CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117964

AN ORDINANCE regarding the Seattle Indian Services Commission, a City-chartered public corporation (the "Commission"); approving the Commission's transfer of the Leschi Center to the Seattle Indian Health Board subject to certain terms and conditions; authorizing the Mayor or his designee to negotiate and execute an amendment to the Leschi Center Cooperation Agreement authorized by Ordinance 117014, most recently amended by Ordinance 120730; and authorizing the Mayor or his designee to review, approve, and execute any additional documents necessary for the Commission to effect the transfer in compliance with all legal requirements.

WHEREAS, The Seattle Indian Services Commission (the "Commission") is a public corporation created in 1972 pursuant to Chapter 3.110 of the Seattle Municipal Code to provide effective, comprehensive, and coordinated planning services, activities, and programs to meet the unique needs of the many Native American residents of Seattle; and

WHEREAS, the Commission owns the Pearl Warren Building (the "Warren Building") and the Leschi Center (the "Leschi Center" and, together with the Warren Building, the "Properties"); and

WHEREAS, both Properties were financed with tax-exempt municipal bonds (the "Bonds") issued by the Commission and guaranteed by the City of Seattle (the "City"); and

WHEREAS, the outstanding principal amount of the City-guaranteed Bonds currently exceeds $5,000,000; and

WHEREAS, since it was built, the Warren Building has suffered from water infiltration and as a consequence has sustained damage with an estimated repair cost of $2,500,000; and

WHEREAS, as a result of the condition of the Warren Building and other concerns with the Commission's administration and governance, Seattle City Council passed Resolution 31408 authorizing the Mayor to intervene in the affairs of the Commission; and

WHEREAS, the Seattle Indian Health Board (the "Board") is a non-profit multi-service community health center chartered to serve the health care needs of American Indians and Alaska natives living in the Seattle/King County region; and

WHEREAS, the Board is the only tenant in the Warren Building and is the primary tenant in the Leschi Center, and rent revenue is currently the sole fixed source of revenue available to the Commission to pay the debt service on the Bonds; and

WHEREAS, after the Board made repeated requests to the Commission to repair the Warren Building, on December 16, 2009, the Board gave the Commission notice of default of landlord's obligations under the lease; and

WHEREAS, the Commission does not have the resources necessary to comply with the lease and correct the problems with the Warren Building; and

WHEREAS, if the Board terminates its lease at the Warren Building, the Commission will be unable to pay the debt service on the Warren Building and as the bond guarantor the City will be obliged to pay the debt; and

WHEREAS, during the City's intervention, the Commission and City representatives explored and considered options for addressing the condition of the Warren Building, and were in the process of negotiating with the Board regarding a transfer of both Properties to the Board; and

WHEREAS, it was determined that the Leschi Center also has water infiltration damage and deferred maintenance estimated to cost over one million dollars to repair, and the Board did not have the financial ability to assume responsibility for repairing both Properties; and

WHEREAS, the Commission and the Board have negotiated an agreement to transfer the Leschi Center to the Board in exchange for the Board's commitment to take over the outstanding Bonds relating to the Leschi Center, to repair the Leschi Center and use it to offer health care and other social services, and to continue to pay rent at the Warren Building through October 2014 notwithstanding the condition of the property; and

WHEREAS, the Commission approved the basic terms of the transfer at a public meeting on September 24, 2013; and

WHEREAS, the Commission's bond resolution and the cooperation agreement between the City and the Commission require the City's approval of a transfer of the Leschi Center as a condition of any transfer; and

WHEREAS, transferring the Leschi Center to the Board will permit the Board to relocate its offices from the damaged Warren Building and consolidate its operations at the Leschi Center, keeping the Leschi Center in use to provide culturally appropriate health care for American Indian and Alaska Native residents of Seattle, and the Board's commitment to

pay rent at the Warren Building through October 2014 will allow the Commission time to focus on the redevelopment of the Warren Building; NOW THEREFORE

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Seattle City Council approves the Seattle Indian Services Commission's anticipated transfer of its real property commonly described as the Leschi Center, 611 12th Avenue South, Seattle, Washington, to the Seattle Indian Health Board on terms and conditions consistent with the Agreement Between Seattle Indian Health Board and Seattle Indian Services Commission dated September 23rd, 2013 and attached hereto as Attachment 1 ("Term Sheet").

