

ORDINANCE No. 118112

*McJ
Law Department*

COUNCIL BILL No. 111208

The City of Seattle--Legisla

Council Bill No. 111208, AN ORDINANCE relating to the Downtown Concert Hall Project; authorizing amendments of the Master Agreement with the Seattle Symphony Orchestra regarding such project

INDEXED

REPORT OF COMMITTEE

Honorable President:

Your Committee on _____

to which was referred the within Council Bill No. _____ report that we have considered the same and respectfully recomm

4/24/96 Parks, Public Grounds and Recreation

Full Council vote 8-0

COMPTROLLER FILE No. _____

Introduced: <u>APR 22 1996</u>	By: DONALDSON
Referred: <u>APR 22 1996</u>	To: PARKS, PUBLIC GROUNDS AND RECREATION COMMITTEE
Referred:	To:
Referred:	To:
Reported:	Second Reading: <u>APR 29 1996</u>
Third Reading: <u>APR 29 1996</u>	Signed: <u>APR 29 1996</u>
Presented to Mayor: <u>APR 30 1996</u>	Approved: <u>MAY - 3 1996</u>
Returned to City Clerk: <u>MAY - 3 1996</u>	Published: <i>Dette</i>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

OK

Committee Chair

Law Department

INDEXED

The City of Seattle--Legislative Department

Date Reported
and Adopted

REPORT OF COMMITTEE

Honorable President:

Your Committee on _____

to which was referred the within Council Bill N _____
report that we have considered the same and respectfully recommend that the same:

4/24/96 Parks, Public Grounds and Recreation 4-0 To Pass as Amended

Full Council vote 8-0

OK

Committee Chair

RECEIVED THE CITY OF SEATTLE LEGISLATIVE DEPARTMENT

ORDINANCE 118112

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AN ORDINANCE relating to the Downtown Concert Hall Project; authorizing amendment of the Master Agreement with the Seattle Symphony Orchestra regarding such Project.

WHEREAS, the Seattle City Council on August 1, 1994, by Resolution 28967, approved an Action Plan pledging the City's support in the development of a new Downtown Concert Hall; and

WHEREAS, the Seattle City Council has previously approved Ordinance 117352, Ordinance 117334, Ordinance 117491, Ordinance 117814 and Ordinance 117898 to provide staff and other resources to support the development of a new Concert Hall; and

WHEREAS, the Seattle City Council has previously approved Ordinance 117520 authorizing execution of a Memorandum of Understanding with the Seattle Symphony Orchestra regarding design and construction of the Downtown Concert Hall; and

WHEREAS, the Seattle City Council has previously approved Ordinance 117855, authorizing execution of a Master Agreement, a Design Agreement and a Construction Agreement with the Seattle Symphony Orchestra regarding such Project; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Office of Management and Planning and recommended by the Mayor, the Director of the Office of Management and Planning is hereby authorized to execute, for and on behalf of The City of Seattle, an amendment to the Master Agreement between The City of Seattle and the Seattle Symphony Orchestra substantially in the form attached hereto as Attachment A.

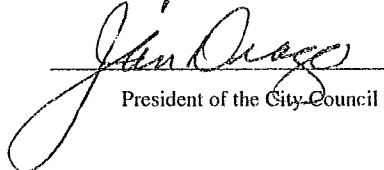
Section 2. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

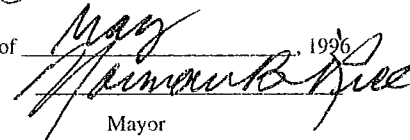
NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

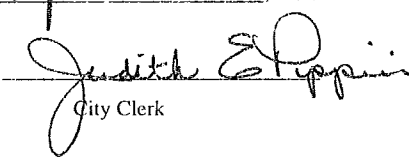
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Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 29 day of April, 1996, and signed by me in open session in authentication of its passage this 29 day of April, 1996.


