain ownership of the AMP Art Installation located on Site A and Licensor shall have no ownership interest in the AMP Art Installation located on Site A. The Parties acknowledge that each Artist retains the copyright and all other intellectual property rights to the artwork it produced pursuant to its respective Artist Services Agreement. Each Artist has granted Licensee an irrevocable, non-exclusive, royalty free license to graphically reproduce (through photography or otherwise), in perpetuity, the image of the artwork it produced pursuant to its respective Artist Services Agreement, including but not limited to, the artwork proposal and all preliminary studies, models and maquettes, and to authorize third parties, including Licensor and Sound Transit, to graphically reproduce (through photography or otherwise) any and all of the same, as are desired by the Licensee, or by Licensor or Sound Transit, for municipal, education, public information, etc. purposes, and not for financial gain. On each such reproduction, the applicable Artist shall be acknowledged, using designations provided by the Artist, to be the creator of the original artwork thereof, provided that reproductions of any preliminary studies, models and maquettes shall not be identified as or represented to be the finished artwork. Licensee hereby authorizes Licensor and Sound Transit to graphically reproduce (through photography or otherwise) any and all of the same as each desires, subject to the above stated conditions. Notwithstanding the foregoing, Licensor shall be permitted to graphically reproduce (through photography or otherwise) any or all of the same as an incidental part of any publications, advertisements, media releases, and promotional materials pertaining to Licensor's project. Licensor shall acknowledge the Artist when appropriate in such incidental use and shall not use any reproductions for any other commercial purpose without express permission.

9. INDEMNIFICATION.

(a) General Indemnity. Neither this Section 9(a) nor any other provisions of this Agreement shall be construed to require indemnification by Licensee to a greater extent than allowed under any applicable laws and policies. Licensee shall indemnify, defend (with counsel reasonably acceptable to Licensor), and hold harmless the Licensor, and its directors and officers, employees, attorneys, agents, and successors and assigns and Sound Transit, and its directors and officers, employees, attorneys, agents, and successors and assigns ("***Licensor Indemnified Parties***") from and against all suits, actions, claims, causes of action, costs, demands, judgments, and liens arising out of Licensee's or Licensee's contractors' performance or non-performance under this Agreement or arising in connection with Licensee's or Licensee's contractors' entry onto, ownership of, occupancy in, or construction on the Site A Property by Licensee (the "***Licensee Indemnification Obligations***"). The Licensee Indemnification Obligations shall not extend to any claim to the extent such claim is attributable to or arising from the applicable Licensor Indemnified Parties' negligence or willful misconduct.

To the extent that this Agreement is deemed to be "a contract or agreement relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate" within the meaning of RCW 4.24.115, the foregoing indemnifications shall not extend to any loss or liability to the extent such loss or liability: (i) arises out of the sole negligence of any indemnitee; or (ii) is caused by or resulting from the concurrent negligence of: (A) Licensor or Licensor Indemnified Parties, and (B) Licensee or its directors and officers, employees, attorneys, agents, and successors and assigns, in which case, any such indemnification is valid and enforceable only to the extent of the indemnitor's negligence.

SOLELY FOR THE PURPOSE OF EFFECTUATING THE INDEMNITIES CONTAINED IN THIS AGREEMENT, AND NOT FOR THE BENEFIT OF LICENSEE'S OR LICENSOR'S EMPLOYEES OR ANY THIRD PARTIES, LICENSEE AND LICENSOR HEREBY WAIVE ANY IMMUNITY GRANTED TO THEM UNDER THE WASHINGTON INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, AND AGREE THAT THIS WAIVER WAS EXPRESSLY AND SPECIFICALLY NEGOTIATED BY THE PARTIES.

(b) Survival. The Licensee Indemnification Obligations shall survive the expiration or earlier termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

(c) Waiver of Artist's Rights under Visual Artist Rights Act of 1990. As a condition precedent to the effectiveness of this Agreement, Licensee shall obtain from the artist(s) involved in or otherwise having rights to the AMP Art Installation a written waiver of any and all of the artist's rights under the Visual Artist Rights Act of 1990 (as now existing or hereafter amended) arising as a consequence of: (i) the installation or integration of the AMP Art Installation or any other work of visual art on the Site A Property; or (ii) the destruction, distortion, mutilation, or other modification of the AMP Art Installation or any other work of visual art that results by reason of its removal (the "*VARA Waiver*"). The VARA Waiver shall be in form and content as reasonably approved by Licensor and Sound Transit and shall be delivered to Licensor and Sound Transit prior to the Effective Date.