Section 2. The Seattle City Council's approval of the transfer is expressly conditioned upon the following:

A. The City Attorney shall review and approve all transfer-related documents in order to ensure that the City's interests as guarantor of the bonds issued by the Commission to finance the Leschi Center are not adversely impacted, and to ensure that the transfer documents are consistent with the Term Sheet; and

B. The Commission shall obtain the opinion of nationally recognized bond counsel that the transfer will not cause interest on the bonds issued to finance the Leschi Center to be included in gross income of the owners of such bond, which opinion must be satisfactory to the City Attorney's Office.

Section 3. The Mayor or his designee is authorized to negotiate and execute, for and on behalf of the City, an amendment to the Leschi Center Cooperation Agreement with the Commission, originally authorized by Ordinance 117014 and most recently amended pursuant to Ordinance 12073. The Mayor or his designee is authorized to amend the Cooperation Agreement as necessary to facilitate the transfer of the Leschi Center and as determined by the Mayor to be in the best interest of the City. The Mayor is further authorized to execute for and on behalf of the City any additional documents necessary or desirable in connection with the

Commission's transfer of the Leschi Center to the Seattle Indian Health Board and the Seattle Indian Health Board's assumption of the obligation to make payments sufficient to pay debt service on the bonds.

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

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

ATTACHMENT 1: Agreement between Seattle Indian Health Board and Seattle Indian Services Commission

AGREEMENT
Between Seattle Indian Health Board and Seattle Indian Services Commission

TERM SHEET
Revised September 23, 2013

This Term Sheet is between the Seattle Indian Health Board ("Board" or "SIHB") and the Seattle Indian Services Commission ("Commission" or "SISC").

Prior Term Sheets. Prior Term Sheets between the SIHB and the SISC are no longer in force.

Acquisition of Leschi Center. The SIHB proposes to acquire fee ownership of the Leschi Center, together with associated property and site improvements (the "Property").

Consideration. As consideration for the Property, the SIHB will (1) assume responsibility for payment of the outstanding bond on the Property issued by the SISC and guaranteed by the City of Seattle ("City"), and (2) the SIHB will repair and maintain the Property, and (3) so long as Closing occurs in 2013, and as detailed below, the SIHB will continue to make payments, in the reduced amount detailed below, for space in the Pearl Warren Building until October 31, 2014.

Financial Plan. Prior to Closing and upon request, SIHB shall submit to the SISC three years of audited financial statements to demonstrate the SIHB's fiscal capacity to make the necessary bond payments and repairs.

Continuation of Use of Property. SIHB commits to continue health and human services programs at the Property so long as it has financial resources to do so. It is the intent of the SIHB to continue health and human services on the Property for 50 years and longer.

Use of the Property While Bond Obligations Remain. While the City guaranteed bond remains outstanding, SIHB agrees that all uses of the Property will conform to the Bond Resolution and applicable regulations. During this period, SIHB will not transfer or encumber the Property without the approval of the City. The SISC and the City will cooperate in any SIHB effort to refinance the bond.

Use of Property After Bond Obligations are Satisfied and Right of First Refusal. After the bond secured by the Property and guaranteed by the City has been paid, the SIHB will have the right to encumber the Property without approval of the SISC and may use the value of the Property for continuation of health and human services in the City. While it is the intent of the SIHB to continue its programs at the Property for 50 years or longer, the parties acknowledge that circumstances change and that 50 years is a long, uncertain period of time that may extend beyond the useful life of the Property. It is agreed that any transfer of the Property assets will be to buildings and/or programs in the City for the purpose of fulfilling the mission of the SIHB to

improve the health and well-being of the community. Should the SIHB propose to sell the Property within 50 years of the date of acquisition, it will give the SISC (if still in existence) a 90 day right of first refusal to purchase the Property at fair market value.

Acceptance and Rejection of Leases and Contracts. As part of the transfer of the Property, and prior to Closing, the SISC will terminate contracts and leases for the Property that are capable of termination due to expiration or default and will, prior to Closing, remove tenants other than SIHB. Pending Closing, the SISC will not enter into new contracts or leases or modifications of contracts or leases without the prior written consent of the SIHB. Should the SISC terminate any lease pending Closing, the SIHB will assure full monthly payment of the outstanding bond obligation for Property.

Bond Payments and Reserve Account. Upon transfer of the Property, SIHB will make bond payments directly to the Bond Trustee or other appropriate agent of the bondholders.

Seattle Housing Authority Matters. Pending Closing, the SISC will not make any agreements with the SHA regarding parking or other matters without the prior written consent of the SIHB. The SIHB will have the right to negotiate with the SHA pending Closing and, upon Closing, any compensation paid by SHA will flow to the SIHB, subject to any requirements of the Bond Resolution.