President of the City Council

Approved by me this 3 day of May, 1996

Mayor

Filed by me this 3 day of May, 1996

City Clerk

(Seal)

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AMENDMENT TO MASTER AGREEMENT

The Seattle Symphony Orchestra, a Washington corporation ("Symphony"), and the City of Seattle, a municipal corporation of the State of Washington ("City"), for good and valuable consideration, agree as follows:

Background

a. The Symphony and the City are parties to a Master Agreement Between Owner and Design/Builder ("Contract") dated October 30th, 1995, generally relating to the design and construction of the Seattle Concert Hall ("Project").

b. The parties wish to amend the Contract to reflect clarifications to the requirements for delivery of a communication from the Design/Builder and the sale of development rights and use of revenues.

Agreement

The Symphony and the City hereby amend the Contract as follows:

1. **IV. PRECONDITIONS FOR CONTRACT FOR CONSTRUCTION**

Amend paragraph G of Article IV to read as follows:

G. Delivery of Design/Builder Communication

The Owner's Finance Director has received from the Design/Builder a letter signed by the Design/Builder's Board Chairman, Treasurer and Executive Director stating that the sum of (1) the funds deposited by and on the behalf of the Design/Builder in the Bank as specified in Paragraph IV.B.1; plus (2) the proceeds available or to be available from the State of Washington and King County as identified in the letter; plus (3) the pledges received to date as identified in the letter; plus (4) the \$5,000,000 estimated by the parties hereto to be realized in the future from the transfer to one or more third parties of development rights associated with the Site pursuant to Section VIII hereof; plus (5) the unpaid portion of the Maximum Owner Expenditure; equal One Hundred Percent (100%) of the estimated cost of completing the Project (as identified in the latest Project budget approved by the parties hereto pursuant to Section VII hereof).

- (1) With respect to the transfer of development rights associated with the Site pursuant to Section VIII hereof ("TDRs"), if a TDR sales agreement for these TDRs is consummated and the Owner receives, pursuant to such agreement, any TDR sales proceeds prior to August 1, 1998, the Owner shall remit those TDR sale proceeds to the Design/Builder within thirty (30) days after the Owner's receipt of the same. If, under such TDR sales agreement, the Owner is to receive any TDR sale proceeds after August 1, 1998, the Owner shall remit to the Design/Builder on or by August 31, 1998 the remaining aggregate amount of the TDR sale proceeds (reduced to their present value as of August 1, 1998).

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Notwithstanding the provisions of the paragraph IV.G(1) immediately above, the Design/Builder hereby expressly affirms:

a.) Design/Builder shall secure the difference (if any) between the \$5,000,000 and the proceeds of any sale of TDRs (present value August 1, 1998) from private sources or public sources (other than Owner) bank financing, or any combination thereof; or

b.) Upon request and following the delivery by the Design/Builder to the Owner's Representative of a copy of all unpaid Project invoices received by the Design/Builder through July 31, 1998, Owner shall remit an amount equal to the lesser of (a) the aggregate amount of such unpaid Project invoices or (b) the difference between the \$5,000,000 and the amount of TDR sale proceeds due to the Design/Builder pursuant to Paragraph IV.G(1), above. If the Design/Builder elects this option, then the Owner shall be entitled to offset the amount of any such remittance against the amount(s) that would be otherwise due to the Design/Builder as a maintenance and operations payment under the Lease Agreement, as contemplated into §8.B of the March 14, 1995 Memorandum of Understanding (M.O.U.) between the parties hereto (plus the amount of costs incurred by the Owner as a consequence of the Design/Builder's election to receive payments pursuant to this subsection), until the aggregate amount of the maintenance and operations remittance (plus the amount of the costs incurred by the Owner as a consequence of the Design/Builder's election to receive payments pursuant to this subsection) that have been offset equals the amount received by the Design/Builder pursuant to its election to receive a remittance pursuant to this subsection. After the date such offset has been fully realized, the Owner shall again be obligated to make maintenance and operations payments as provided in the Lease Agreement between the parties, as contemplated in §8.B of said M.O.U. Notwithstanding any other provision herein, the Design/Builder shall be entitled to pay to the Owner any portion of the amount remitted by the Owner to the Design/Builder pursuant to this subsection that has not been previously offset, in order to accelerate commencement of the Owner's payment to the Design Builder of maintenance and operations payments pursuant to the Lease Agreement, as contemplated in §8.B of the M.O.U.

c.) The Design/Builder hereby commits itself to exercise its good faith and continuing efforts to obtain all private funding necessary to commence and complete construction of the Project in a timely manner.

D.) In the event the TDRs are not sold by April 2, 1998, or sale of the TDRs yields proceeds of less than \$5,000,000, then the Design/Builder will report to the City Council on its financing plan by April 15, 1998.

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2. VIII. SALE OF DEVELOPMENT RIGHTS AND USE OF REVENUES

Amend Article VIII to read as follows:

The Owner, at its discretion, may delegate the duty to the Design/Builder to negotiate and consummate the sale of development rights associated with the Site, and the proceeds shall be used as follows. In the event that any revenues are received by either party from (1) the sale of view or light easements affecting the Site of the Project; (2) the transfer to a third party of development rights associated with the Site; or (3) the creation of a planned community development that includes the Site of the Project; or (4) the donation of any money or service specifically for the development of the Open Space portion of the Project (including but not limited to the creation of a memorial garden therein); or (5) the provision of any money or service specifically to pay or offset any King County charge for development of the METRO Bus Tunnel entrance or for relocation of utilities, the first Eight Million Dollars (\$8,000,000) of any such revenue received (or in the case of donated services, the commercial value of the services received) shall be expended to pay the costs of constructing such elements of the Project as the Design/Builder determines are appropriate. Any additional revenue from such source(s) shall be divided evenly between the Owner and the Design/Builder. The Owner's share of such additional revenue shall be deposited into a special fund managed by the Design/Builder or a related, supportive entity, and shall along with its earnings be expended exclusively to pay maintenance and operations for which the Design/Builder is responsible under any lease of the Concert Hall facility by the Owner, as lessor, to the Seattle Symphony Orchestra, the Design/Builder, or an entity affiliated with either such entity, as lessee, or for major maintenance required for the Project. The Design/Builder's share of such additional revenue shall be expended by the Design/Builder solely for Project-related purposes.

3. All other provisions of the Contract not inconsistent with the above remain in full force and effect.

IN WITNESS THEREOF, the parties have caused this Amendment to be duly executed as of the day and year last written below.

SEATTLE SYMPHONY ORCHESTRA

By Donald Card

Title: Executive Director

Dated: June 3, 1996

THE CITY OF SEATTLE

By James M. Pegg

Title: Director, Management & Planning

Dated: May 23, 1996

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3. All other provisions of the Contract not inconsistent with the above remain in full force and effect.

IN WITNESS THEREOF, the parties have caused this Amendment to be duly executed as of the day and year last written below.

SEATTLE SYMPHONY ORCHESTRA

THE CITY OF SEATTLE

By _____

By _____

Title: _____

Title: _____

Dated: _____

Dated: _____

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City of Seattle

Executive Department—Office of Management and Planning

Thomas M. Tierney, Director
Norman B. Rice, Mayor



April 25, 1996

The Honorable Jan Drago
President, Seattle City Council
1100 Municipal Building
Seattle, WA 98104

Subject: LEGISLATION RELATING TO THE DOWNTOWN CONCERT HALL PROJECT;
AUTHORIZING AMENDMENT OF THE MASTER AGREEMENT WITH THE SEATTLE
SYMPHONY ORCHESTRA

Dear Councilmember Drago:

Last October, the City Council authorized the execution of a Design-Build Agreement with the Seattle Symphony Orchestra for the construction of a downtown concert hall, now known as "Benaroya Hall." While this agreement is the framework of the City's public-private partnership with the Symphony, it has always been recognized that it will require periodic amendment. A proposed amendment is the subject of this ordinance.

Section IV of Master Agreement: Preconditions for Contract for Construction:

This section states, in essence, that the City has no obligation to issue a Notice to Proceed with construction of the Hall (beyond site preparation work) unless our Director of Finance has determined that the Symphony has raised its portion of the Project's budget (\$68,147,541) in its entirety. This includes \$5,000,000 to be raised from the sale of Transferable Development Rights (TDRs) from the concert hall site.

For the past three months, OMP has been actively pursuing the sale of the TDRs from the Benaroya Hall site. Since these remain unsold, OMP is recommending that it continue to offer to sell the TDRs between now and August 1998 until a buyer is secured. If the purchase price is less than \$5,000,000, the Symphony will either secure the balance from private fundraising or agree to a reduction in the City's maintenance and operating payment by an amount equal to the balance. The proposed amendment also allows the City to delegate sale of the TDRs to the Symphony although it is not anticipated that this provision will be exercised.

The schedule for this project has significant time constraints. It is imperative that the Symphony commence construction in early May so that Benaroya Hall can be completed by August 1998, in time for the opening of the 1998/99 Season. We ask for your prompt consideration of this request. If you have any questions please contact Judy Bunnell at 6-9047 or Celia Grether at 4-8048.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Tierney".

Tom Tierney, Director

Accommodations for people with disabilities provided on request. An equal employment opportunity - affirmative action employer.
Office of Management and Planning 300 Municipal Building, Seattle, Washington 98104-1826
(206) 684-8080 • (TDD) 684-8118 • FAX (206) 233-0085

Produced on Recycled Paper

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City of Seattle

Executive Department--Office of Management and Planning

Thomas M. ...
Norman B. Rice, Mayor

April 19, 1996

The Honorable Mark Sidran
City Attorney
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING
DEPARTMENT: Manager and Planning

SUBJECT: AN ORDINANCE relating to the Downtown Concert Hall Project;
authorizing amendments of the Master Agreement with the Seattle
Symphony Orchestra regarding such project.

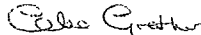
Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Celia Grether at 684-8048.

Sincerely,

Norman B. Rice
Mayor

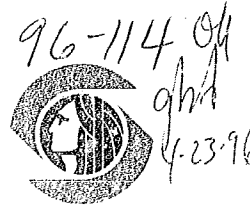
by



for TOM TIERNEY
Director

h:\admin\legis\lawlrs\greth1

Enclosure



APR 23 AM 11:29
CITY OF SEATTLE

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TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

_____	_____
_____	_____
_____	_____
_____	_____

Don Arnold

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE

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STATE OF WASHINGTON - KING COUNTY

67810
City of Seattle, City Clerk

—ss.

No.

Affidavit of Publication

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on April 29, 1996, and published here by title only, will be mailed, at no cost, upon request for two months after this publication. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 118109

AN ORDINANCE relating to Seattle Center, authorizing execution of a revised Premises Use and Occupancy Agreement and a Construction Agreement with the Seattle Repertory Theatre, and establishing a Bagley Wright Theatre Maintenance, Repair, and Replacement Sub-fund in the Seattle Center Operating Fund.

ORDINANCE NO. 118110

AN ORDINANCE relating to the Department of Administrative Services, authorizing the acquisition by an agreement in lieu of condemnation of real property commonly known as 2203 Airport Way South, in the City of Seattle, for general municipal purposes.

ORDINANCE NO. 118111

AN ORDINANCE relating to the Department of Parks and Recreation, authorizing the Superintendent to enter into a five (5) year lease agreement with the University of Washington on a portion of the University of Washington's West Seattle Laboratories site for public park and playground purposes.

ORDINANCE NO. 118112

AN ORDINANCE relating to the Downtown Concert Hall Project, authorizing amendments to the Master Agreement and the Construction Agreement with the Seattle Symphony Orchestra regarding such project.

ORDINANCE NO. 118113

AN ORDINANCE relating to the Downtown Concert Hall Project, appropriating funds for, and authorizing the Executive to issue a Notice to proceed with, said Project.

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of official publication in the Daily Journal of Commerce, Seattle, May 9, 1996. (67810)

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT:118109-113

was published on

05/09/96

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

Subscribed and sworn to before me on

05/09/96

Notary Public for the State of Washington, residing in Seattle

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