10. MECHANIC'S LIEN INDEMNIFICATION. Licensee shall have no authority to place a lien upon Site A or to permit or cause a lien to be placed upon Site A. Without limiting any other indemnification obligations of the Licensee hereunder, Licensee, for itself and for its contractors and subcontractors, agrees to indemnify, defend, and hold Licensor Indemnified Parties harmless from any cost, loss, liability, claim, attorneys' fees, expenses, or damages whatsoever incurred by Licensor Indemnified Parties as a result of any mechanic's lien claims filed against the Site A Property or the ground leasehold estate held by Licensor in the Site A Property or other encumbrance for material, labor, or other charges incurred in or arising from any Site A Art Installation Activities performed by Licensee or at the direction of Licensee. In the event that any such mechanic's lien is filed, Licensee, at its sole cost and expense, shall cause it to be removed of record no later than thirty (30) days after its filing, provided, however, if such mechanic's lien cannot reasonably be removed within such thirty (30) day period and Licensee has commenced the process for such removal within such thirty (30) day period and thereafter is diligently working in good faith to complete such removal, Licensee shall have an additional thirty (30) day period to complete such removal.

11. INSURANCE.

(a) The Parties acknowledge that Licensee is self-insured. Licensee will maintain a fully funded self-insurance program for the protection and handling of Licensee's liabilities including injuries to persons and damage to property. Licensee agrees to provide Licensor with at least thirty (30) days' prior written notice of any change in City's self-funded self-insured status and will provide Licensor with the letter of self-insurance as adequate proof of insurance.

(b) Notwithstanding anything to the contrary in this Section 11, in the event Licensee ceases to maintain such self-funded self-insurance program, Licensee shall: (a) immediately obtain and maintain insurance, in commercially reasonable amounts, with such amounts subject to Licensor's reasonable approval, for the protection and coverage of Licensee's liabilities, including injuries to persons and damage to property; (b) promptly provide Licensor with a certificate of insurance evidencing such insurance coverage; and (c) shall include, as additional insureds, Licensor, Sound Transit, BentallGreenOak (U.S.) Limited Partnership, and NewTower Trust Company to any such liability insurance policy.

(c) Licensor agrees to include all areas covered by this Agreement under any general liability insurance policies covering Site A.

12. TERMINATION. Upon termination of this Agreement as set forth herein, Licensee shall quit the Site A Property. At Licensee's sole cost and expense, Licensee shall remove from the Site A Property any and all personal property placed thereon by Licensee during the License Term, including, without limitation, the AMP Art Installation. Licensee shall restore the Site A Licensee Work Area substantially to the condition as when Licensee acquired possession under this License Agreement and the Site A Licensee Work Area shall otherwise be delivered to Licensor in a condition reasonably satisfactory to Licensor ("**Removal and Restoration**"). In the event of termination of this Agreement, Licensee agrees to perform and complete such Removal and Restoration as promptly as possible, but in no event later than one hundred twenty days (120) after the date of such termination. In addition, in the event of termination of this Agreement, Licensor may remove the plinths or cap them to hide the embedded areas and remove and replace the core drilled pavers, and Licensee shall reimburse Licensor for the actual cost thereof within thirty (30) days after invoice therefor.

13. ASSIGNMENT; MODIFICATION. This Agreement shall be assigned by Licensor to any subsequent tenant under the Site A Ground Lease and written acceptance of such assignment of this Agreement shall be a condition precedent to any assignment or transfer of the Site A Ground Lease. As provided in Section 5 hereof, this Agreement shall not be transferable by Licensee. This Agreement and all of its terms and conditions shall extend to and be binding upon the Parties and upon their respective administrators, permitted successors and assigns. This Agreement may not be changed, modified or amended, in whole or in part, except in writing, signed by the Parties.

14. DEFAULT. Notwithstanding anything to the contrary herein, if Licensee shall materially fail in the performance of or compliance with any of the covenants, agreements, terms, or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from Licensor to Licensee (except that in connection with a failure not susceptible of being cured with due diligence within thirty (30) days, provided that Licensee commences such cure within such thirty (30) days, the time of Licensee within which to cure the same shall be extended for such time as may be reasonably necessary to cure the same) (hereinafter called an "**Event of Default**"), then and in any such event Licensor at any time thereafter during the continuance of such Event of Default may give written notice to Licensee, specifying such Event of Default and stating that this Agreement shall terminate on the date specified in such notice, which shall be at least ten (10) days after the giving of such notice of termination, and upon the date specified in such notice of termination, this Agreement shall expire and terminate. Upon termination of this Agreement, for any reason, Licensee shall, remove the AMP Art Installation and restore the Site A Property pursuant to and in accordance with Section 12, above.

15. NOTICE. All notices, demands, statements, and communications required under this Agreement shall be in writing and, if intended for Licensor, shall be addressed to Licensor at the address set forth opposite the Licensor's signature, and if intended for Licensee, shall be addressed to Licensee at the address set forth opposite Licensee's signature, or to such other address as the Parties may provide, by written notice, given in accordance with this Section 15, advise the other Party. Notices shall be transmitted by personal delivery, overnight express or courier service, United States Postal Service, facsimile transmission, or electronic mail transmitted during normal business hours and confirmed by a counterpart delivered using one or more of the other authorized means of delivery. Notices shall be deemed to be delivered on the earlier of: (a) the date received; (b) five (5) business days after having been deposited in the United States Postal Service, postage prepaid; or (c) the next business day following delivery to a national overnight express or courier service.

16. VOID PROVISION; HEADINGS; GOVERNING LAW. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable by a court of competent jurisdiction, then such provision shall be stricken and the remainder of this Agreement shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the Parties. The headings included herein are for reference purposes only and shall have no bearing on the interpretation of the terms of this Agreement. This Agreement shall be governed by and interpreted according to the laws of the State of Washington.

17. GENERAL. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or other electronic mail transmission, and such transmission shall be binding on the Party or Parties whose signatures appear thereon. Time is of the essence under this Agreement. Each Party hereby represents and warrants to the

other that: (i) it has the full power and authority necessary to enter into this Agreement; (ii) the individual(s) signing this Agreement on its behalf have the authority to bind the Party and to enter into this Agreement; and (iii) it has taken all required action(s) to legally authorize the execution, delivery, and performance of this Agreement.

18. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, express or implied, and all negotiations or discussions of the Parties, whether oral or written, and there are no warranties, representations, or agreements between the Parties in connection with the subject matter hereof except as set forth herein.

19. NO DEDICATION. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Site A Property.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Address:

MEPT Capitol Hill Station Joint Venture LLC
c/o NewTower Trust Company
7315 Wisconsin Avenue, Suite 350 West
Bethesda, MD 20814
Attn: President

And to:

MEPT Capitol Hill Station Joint Venture LLC
c/o BentallGreenOak (U.S.) Limited Partnership
1201 Third Avenue, Suite 3000
Seattle, WA 98101
Attn: Principal, Asset Management

And to:

MEPT Capitol Hill Station Joint Venture LLC
c/o BentallGreenOak (U.S.) Limited Partnership
600 California Street, Suite 560
San Francisco, CA 94108
Attn: Principal, Asset Management

And to:

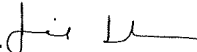
McNaul Ebel Nawrot & Helgren PLLC
600 University Street, Suite 2700
Seattle, WA 98101
Attn: Marc O. Winters

Licensor:

MEPT CAPITOL HILL STATION JOINT VENTURE LLC, a Delaware limited liability company

By: Gerding/Edlen Development Company, LLC,
an Oregon limited liability company, its Manager

By: GEDI, Inc., an Oregon corporation, its
Manager

By:  _____

Name: Jill Sherman

Title: Vice President

Date: 08/19/20


IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Address:

City of Seattle
c/o Office of Arts & Culture
PO Box 94748
303 S Jackson St, Third Floor
Seattle, WA 98124-4748

Licensee:

City of Seattle, a municipal corporation


By: Randy Engstrom (Aug 19, 2020 13:54 PDT)
Randy Engstrom, Director,
Office of Arts & Culture

Date: 08/19/20

APPROVED AND CONSENTED TO BY:

Sound Transit:

CENTRAL PUGET SOUND REGIONAL TRANSIT
AUTHORITY, a Washington regional transit authority

Bria Knowles

By: Bria Knowles (Aug 19, 2020 12:36 PDT)

Don Billen, Executive Director,
Planning, Environment & Project Development

Date: 08/19/20

Approved as to form:

Joanna Valeri

Joanna Valeri (Aug 13, 2020 15:57 PDT)

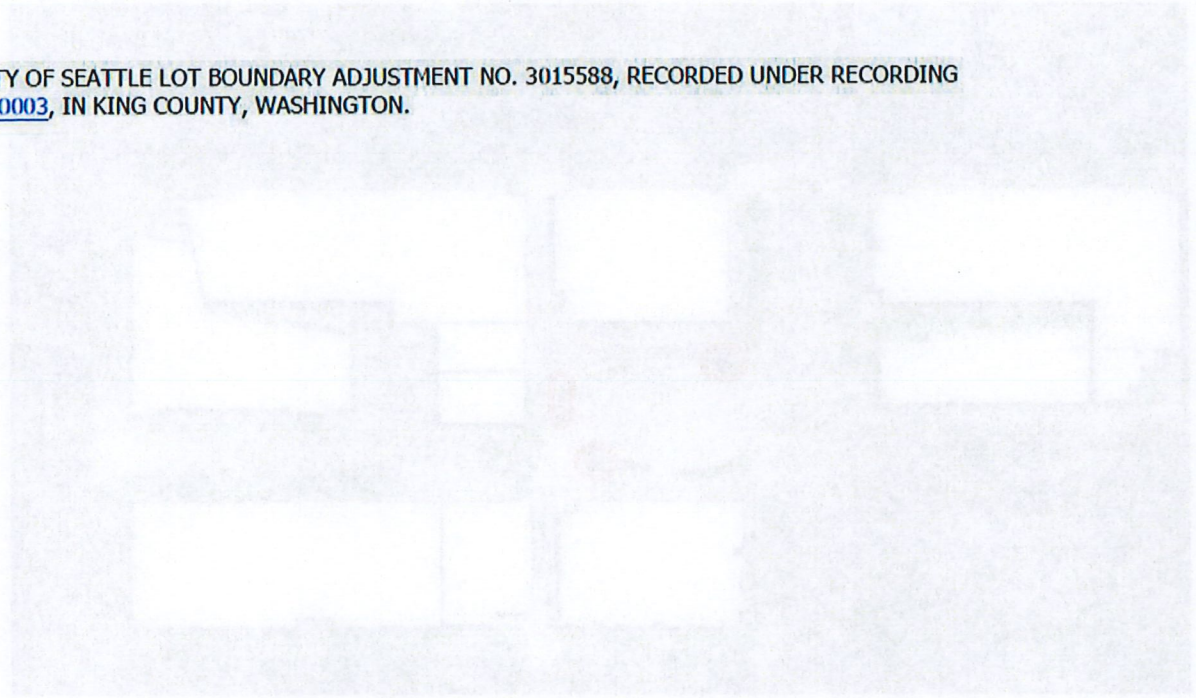
Joanna Valeri, Senior Legal Counsel

Exhibit A

Legal Description of Site A Property

SITE A:

PARCEL A OF CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NO. 3015588, RECORDED UNDER RECORDING NO. 20131113900003, IN KING COUNTY, WASHINGTON.



| | |
|-------|---|
| 1 | Electricity Network - Landmark Management (v. 1/2013) |
| 2 & 3 | Phase 1 Connecting "Attorneys - Who're Already Here" |

Exhibit B

Depiction of Approximate Location of AMP Art Installation



Legend

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| 1 | Centerpiece Artwork - “andimgonnamisseybody” |
| 2 & 3 | Plaza “Connecting” Artworks – “We’re Already Here” |

Exhibit C

Design Parameters for AMP Art Installation located on Site A

This project includes two artworks, centerpiece artwork titled “andimgonnamisseverybody” by artist Chris Paul Jordan and connecting artworks titled “We’re Already Here” by artist team Corey Gutch and Gabriel Stromberg, Civilization, both artworks are site-integrated artwork to be installed in the plaza according to Exhibit B. The respective artists will fabricate and install the artworks as described below.

Centerpiece Artwork “andimgonnamisseverybody”

The centerpiece artwork for the AIDS Memorial Pathway project titled “andimgonnamisseverybody” is a site-integrated Artwork, located at the northwest end of the plaza (see exhibit B). The artist will fabricate and install the artwork to a site prepared to receive the artwork.

The ARTWORK consists of aluminum, bronze, and stainless steel to create a three-dimensional sculpture in the shape of an “X-shape”. ARTWORK will be twenty (20) feet tall by twenty (20) feet wide and three (3) feet deep and consist of 127 “speaker” cabinets of various configurations that will be assembled into an X-shape to make up the front face of the sculpture. The speaker assemblies will be six (6) sided boxes of various sizes, housing various arrangements of speakers [twenty (20) speaker assemblies, twenty-nine (29) speaker boxes, twenty-nine (29) square or rectangular speaker cones, fifty-seven (57) round speaker cones, three (3) stock metal gratings, one (1) custom perforated metal speaker grill, and seventeen (17) cast bronze speakers]. Front, sides, top, and bottoms to be skip-welded from 3/16-inch aluminum plate, with openings CNC-cut-out from front face to accommodate speaker cones, and openings CNC-cut-out from top and bottom faces for internal, structural tube frame to pass through. Internal structure to be X-shape welded from eight (8) inch by eight (8) inch by 1/4-inch square aluminum tube, speaker assemblies to fasten to internal tube frame. Some speaker assemblies may appear to be multiple, joined speaker boxes. Rear surfaces of speaker assemblies to feature eleven (11) gauge, factory polished stainless-steel plates, internally fastened to speaker assemblies via welded studs. Front and side surfaces of ARTWORK will be painted, speaker faces will be painted black and sides of speaker cabinets will be painted pastel colors, all colors will be specified during fabrication. Rear surface finish of ARTWORK is polished stainless-steel. The ARTWORK does not include lighting, site plaza will provide ambient light.

The ARTWORK will be attached to the contractor designed, permitted, and constructed foundation with custom “embeds” designed and engineered by artist. “Embeds” will consist of 3/4-inch thick stainless-steel anchor plates measuring approximately fifty-one (51) inches tall by sixteen (16) inches wide with added stainless-steel hex bolts. Artist will fabricate two “embeds” and provide to general contractor to install onsite during preparation of plaza to receive artwork. Artist will coordinate and provide direction to general contractor for installation of “embeds”, including template for installation if needed. The ARTWORK will be installed by artist to the “embeds” installed by the general contractor.

Connecting Artwork “We’re Already Here”

The connecting artwork for the AIDS Memorial Pathway project titled “We’re Already Here” is a site-integrated Artwork, located in two distinct installation groupings in the plaza (see exhibit B). The third grouping will be installed in Cal Anderson Park and does not fall within the design parameters of this agreement. The artist will fabricate and install the artwork to a site prepared to receive the artwork.

Each sign/artwork component is composed of aluminum with a single demonstration message debossed/engraved on the surface – front and back. The messages on the front and back of each sign are different, and each engraved message is unique. The entire sign is coated with a durable, vividly colored,

polyurethane acrylic paint in one of an array of monochromatic hues (solid blue, green, red, yellow, pink, lavender, etc., in homage to the colors of the rainbow and trans-rights flags). Each piece will be inserted into a separate aluminum installation base component/sheath and mounting plate that will be bolted into concrete slabs using Simpson Strong-Tie TitenHD Screw Anchors. The bases which will support each piece structurally and appear as a pedestal on which the piece stands. The installation bases will allow us to adjust and perfect each individual sign's position within each sign grouping. The Artwork is comprised of three distinct installation/groupings of three, four or five signs. The grouping in the northeast corner of the plaza is comprised of five signs. The grouping in the southeast corner of the plaza is comprised of 4 signs. The third grouping is in northwest corner of Cal Anderson Park and is comprised of 3 signs.

Individual signs within the groups will be spaced approximate 42" between each individual sign installation. This distance is not specifically set because the space is determined by centering within the hexagonal tile pavers. While the groupings and the space between the signs within groupings is important, the distance between the 3 groupings is simply determined by the site requirements and restrictions, and location of the park, and should not be considered part of the artwork.

The signs vary in individual final height, but where people will be expected to walk the protruding elements of the signs will not begin until 86" above ground to allow for accessibility clearance. Sign bases will be 5" x 5" with a 15" x 13.5" mounting plate above the pavers. Each sign pole is 3"x 3" with an overall height of 11', and each sign is between 24" and 36" tall and 24" and 36" wide.