Closing Costs. The SIHB will pay closing costs such as escrow, recording fees and title insurance costs. As part of closing costs, SIHB will pay reasonable legal fees incurred by the SISC to implement this Term Sheet and related agreements so long as the SISC has first used its cash reserves beyond amounts necessary to pay all principal and interests on the Bonds for both buildings to make payments of such legal fees. SIHB obligations for all closing costs shall not exceed a total of $30,000.

SIHB Lease in the Pearl Warren Building. So long as Closing occurs in 2013, and so long as repairs to the Leschi Center can be completed prior to October 15, 2014, the SIHB will remain in the Pearl Warren Building until the Board can repair the Leschi Center and move Board Staff and equipment into the Leschi Center by November 1, 2014. The SIHB agreement to remain in the Pearl Warren Building is expressly conditioned on the SIHB's ability to move Board Staff and equipment into the repaired Leschi Center on or before November 1, 2014. So long as Closing occurs in 2013, SIHB will contract for repairs for the Leschi Center as promptly as can be reasonably accomplished with the objective of having repairs completed no later than October 15, 2014. Should SIHB determine, in its sole judgment, that repairs to the Leschi Center cannot be completed by October 15, 2014, the SIHB may, at its sole option, vacate the Pearl Warren Building. Upon Closing when the Board assumes responsibility for all bond payments and repair costs for the Property, the SIHB Lease for the Pearl Warren Building will be revised so that the Board is only paying for the space it is occupying in the Pearl Warren Building; provided however, that in no event shall SIHB payments through October 31, 2014 be reduced to an amount less than required to pay the principal and interest on the outstanding Bond on the Pearl Warren Building. The SIHB Lease for the Pearl Warren Building will terminate the latter of a) when the SIHB vacates the Building, or b) October 31, 2014. The SIHB will cooperate with the

SISC and the City in efforts to sell or otherwise reprogram the Building after the SIHB vacates the Building.

Parking. After the SIHB vacates the Pearl Warren Building, it will have the right, but not the obligation, to lease parking at the Pearl Warren Building at fair market value to support its Staff and programs in the Leschi Center. In any sale or reprogramming of the Pearl Warren Building, the SISC and the City will use best efforts to maintain the opportunity for the SIHB to lease parking at fair market value on the site of the Pearl Warren Building.

Redevelopment or Reprogramming of the Pearl Warren Building. With the objective of supporting the continuation of community services on the site of the Pearl Warren Building, the SIHB will have the right, but not the obligation, to collaborate with the SISC in the sale, redevelopment or reprogramming of the Pearl Warren Building.

Consistent Agreement with City. This Term Sheet is expressly conditioned on the parties reaching an agreement with the City consistent with the provisions of this Term Sheet.

Terms of Agreement. The parties will negotiate a mutual agreement in good faith. The mutual agreement will contain standard legal provisions consistent with this Term Sheet. The mutual agreement will be consistent with requirements in the Bond Resolution.

Approved:	Approved:
SEATTLE INDIAN HEALTH BOARD	SEATTLE INDIAN SERVICES COMMISSION
By: _____	By: _____
Date:	Date:

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
LEG	Tony Kilduff 684-3580	N/A

Legislation Title: AN ORDINANCE regarding the Seattle Indian Services Commission, a City-chartered public corporation (the "Commission"); approving the Commission's transfer of the Leschi Center to the Seattle Indian Health Board subject to certain terms and conditions; authorizing the Mayor or his designee to negotiate and execute an amendment to the Leschi Center Cooperation Agreement authorized by Ordinance 117014, most recently amended by Ordinance 120730; and authorizing the Mayor or his designee to review, approve, and execute any additional documents necessary for the Commission to effect the transfer in compliance with all legal requirements.

Summary of the Legislation: Authorizes the Seattle Indian Services Commission to transfer the Leschi Center to the Seattle Indian Health Board. The debt on the Leschi Center is guaranteed by the City of Seattle and the City Council must authorize the sale. Transfer of the property to the Seattle Indian Health Board will strengthen management of a public asset and allow the Health Board to relocate from the damaged Pearl Warren building.

Background:
The Seattle Indian Services Commission (SISC) is a public corporation chartered in 1972 to provide effective, comprehensive, and coordinated planning services, activities, and programs that meet the unique needs of the many Indian residents of Seattle. SISC owns two properties on 12th Avenue South, the Pearl Warren Building and the Leschi Center. These properties are leased to the Seattle Indian Health Board (SIHB) and the Seattle Indian Center (SIC) and the property debt is guaranteed by the City of Seattle.

Due to poor construction and water intrusion that was never addressed, the Pearl Warren Building requires repairs estimated to cost over two million dollars, and SISC does not have the financial ability to make the repairs. SIHB is the sole tenant in the Pearl Warren Building and SIHB has provided notice of landlord default and has made it clear that it cannot keep its employees working in the damaged offices indefinitely. If SIHB were to terminate its lease as a result of SISC's failure to comply with the lease, SISC would not be able to make the payments on the bonds and the City would be required to take on the debt. Following adverse audit findings, and in an effort to address SISC's long standing organizational problems and property management issues at the Pearl Warren Building , in 2012 City Council passed Resolution 30418 authorizing the Mayor to intervene in the affairs of SISC. The Mayor amended SISC's charter to remove conflicts of interest from the SISC governing council and appointed Department of Finance and Administrative Services Director Fred Podesta as temporary Commission chair. Since that time, the City has provided management support to the SISC's governing council as it works to address the future of the properties. During the past year, it was discovered that the Leschi Center also had deferred maintenance, and water intrusion damage estimated to cost over one million dollars to repair. Additionally, Seattle Indian Center, the other tenant in the Leschi

Building, has been in arrears on its rent for years, and to date has refused to reduce its space, relocate, or pay the full rent due.

As a solution to the condition both buildings and the possibility of debt default, the SISC governing council has agreed to terms to sell the Leschi Center to SIHB in exchange for SIHB paying off the building's debt ($1.6 million), making the necessary repairs and providing ongoing maintenance so it can continue its programs at the site for next 50 years or longer.

Sale of the Leschi Center to SIHB will allow SISC to focus on the future use of the Pearl Warren Building, which will likely need to be demolished and redeveloped. As part of the sale of the Leschi Center, SIHB has agreed to make the debt service payment on the Pearl Warren Building through October 31, 2014, after which SISC will no longer have sufficient revenue to pay the debt service on the Pearl Warren building. That provides SISC with 12 months to identify a redevelopment strategy.

With the sale, SIHB will consolidate operations into the Leschi Center. This will displace the Seattle Indian Center. SIC has experienced its own operating issues and is currently more than $100,000 behind on its rent to SISC. SIC provides important human services to the Seattle community and the City of Seattle has offered to help the SIC find alternate, affordable space for its programs. However, to date SIC has refused to accept any solution such as reducing its space and agreeing to a payment plan, paying its full rent, or relocating to a more affordable location and may resist leaving the Leschi Center.

Please check one of the following:

____ **This legislation does not have any financial implications.**

X **This legislation has financial implications.** The City of Seattle guarantees the bonds on the Leschi Center and the Pearl Warren Building. Transferring the building will shift the burden of repayment to SIHB and provide an additional 12 months of debt payments for the Pearl Warren Building.. Failure to approve the legislation will likely result in a default on the Pearl Warren debt.

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL				

**See budget book to obtain the appropriate Budget Control Level for your department.*

Appropriations Notes:

None

Anticipated Revenue/Reimbursement Resulting from this Legislation: None

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
TOTAL				

Revenue/Reimbursement Notes: None

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL							

** 2014 positions and FTE are total 2014 position changes resulting from this legislation, not incremental changes. Therefore, under 2014, please be sure to include any continuing positions from 2013.*

Position Notes: None

Do positions sunset in the future? No

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
TOTAL				

** See budget book to obtain the appropriate Budget Control Level for your department.*

Spending/Cash Flow Notes:

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
The City guarantees the debt on the Leschi Center. If the City Council does not approve the transfer of the property to the Seattle Indian Health Board, the Health Board will likely vacate the Pearl Warren Building (with cause). This will result in a revenue short fall for the Seattle Indian Services Commission and a likely default on City guaranteed debt. The City will then likely need to make the debt payments in place of SISC, take control of the Pearl Warren Building, and actively look to sell the Peal Warren Building to pay off the debt.

b) **What is the financial cost of not implementing the legislation?**
Debt costs for 2014 for the Pearl Warren Building are approximately $440,000. There will be additional costs in foreclosing on the property and selling it.

c) **Does this legislation affect any departments besides the originating department?**
Yes. The Seattle Indian Center provides human services in the Leschi Center. The Human Services Department contracts w/ SIC to provide a portion of these services. Transferring the Leschi Center will result in eviction of SIC, who will then need to find an alternate location for its programs or cease to operate.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None

e) **Is a public hearing required for this legislation?** No

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No

g) **Does this legislation affect a piece of property?**

h) **Other Issues:**

List attachments to the fiscal note below: