

Ordinance No. 121206

Council Bill No. 114612

AN ORDINANCE relating to the Seattle Center Department; authorizing the Seattle Center Director to execute an Agreement between the City of Seattle, the Pacific Northwest Ballet Association and the Seattle Opera relating to the use and management of Marion Oliver McCaw Hall; and creating a new McCaw Hall Subfund of the Seattle Center Fund for segregating McCaw Hall operational expenses and earnings.

CF No. \_\_\_\_\_

Date Introduced:	<u>6-16-03</u>
Date 1st Referred:	<u>6-16-03</u>
Date Re - Referred:	
Date Re - Referred:	
Date of Final Passage:	<u>6-23-03</u>
Date Presented to Mayor:	<u>6-24-03</u>
Date Returned to City Clerk:	<u>7/2/03</u>
Date Vetoes by Mayor:	
Date Passed Over Veto:	
To: (committee)	<u>Finance</u>
To: (committee)	
To: (committee)	
Full Council Vote:	<u>9-0</u>
Date Approved:	<u>7/1/03</u>
Date Published:	<u>3PAP</u>
Date Veto Published:	
Veto Sustained:	

The City of Seattle - Legislative Department  
Council Bill/Ordinance sponsored by: Fargela

**Committee Action:**

DP as amended 3-D JD, PS, JC

6/23/03 Passed As Amended

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_

*Law Department*

Law Dept. Review

OMP Review

City Clerk Review

The City of Seattle - Legislative Department  
Council Bill/Ordinance sponsored by: Fargela

Councilmember

**Committee Action:**

DP as amended 3-D JD, PS, JC

6/23/03 Passed As Amended 9-0

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Electronic Copy Loaded

Indexed

ORDINANCE

121206

AN ORDINANCE relating to the Seattle Center Department; authorizing the Seattle Center Director to execute an Agreement between the City of Seattle, the Pacific Northwest Ballet Association and the Seattle Opera relating to the use and management of Marion Oliver McCaw Hall; and creating a new McCaw Hall Subfund of the Seattle Center Fund for segregating McCaw Hall operational expenses and earnings.

WHEREAS, the Pacific Northwest Ballet (Ballet) and the Seattle Opera (Opera) are world-renowned companies who have, since their inception, presented their art in the Seattle Center Opera House; and

WHEREAS, in recognition of the fact that the Opera House had significant seismic problems that would have required some \$82 million to repair and had generally outlived its useful life, on November 2, 1999, the voters of Seattle approved a special property tax levy lid lift to provide \$29,000,000 toward the renovation of the Opera House into the Marion Oliver McCaw Hall (McCaw Hall); and

WHEREAS, the City of Seattle requested the Ballet and the Opera to help raise significant private dollars for the new hall and, together with the Seattle Center Foundation, have committed to raising \$70 million for the project; and

WHEREAS, the status of McCaw Hall as an invaluable regional facility has been demonstrated during its 75-year history as the Civic Auditorium and Seattle Opera House and, during this transformation, by the private contributions from donors inside and outside the city limits; and

WHEREAS, McCaw Hall will afford the Ballet and Opera opportunities to present performances that will result in enhanced national and international visibility for the City of Seattle; and

WHEREAS, the presence of such esteemed arts organizations contributes substantially to the cultural and economic vibrancy of the City; and

WHEREAS, the Ballet and Opera are prepared to enter into a long-term relationship with the City in which all parties share in the risks and rewards of operating and maintaining McCaw Hall; and

WHEREAS, in entering a joint management agreement the City desires to have efficient and accurate accounting structures for the new McCaw Hall.

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**NOW THEREFORE,**

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

Section 1. The Seattle Center Director is authorized to execute, for and on behalf of The City of Seattle, an agreement with the Pacific Northwest Ballet Association and the Seattle Opera, substantially in the form of the agreement attached hereto and identified as "Agreement between the City of Seattle, Pacific Northwest Ballet Association and Seattle Opera Relating to the Use and Management of Marion Oliver McCaw Hall."

Section 2. The Director of Finance, in consultation with the Seattle Center Director, is authorized and directed to create a McCaw Hall Subfund, a subfund of the Seattle Center Fund, into which shall be deposited all revenues derived from the operation of McCaw Hall and from which the operating and maintenance expenses of the McCaw Hall shall be paid. Any unused funds, interest earnings or excess revenues above current operating expenses shall be retained in the McCaw Hall Subfund to pay future McCaw Hall maintenance or operating expenses. The Seattle Center Director is authorized to make transfers between the Seattle Center Fund and the McCaw Hall Subfund in order to make the necessary accounting transactions in accordance with the Agreement attached hereto. Any income derived from investment of balances in this subfund, shall be deposited into the subfund. The schedule of general fund contributions to the McCaw Hall subfund shall be approved by the Director of Finance.

Section 3. The City Council requests that the Seattle Center Director report to the Parks, Education and Libraries Committee or its functional successor at least once on the proposed terms and conditions of the individual facility use agreements with the Ballet and Opera before such agreements are executed, and periodically as requested by the Committee, on the overall financial condition and operations of McCaw Hall, including a list of public benefits.

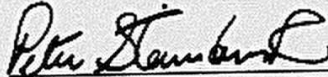
Section 4. Any act consistent with this authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

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Section 5. 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 23<sup>rd</sup> day of June, 2003, and signed by me in open session in authentication of its passage this 23<sup>rd</sup> day of June, 2003.



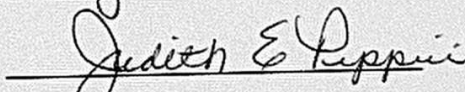
President of the City Council

Approved by me this 1 day of July, 2003.



Mayor

Filed by me this 2nd day of July, 2003.



City Clerk

(SEAL)

Attachment 1 – Agreement between the City of Seattle, Pacific Northwest Ballet Association and Seattle Opera Relating to the Use and Management of Marion Oliver McCaw Hall.

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## AGREEMENT

between the City of Seattle,  
Pacific Northwest Ballet Association and Seattle Opera  
Relating to the Use and Management of Marion Oliver McCaw Hall

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CITY OF SEATTLE  
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CITY CLERK  
Ord. 121206

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_ by and between The City of Seattle ("City"), a first class city of the State of Washington, the Pacific Northwest Ballet Association ("Ballet"), and Seattle Opera ("Opera"), both world-class Washington non-profit corporations.

### Background and Principles Underlying this Agreement:

1. The people of the City of Seattle are proud to support a flourishing and continually developing arts community.
2. The real property and improvements commonly known as the Opera House are owned by the City and operated, managed and maintained by Seattle Center. Two of the goals of Seattle Center are to be the "Cultural and Community Heart of the City", and the "Nation's Best Gathering Place."
3. The Ballet and the Opera, collectively referred to herein as "Resident Entities", have presented their art, since their inception, in the Opera House.
4. As of the year 2001, the Opera House was in poor condition and in need of major repairs to bring the building up to current codes (seismic and life safety). There was a value to the structure, even in its poor condition, in the range of \$70 million to \$100 million.
5. In 1997, the parties adopted an Action Plan to redevelop the Opera House into Marion Oliver McCaw Hall ("McCaw Hall"). In addition to the City's contribution of the existing structure, the resources needed to redevelop the existing Opera House building consist of 44% public funding and 56% private contributions. The Seattle Center Foundation and each of the Resident Entities share in the private fundraising.
6. In recognition of the amount of private funds raised by the Resident Entities and their commitment to future use of McCaw Hall, the City commits to continuing its financial support of McCaw Hall as set forth in this Agreement.
7. All parties understand and acknowledge that the Mayor and Seattle City Council must approve and authorize Seattle Center to enter into this agreement.
8. Seattle Center enters into this Agreement on the express condition that Seattle Center operate McCaw Hall principally as a performing arts facility

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for the Resident Entities as the principal and resident users, as described in the Action Plan, and for other users as the Resident Entities' schedules allow. McCaw Hall must first and foremost serve the operating needs of the Resident Entities.

9. The Resident Entities may provide leasehold improvements to McCaw Hall, which remain the property of the Resident Entities. Upon expiration of this Agreement, earlier termination, or should either of the Resident Entities dissolve, such leasehold improvements shall be distributed to the non-profit Seattle Center Foundation.
10. Seattle Center and the Resident Entities will develop a new management structure for McCaw Hall that will enhance the responsiveness of building management to the needs of the Resident Entities and their patrons, and ensure the long-term excellence of the facility. As an example, such structure will address maintenance, support, and staffing.
11. McCaw Hall shall be operated by the Seattle Center, on behalf of the City, under the oversight of a "Marion Oliver McCaw Hall Operating Board" (the "MOB"), consisting of one representative from Seattle Center and one representative from each Resident Entity. The MOB will have authority to develop and recommend policies, subject to Mayoral and City Council approval, when required, for:
  - Long Range Capital Improvements
  - Operating Levels of Service & Expenses
  - Staffing and Levels of Service including encouraging of women and minority business and equal opportunity goals
  - Operating Standards for McCaw Hall
  - Management of and recommendation for uses of any endowment funds (when such are received)
  - Management of fund balances (if any)
  - McCaw Hall Booking Policies

The Director will review the recommendations of the MOB in good faith, will not unreasonably withhold approval or recommendation of the same to the Mayor and City Council, and will respond in a manner that acknowledges and values the historical relationship between the City and the Resident Entities; that recognizes the world-class reputation of the Resident Entities and as such, their importance to a healthy arts community; and that honors the profound working relationship developed for the funding of the McCaw Hall renovation.

12. McCaw Hall shall be operated for the benefit of the three parties. As specified in Business Term 3, below, the City shall sustain its commitment

to support the operation of McCaw Hall. Any net revenue resulting from third-party use of McCaw Hall shall be applied toward operation and maintenance of McCaw Hall. The Resident Entities shall reimburse Seattle Center for those expenses, as determined by the MOB, that are not included in their annual use fees and are required for their respective productions.

13. The City intends to develop an asset preservation strategy and establish a capital reserve account for the purpose of restoring and refurbishing McCaw Hall to preserve the capital investment made therein.
14. Each Resident Entity commits to the use of McCaw Hall as its primary venue for the presentation of its regular season performances. The number of performances may vary from year to year. This commitment of the Resident Entities does not preclude performances by either of them in other venues, whether local, national or international.
15. In conformity with the booking policies adopted by the MOB, Resident Entities will share first priority in the use of each and all spaces in McCaw Hall and in booking dates; other users will be scheduled around use by the Resident Entities. Resident Entities recognize that Seattle Center will rent space in McCaw Hall in accordance with booking policies developed by the MOB when neither Resident Entity is using the particular space.

**The Business Terms of this Agreement are:**

**1. Condition and Delivery of McCaw Hall.**

Each Resident Entity agrees to accept McCaw Hall in its renovated condition, provided it is constructed substantially in conformance with the plans and specifications for the renovation approved by the Performance Hall Executive Leadership Team. The City shall enforce and pass through, as appropriate, to the Resident Entities liquidated damages proceeds from the construction contractor and collected by the City in the event McCaw Hall is not substantially complete by June 20, 2003, and financial loss is experienced by one or both of the Resident Entities.

**2. Agreement Term.**

The term of this Agreement is 25 years with two 15-year renewal options. Twenty-four months prior to the expiration of the original 25-year term and, again, 24 months prior to the expiration of the first extended term (if such option has been exercised), Seattle Center shall notify the Resident Entities of the impending termination of this Agreement. If either Resident Entity does not wish to extend the term of this Agreement, it shall so notify Seattle Center no less than

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eighteen months prior to such expiration date. If both Resident Entities fail to give such notice, this Agreement shall automatically be extended for 15 years. If either Resident Entity declines to extend the term of this Agreement, then this Agreement shall terminate five years from the next date for termination set forth herein. In such event, the City shall negotiate a new agreement to ensure that the remaining Resident Entity remains, to the extent practicable, in as nearly the same position with regard to McCaw Hall as it is under this Agreement.

**3. Operating Budget / Debt Service / Use Fees.**

**A. Operating Budget**

The annual Operating Budget for McCaw Hall shall include the operating expense line items identified on the attached Exhibit A. Seattle Center shall supply central services to McCaw Hall, including, among other things, event booking, marketing, computer services, fiscal services, Seattle Center administration and campus maintenance and landscaping services, but such services shall not be included in the annual operating budget.

**B. Use Fees**

Except as provided below in the case of an annual net operating loss, the City shall provide "Direct Operating Support" to McCaw Hall of not more than the following amounts:

YEAR	AMOUNT
2003 (6 months)	\$253,280
2004	\$442,208

Commencing January 2005, and in each January thereafter throughout the term of this Agreement, the City's Direct Operating Support shall be that amount set forth above for 2004 adjusted annually to reflect increases in the Seattle-Tacoma-Bremerton All-Urban Consumers CPI All Items (1982-84=Base).

The Resident Entities shall each pay the City an annual fee for the use of McCaw Hall in such amount as, when added to the City's Direct Operating Support and the other building revenues enumerated in Exhibit A, will project a balanced / break-even budget at each year end. In determining the amount of such fees, Seattle Center shall reasonably estimate the building revenues and expenses for each calendar year and propose use fees based on these estimates. The MOB will have an opportunity to review these estimates and agree to them. If, in any year, due to a reduction in performances by a Resident Entity or failure of the City to license a reasonable number of open dates to other users, it is anticipated that a

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Resident Entity's use fees will be greater than twenty-five percent (25%) of the entire Operating Budget for that year, and upon request of the MOB, the parties agree to re-open negotiation of this paragraph to explore and find a mutually acceptable method for distributing operating expenses.

If, in any year, the McCaw Hall operating revenues together with the City's Direct Operating Support exceed the building's operating expenses, such excess revenue may be applied to the McCaw Hall operating fund to reduce each of the Resident Entities' use fees for the following year by a total of 50% of the excess and to reduce the City's Direct Operating Support by 50% of the excess, or as otherwise determined by the MOB.

If, in any year, the McCaw Hall operating expenses exceed the building's operating revenues together with the City's Direct Operating Support, then the City's Direct Operating Support for the following year shall increase by 50% of the loss, and the Resident Entities shall pay the City during that year, for deposit into the Operating Fund, the remaining 50%, which shall be derived from (i) increased Resident Entity use fees; (ii) application of any of the operating fund balance, if one exists; and/or (iii) additional funding sources identified by the MOB.

Notwithstanding the foregoing, the Resident Entities shall not be required to compensate the City for any net operating loss if and to the extent such loss is attributable to a Force Majeure event. For purposes of this agreement, a "Force Majeure" event means an event outside the reasonable control of the parties or their agents.

**C. Debt Service Re-opener.**

The Resident Entities acknowledge that the City has put short-term financing in place in order to complete the construction of McCaw Hall, the costs of which are included in the total capital budget. It is recognized that this short-term financing must be retired, renewed, or replaced by July of 2005. The Resident Entities agree to work with the City to find solutions to any shortfall in capital funding that may exist at that time, including, but not limited to, and in priority order: 1) completion of full funding participation by State and County governments; and 2) exploration and identification of other public or private capital funding sources, excluding any use of City of Seattle General Fund.

The parties agree to renegotiate the specific terms of this Agreement that are affected by any capital funding shortfall and funding decisions prior to July of 2005. If the parties cannot reach agreement on a satisfactory mechanism for addressing such shortfall then the City or the Resident

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Entities shall have the right to terminate this agreement upon one year's written notice.

So long as debt service remains outstanding on the building, the City agrees that raising the full amount of funds originally anticipated from public sources will remain a top priority for the City's legislative agenda with the federal, state and county governments and the Resident Entities agree to participate in that process.

**4. McCaw Hall Funds / Separate Subfund.**

The City shall place all revenues derived from the operation of McCaw Hall into a separate, interest-bearing Subfund, and operational expenses for McCaw Hall shall be paid out of such Subfund.

**5. Uses of Space and Schedule.**

- The MOB will develop, for adoption by the City, policies for using and scheduling space in McCaw Hall that are clear and comprehensive. Resident Entities will have priority for use of each and every space in McCaw Hall and first choice of dates for using McCaw Hall. The MOB will develop a booking and priority policy that shall be appended to this Agreement without the need for formal amendment, which ensures these goals are met, and balances the needs of both Resident Entities.
- The agreed-upon use dates for each Resident Entity will be detailed in facility use agreements for each Resident Entity.
- In recognition of the City's Direct Operating Support to McCaw Hall, Seattle Center shall have the right to use McCaw Hall for the duration of the Seattle International Children's Festival, the Folklife Festival, Bumbershoot and for Seattle Center-produced community events, for up to fourteen (14) total days per year, with no payment of rent into the McCaw Hall operating budget, and with expenses accounted for outside of the McCaw Hall operating budget. Such use shall be in recognition of and subject to the McCaw Hall booking policies.

**6. Direct Event Expenses.**

- The MOB will develop and recommend to the Director direct event operating standards and a schedule of associated costs for the following ("Direct Event Expenses"):

Front of House staff  
Event Attendants  
Technical staff  
Equipment use  
Stage door security

The cost of standard stage or communications equipment, insurance, utilities, cleaning, maintenance, and repair are intentionally excluded from Direct Event Expenses.

- Each Resident Entity's Direct Event Expenses will be calculated on the services it actually uses, at staffing levels agreed upon by the MOB and as required to directly support each event.
- Seattle Center will develop an estimated annual operating budget in a detailed line item format, including estimated Direct Event Expenses, for the Resident Entities' next fiscal year for each Resident Entity, based upon projected usage of McCaw Hall by each Resident Entity and will submit copies to each Resident Entity and the MOB no later than October 1 of each year for their review and approval prior to the budget being presented to the City Council. In setting this time frame, the parties recognize the City's biennial budgeting process and the need to make budget projections two and one-half years prior to each season. Such projections submitted to the City Council will include estimated revenues and staff positions and total expenditure requests. The budget will include all use fees, labor rates and proposed equipment charges.
- Resident Entities shall pay their estimated Direct Event Expenses periodically as described in their respective facility use agreements. Within 30 days following each production, Seattle Center will provide a statement of actual Direct Event Expenses incurred for such production. On or before 90 days after the end of each calendar year, Seattle Center will deliver to each Resident Entity a certified statement of actual Direct Event Expenses showing expenses, dates, and rates on a detailed line item basis. If the annual statement shows an overpayment, it will be accompanied by a check in the amount of the overpayment, or be credited against the next fiscal year's advance payment; if the annual statement shows an underpayment by a Resident Entity, such Resident Entity shall pay Seattle Center the deficit within 30 days of receipt of the annual statement.

**7. Fixed Operating Costs, Operating Standards for McCaw Hall.**

As part of the City's budget process, with final authorization for staff positions and expenditures residing with the Mayor and the City Council, the MOB will

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recommend to the Director the levels of fixed facility staffing necessary for the management and operation of McCaw Hall. The MOB will also all recommend to the Director operating standards for McCaw Hall, which shall be reviewed annually with a mechanism for changes to be made if they are not satisfactory to the Resident Entities. The Operating Standards will apply to McCaw Hall for all uses.

Operating standards will be set for:

A. Front of House

- Maintenance and janitorial level of service
- Catering and concessions level of service and staffing
- Use of public areas (such as art in the lobby)
- Restrictions for non-resident users of the space
- Box office operations and staffing
- Storage spaces and usage
- Use of exterior signage as well as the ability to market and promote future shows in interior spaces

B. Backstage

- Maintenance and janitorial level of service
- Staffing levels, level of service, and standards of service
- Restrictions for non-resident uses of the space
- Storage spaces and usage
- House hang locations
- House inventory (such as equipment, soft goods, lighting)
- Resident Entities' exclusive use spaces and restrictions upon access to such spaces.

Other than reasonable repairs made to comply with these established levels of maintenance, Seattle Center may not make modifications, alterations or repairs which decrease the ability of either Resident Entity to operate within McCaw Hall or increase the cost of either Resident Entity's operations within McCaw Hall in any material respect without the approval of each Resident Entity, except that Seattle Center may make emergency repairs without prior approval, and shall inform the Resident Entities of such emergencies and the completed repairs within twenty-four (24) hours thereafter. All repairs will be scheduled to minimize interference with the Resident Entities' scheduled use of McCaw Hall.

The MOB shall be responsible for oversight and enforcement of the Operating Standards in accordance with all applicable laws.

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**8. Major Maintenance Responsibilities.**

Seattle Center shall be responsible for the maintenance, repair and replacement of the exterior of McCaw Hall including, but not limited to, roofs, walls, foundations, structures and structural elements, all areas immediately adjacent thereto and all campus systems serving the building so that they are in good working order and repair. At such time that any redevelopment of Mercer Arts Arena occurs, the City shall insure that any use or construction that could interfere or compete with the performance standards of McCaw Hall shall be taken under consideration and mitigated in coordination with the Resident Entities.

**9. Capital Improvements Reserve Fund.**

It is the intent of the parties to this Agreement to create a fund, with annual contributions, for the purpose of implementing major maintenance and preservation of this premier City asset. The City's contribution to this fund shall be consistent with any adopted policies regarding asset preservation. Any party may propose capital improvements at any time. The MOB will recommend all capital improvements to be made to McCaw Hall. Seattle Center will submit to the MOB in writing, and in reasonable detail, cost estimates and proposed work schedules for any capital improvements under consideration by the MOB. Approved capital improvements will be made as funds are available. Any capital projects funded from this fund shall be subject to Seattle Center's reasonable project management charges.

**10. Equipment Rentals and Equipment Replacement Account.**

The MOB will recommend a long-range replacement schedule based on the useful lives of the theatrical and other equipment. Resident Entities will not pay equipment rental fees for each individual event. Seattle Center will, however, charge third-party users for equipment rented whenever such charge can be included as part of the negotiations to obtain an event. Any third-party rental fees will be held in the McCaw Hall Subfund, accounted for separately from other revenues, and used solely for the purchase of new or replacement theatrical and other equipment.

**11. Special Events.**

When a Resident Entity is not using the auditorium, and subject to the established booking policies, each Resident Entity will be able to use portions of McCaw Hall outside the auditorium including, but not limited to, lobbies, catering areas, lecture space(s), donor rooms, rehearsal spaces, and box office, for use fees to be established for each specific use. Otherwise, all such spaces shall be

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included with the use of the auditorium, if needed. The gift shop is solely for the use of the Resident Entities and is not subject to any separate use fee.

**12. Service Providers.**

The MOB will recommend to the Director the ticket providers, concession vendors and caterers for McCaw Hall, and no service provider for McCaw Hall shall be selected by the Director who has been disapproved by either Resident Entity, in its reasonable discretion. The MOB will also recommend the terms, levels of service, cost structure and performance standards for the ticket providers, concession vendors, caterers and all other service providers to McCaw Hall.

**13. Allocation of Liability.**

Each Resident Entity will be liable only for its own acts or omissions.

**14. Further Agreements.**

In consultation with the City's Law Department, the Director is authorized to enter into individual facility use agreements with each of the Resident Entities, that are consistent with this Agreement and which establish other specific terms and conditions necessary for the use of McCaw Hall, including such items as dates and times of usage, annual use fees, Insurance, Indemnification, and damage and destruction.

SEATTLE CENTER

PACIFIC NORTHWEST BALLET ASSN.

By \_\_\_\_\_

By \_\_\_\_\_

Virginia Anderson, Director

SEATTLE OPERA

By \_\_\_\_\_

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EXHIBIT A

Operating Budget Line Item Detail

**REVENUES**

Rent from non-Resident Entity Users  
    McCaw Hall  
    Lecture Hall  
    Front of House Spaces  
Reimbursed Labor  
    Non-Resident Entity Users  
    Resident Entities  
Food and Beverage  
    Concessions  
    Catering  
Ancillary Revenues from non-Resident Entity Users  
    Equipment Rental (to replacement fund)  
    Ticketing Revenues  
    Program / Novelty Revenues  
Resident Group User Fees for operating expenses  
    Opera  
    Ballet  
Annual City of Seattle Direct Operating Support  
Other

**EXPENSES**

Direct Event Labor: Admissions, Stage, Sound, Event Security, Event Attendants  
    Non-Resident Entity Events  
    Resident Entity Events  
Utilities  
    Electricity  
    Water / Sewage  
    Garbage / Recycling  
    Gas Allocation (Central Plant)  
Direct Facility Fixed Costs  
    Janitorial  
    Maintenance: Laborers, Electricians, Carpenters, Engineers, Plumbers, Painters, Metal Fabricators  
    Management; administrative staff permanently assigned to building  
    Technical Staff: Stage, sound  
    Stage Door Security  
Equipment Replacement (from replacement fund)  
Elevator Maintenance  
Kitchen Equipment Loan Payments

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## AGREEMENT

between the City of Seattle,  
Pacific Northwest Ballet Association and Seattle Opera  
Relating to the Use and Management of Marion Oliver McCaw Hall

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### Background and Principles Underlying this Agreement:

1. The people of the City of Seattle are proud to support a flourishing and continually developing arts community.
2. The real property and improvements commonly known as the Opera House are owned by the City and operated, managed and maintained by Seattle Center. Two of the goals of Seattle Center are to be the "Cultural and Community Heart of the City", and the "Nation's Best Gathering Place."
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9. The Resident Entities may provide leasehold improvements to McCaw Hall, which remain the property of the Resident Entities. Upon expiration of this Agreement, earlier termination, or should either of the Resident Entities dissolve, such leasehold improvements shall be distributed to the non-profit Seattle Center Foundation.
10. Seattle Center and the Resident Entities will develop a new management structure for McCaw Hall that will enhance the responsiveness of building management to the needs of the Resident Entities and their patrons, and ensure the long-term excellence of the facility. As an example, such structure will address maintenance, support, and staffing.
11. McCaw Hall shall be operated by the Seattle Center, on behalf of the City, under the oversight of a "Marion Oliver McCaw Hall Operating Board" (the "MOB"), consisting of one representative from Seattle Center and one representative from each Resident Entity. The MOB will have authority to develop and recommend policies, subject to Mayoral and City Council approval, when required, for:
  - Long Range Capital Improvements
  - Operating Levels of Service & Expenses
  - Staffing and Levels of Service including encouraging use of women and minority disadvantaged businesses, and equal employment opportunity goals
  - Operating Standards for McCaw Hall
  - Management of and recommendation for uses of any endowment funds (when such are received)
  - Management of fund balances (if any)
  - McCaw Hall Booking Policies

The Director will review the recommendations of the MOB in good faith, will not unreasonably withhold approval or recommendation of the same to the Mayor and City Council, and will respond in a manner that acknowledges and values the historical relationship between the City and the Resident Entities; that recognizes the world-class reputation of the Resident Entities and as such, their importance to a healthy arts community; and that honors the profound working relationship developed for the funding of the McCaw Hall renovation.

12. McCaw Hall shall be operated for the benefit of the three parties. As specified in Business Term 3, below, the City shall sustain its commitment to support the operation of McCaw Hall. Any net revenue resulting from

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third-party use of McCaw Hall shall be applied toward operation and maintenance of McCaw Hall. The Resident Entities shall reimburse Seattle Center for those expenses, as determined by the MOB, that are not included in their annual use fees and are required for their respective productions.

13. The City intends to develop an asset preservation strategy and establish a capital reserve account for the purpose of restoring and refurbishing McCaw Hall to preserve the capital investment made therein.
14. Each Resident Entity commits to the use of McCaw Hall as its primary venue for the presentation of its regular season performances. The number of performances may vary from year to year. This commitment of the Resident Entities does not preclude performances by either of them in other venues, whether local, national or international.
15. In conformity with the booking policies adopted by the MOB, Resident Entities will share first priority in the use of each and all spaces in McCaw Hall and in booking dates; other users will be scheduled around use by the Resident Entities. Resident Entities recognize that Seattle Center will rent space in McCaw Hall in accordance with booking policies developed by the MOB when neither Resident Entity is using the particular space.

**The Business Terms of this Agreement are:**

**1. Condition and Delivery of McCaw Hall.**

Each Resident Entity agrees to accept McCaw Hall in its renovated condition, provided it is constructed substantially in conformance with the plans and specifications for the renovation approved by the Performance Hall Executive Leadership Team. The City shall enforce and pass through, as appropriate, to the Resident Entities liquidated damages proceeds from the construction contractor and collected by the City in the event McCaw Hall is not substantially complete by June 20, 2003, and financial loss is experienced by one or both of the Resident Entities.

**2. Agreement Term.**

The term of this Agreement is 25 years with two 15-year renewal options. Twenty-four months prior to the expiration of the original 25-year term and, again, 24 months prior to the expiration of the first extended term (if such option has been exercised), Seattle Center shall notify the Resident Entities of the impending termination of this Agreement. If either Resident Entity does not wish to extend the term of this Agreement, it shall so notify Seattle Center no less than eighteen months prior to such expiration date. If both Resident Entities fail to

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give such notice, this Agreement shall automatically be extended for 15 years. If either Resident Entity declines to extend the term of this Agreement, then this Agreement shall terminate five years from the next date for termination set forth herein. In such event, the City shall negotiate a new agreement to ensure that the remaining Resident Entity remains, to the extent practicable, in as nearly the same position with regard to McCaw Hall as it is under this Agreement.

**3. Operating Budget / Debt Service / Use Fees.**

**A. Operating Budget**

The annual Operating Budget for McCaw Hall shall include the operating expense line items identified on the attached Exhibit A. Seattle Center shall supply central services to McCaw Hall, including, among other things, event booking, marketing, computer services, fiscal services, Seattle Center administration and campus maintenance and landscaping services, but such services shall not be included in the annual operating budget.

**B. Use Fees**

Except as provided below in the case of an annual net operating loss, the City shall provide "Direct Operating Support" to McCaw Hall of not more than the following amounts:

YEAR	AMOUNT
2003 (6 months)	\$253,280
2004	\$442,208

Commencing January 2005, and in each January thereafter throughout the term of this Agreement, the City's Direct Operating Support shall be that amount set forth above for 2004 adjusted annually to reflect increases in the Seattle-Tacoma-Bremerton All-Urban Consumers CPI All Items (1982-84=Base).

The Resident Entities shall each pay the City an annual fee for the use of McCaw Hall in such amount as, when added to the City's Direct Operating Support and the other building revenues enumerated in Exhibit A, will project a balanced / break-even budget at each year end. In determining the amount of such fees, Seattle Center shall reasonably estimate the building revenues and expenses for each calendar year and propose use fees based on these estimates. The MOB will have an opportunity to review these estimates and agree to them. If, in any year, due to a reduction in performances by a Resident Entity or failure of the City to license a reasonable number of open dates to other users, it is anticipated that a Resident Entity's use fees will be greater than twenty-five percent (25%) of

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the entire Operating Budget for that year, and upon request of the MOB, the parties agree to re-open negotiation of this paragraph to explore and find a mutually acceptable method for distributing operating expenses.

If, in any year, the McCaw Hall operating revenues together with the City's Direct Operating Support exceed the building's operating expenses, such excess revenue shall be applied to the McCaw Hall operating fund to reduce each of the Resident Entities' use fees for the following year by 50% of the excess and to reduce the City's Direct Operating Support by 50% of the excess.

If, in any year, the McCaw Hall operating expenses exceed the building's operating revenues together with the City's Direct Operating Support, then the City's Direct Operating Support for the following year shall increase by 50% of the loss, and the Resident Entities shall pay the City during that year, for deposit into the Operating Fund, the remaining 50%, which shall be derived from (i) increased Resident Entity use fees; (ii) application of any of the operating fund balance, if one exists; and/or (iii) additional funding sources identified by the MOB.

Notwithstanding the foregoing, the Resident Entities shall not be required to compensate the City for any net operating loss if and to the extent such loss is attributable to a Force Majeure event. For purposes of this agreement, a "Force Majeure" event means an event outside the reasonable control of the parties or their agents.

**C. Debt Service Re-opener.**

The Resident Entities acknowledge that the City has put short-term financing in place in order to complete the construction of McCaw Hall, the costs of which are included in the total capital budget. It is recognized that this short-term financing must be retired, renewed, or replaced by July of 2005. The Resident Entities agree to work with the City to find solutions to any shortfall in capital funding that may exist at that time, including, but not limited to, and in priority order: 1) completion of full funding participation by State and County governments; and 2) exploration and identification of other public or private capital funding sources, excluding any use of City of Seattle General Fund.

The parties agree to renegotiate the specific terms of this Agreement that are affected by any capital funding shortfall and funding decisions prior to July of 2005. If the parties cannot reach agreement on a satisfactory mechanism for addressing such shortfall then the City or the Resident Entities shall have the right to terminate this agreement upon one year's written notice.

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So long as debt service remains outstanding on the building, the City agrees that raising the full amount of funds originally anticipated from public sources will remain a top priority for the City's legislative agenda with the federal, state and county governments and the Resident Entities agree to participate in that process.

**4. McCaw Hall Funds / Separate Subfund.**

The City shall place all revenues derived from the operation of McCaw Hall into a separate, interest-bearing Subfund, and operational expenses for McCaw Hall shall be paid out of such Subfund.

**5. Uses of Space and Schedule.**

- The MOB will develop, for adoption by the City, policies for using and scheduling space in McCaw Hall that are clear and comprehensive. Resident Entities will have priority for use of each and every space in McCaw Hall and first choice of dates for using McCaw Hall. The MOB will develop a booking and priority policy that shall be appended to this Agreement without the need for formal amendment, which ensures these goals are met, and balances the needs of both Resident Entities.
- The agreed-upon use dates for each Resident Entity will be detailed in facility use agreements for each Resident Entity.
- In recognition of the City's Direct Operating Support to McCaw Hall, Seattle Center shall have the right to use McCaw Hall for the duration of the Seattle International Children's Festival, the Folklife Festival, Bumbershoot and for Seattle Center-produced community events, for up to fourteen (14) total days per year, with no payment of rent into the McCaw Hall operating budget, and with expenses accounted for outside of the McCaw Hall operating budget. Such use shall be in recognition of and subject to the McCaw Hall booking policies.

**6. Direct Event Expenses.**

- The MOB will develop and recommend to the Director direct event operating standards and a schedule of associated costs for the following ("Direct Event Expenses"):

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Front of House staff  
Event Attendants  
Technical staff  
Equipment use  
Stage door security

The cost of standard stage or communications equipment, insurance, utilities, cleaning, maintenance, and repair are intentionally excluded from Direct Event Expenses.

- Each Resident Entity's Direct Event Expenses will be calculated on the services it actually uses, at staffing levels agreed upon by the MOB and as required to directly support each event.
- Seattle Center will develop an estimated annual operating budget in a detailed line item format, including estimated Direct Event Expenses, for the Resident Entities' next fiscal year for each Resident Entity, based upon projected usage of McCaw Hall by each Resident Entity and will submit copies to each Resident Entity and the MOB no later than October 1 of each year for their review and approval prior to the budget being presented to the City Council. In setting this time frame, the parties recognize the City's biennial budgeting process and the need to make budget projections two and one-half years prior to each season. Such projections submitted to the City Council will include estimated revenues and staff positions and total expenditure requests. The budget will include all use fees, labor rates and proposed equipment charges.
- Resident Entities shall pay their estimated Direct Event Expenses periodically as described in their respective facility use agreements. Within 30 days following each production, Seattle Center will provide a statement of actual Direct Event Expenses incurred for such production. On or before 90 days after the end of each calendar year, Seattle Center will deliver to each Resident Entity a certified statement of actual Direct Event Expenses showing expenses, dates, and rates on a detailed line item basis. If the annual statement shows an overpayment, it will be accompanied by a check in the amount of the overpayment, or be credited against the next fiscal year's advance payment; if the annual statement shows an underpayment by a Resident Entity, such Resident Entity shall pay Seattle Center the deficit within 30 days of receipt of the annual statement.

**7. Fixed Operating Costs, Operating Standards for McCaw Hall.**

As part of the City's budget process, with final authorization for staff positions and expenditures residing with the Mayor and the City Council, the MOB will

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recommend to the Director the levels of fixed facility staffing necessary for the management and operation of McCaw Hall. The MOB will also all recommend to the Director operating standards for McCaw Hall, which shall be reviewed annually with a mechanism for changes to be made if they are not satisfactory to the Resident Entities. The Operating Standards will apply to McCaw Hall for all uses.

Operating standards will be set for:

A. Front of House

- Maintenance and janitorial level of service
- Catering and concessions level of service and staffing
- Use of public areas (such as art in the lobby)
- Restrictions for non-resident users of the space
- Box office operations and staffing
- Storage spaces and usage
- Use of exterior signage as well as the ability to market and promote future shows in interior spaces

B. Backstage

- Maintenance and janitorial level of service
- Staffing levels, level of service, and standards of service
- Restrictions for non-resident uses of the space
- Storage spaces and usage
- House hang locations
- House inventory (such as equipment, soft goods, lighting)
- Resident Entities' exclusive use spaces and restrictions upon access to such spaces.

Other than reasonable repairs made to comply with these established levels of maintenance, Seattle Center may not make modifications, alterations or repairs which decrease the ability of either Resident Entity to operate within McCaw Hall or increase the cost of either Resident Entity's operations within McCaw Hall in any material respect without the approval of each Resident Entity, except that Seattle Center may make emergency repairs without prior approval, and shall inform the Resident Entities of such emergencies and the completed repairs within twenty-four (24) hours thereafter. All repairs will be scheduled to minimize interference with the Resident Entities' scheduled use of McCaw Hall.

The MOB shall be responsible for oversight and enforcement of the Operating Standards in accordance with all applicable laws.

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**8. Major Maintenance Responsibilities.**

Seattle Center shall be responsible for the maintenance, repair and replacement of the exterior of McCaw Hall including, but not limited to, roofs, walls, foundations, structures and structural elements, all areas immediately adjacent thereto and all campus systems serving the building so that they are in good working order and repair. At such time that any redevelopment of Mercer Arts Arena occurs, the City shall insure that any use or construction that could interfere or compete with the performance standards of McCaw Hall shall be taken under consideration and mitigated in coordination with the Resident Entities.

**9. Capital Improvements Reserve Fund.**

It is the intent of the parties to this Agreement to create a fund, with annual contributions, for the purpose of implementing major maintenance and preservation of this premier City asset. The City's contribution to this fund shall be consistent with any adopted policies regarding asset preservation. Any party may propose capital improvements at any time. The MOB will recommend all capital improvements to be made to McCaw Hall. Seattle Center will submit to the MOB in writing, and in reasonable detail, cost estimates and proposed work schedules for any capital improvements under consideration by the MOB. Approved capital improvements will be made as funds are available. Any capital projects funded from this fund shall be subject to Seattle Center's reasonable project management charges.

**10. Equipment Rentals and Equipment Replacement Account.**

The MOB will recommend a long-range replacement schedule based on the useful lives of the theatrical and other equipment. Resident Entities will not pay equipment rental fees for each individual event. Seattle Center will, however, charge third-party users for equipment rented whenever such charge can be included as part of the negotiations to obtain an event. Any third-party rental fees will be held in the McCaw Hall Subfund, accounted for separately from other revenues, and used solely for the purchase of new or replacement theatrical and other equipment.

**11. Special Events.**

When a Resident Entity is not using the auditorium, and subject to the established booking policies, each Resident Entity will be able to use portions of McCaw Hall outside the auditorium including, but not limited to, lobbies, catering areas, lecture space(s), donor rooms, rehearsal spaces, and box office, for use fees to be established for each specific use. Otherwise, all such spaces shall be

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included with the use of the auditorium, if needed. The gift shop is solely for the use of the Resident Entities and is not subject to any separate use fee.

**12. Service Providers.**

The MOB will recommend to the Director the ticket providers, concession vendors and caterers for McCaw Hall, and no service provider for McCaw Hall shall be selected by the Director who has been disapproved by either Resident Entity, in its reasonable discretion. The MOB will also recommend the terms, levels of service, cost structure and performance standards for the ticket providers, concession vendors, caterers and all other service providers to McCaw Hall.

**13. Allocation of Liability.**

Each Resident Entity will be liable only for its own acts or omissions.

**14. Further Agreements.**

In consultation with the City's Law Department, the Director is authorized to enter into individual facility use agreements with each of the Resident Entities, that are consistent with this Agreement and which establish other specific terms and conditions necessary for the use of McCaw Hall, including such items as dates and times of usage, annual use fees, Insurance, Indemnification, and damage and destruction.

SEATTLE CENTER

PACIFIC NORTHWEST BALLET ASSN.

By \_\_\_\_\_  
Virginia Anderson, Director

By \_\_\_\_\_

SEATTLE OPERA

By \_\_\_\_\_

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EXHIBIT A

Operating Budget Line Item Detail

**REVENUES**

Rent from non-Resident Entity Users  
    McCaw Hall  
    Lecture Hall  
    Front of House Spaces  
Reimbursed Labor  
    Non-Resident Entity Users  
    Resident Entities  
Food and Beverage  
    Concessions  
    Catering  
Ancillary Revenues from non-Resident Entity Users  
    Equipment Rental (to replacement fund)  
    Ticketing Revenues  
    Program / Novelty Revenues  
Resident Group User Fees for operating expenses  
    Opera  
    Ballet  
Annual City of Seattle Direct Operating Support  
Other

**EXPENSES**

Direct Event Labor: Admissions, Stage, Sound, Event Security, Event Attendants  
    Non-Resident Entity Events  
    Resident Entity Events  
Utilities  
    Electricity  
    Water / Sewage  
    Garbage / Recycling  
    Gas Allocation (Central Plant)  
Direct Facility Fixed Costs  
    Janitorial  
    Maintenance: Laborers, Electricians, Carpenters, Engineers, Plumbers, Painters, Metal Fabricators  
    Management; administrative staff permanently assigned to building  
    Technical Staff: Stage, sound  
    Stage Door Security  
Equipment Replacement (from replacement fund)  
Elevator Maintenance  
Kitchen Equipment Loan Payments

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**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Legislative	G. Saroja Reddy/4-8147	Helen Welborn/3-7884

**Legislation Title:** AN ORDINANCE relating to the Seattle Center Department; authorizing the Seattle Center Director to execute an Agreement between the City of Seattle, the Pacific Northwest Ballet Association and the Seattle Opera relating to the use and management of Marion Oliver McCaw Hall; and creating a new McCaw Hall Subfund of the Seattle Center Fund for segregating McCaw Hall operational expenses and earnings.

• **Summary of the Legislation:**

This legislation authorizes the Seattle Center Director to execute, for and on behalf of The City of Seattle, an agreement with the Pacific Northwest Ballet Association and the Seattle Opera. The proposed Agreement establishes a set of shared financial incentives on the part of the three parties to the Agreement (the City, The Seattle Opera, and the Pacific Northwest Ballet.) The term of the Agreement is twenty-five years with two 15-year renewal options.

The Director of Finance, in consultation with the Seattle Center Director, is authorized and directed to create a McCaw Hall Subfund, a subfund of the Seattle Center Fund, into which shall be deposited all revenues derived from the operation of McCaw Hall and from which the operating and maintenance expenses of the McCaw Hall shall be paid. Any unused funds, interest earnings or excess revenues above current operating expenses shall be retained in the McCaw Hall Subfund to pay future McCaw Hall maintenance or operating expenses. The Seattle Center Director is authorized to make transfers between the Seattle Center Fund and the McCaw Hall Subfund; this provides technical flexibility to correct accounting transactions in accordance with the Agreement attached to the legislation. Any income derived from investment of balances in this subfund, shall be deposited into the subfund. The schedule of general fund contributions to the McCaw Hall subfund shall be approved by the Director of Finance.

**Reporting Requirements** - The City Council requests that the Seattle Center Director report to the Parks, Education and Libraries Committee or its functional successor at least once on the proposed terms and conditions of the individual facility use agreements with the Ballet and Opera before such agreements are executed, and periodically as requested by the Committee, on the overall financial condition and operations of McCaw Hall, including a list of public benefits.



- **Background:** (Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):

In recognition of the fact that the Opera House had significant seismic problems that would have required some \$82 million to repair and had generally outlived its useful life, on November 2, 1999, the voters of Seattle approved a special property tax levy lid lift to provide \$29 million toward the renovation of the Opera House into the Marion Oliver McCaw Hall (McCaw Hall). Together with the Seattle Center Foundation, the Opera and the Ballet have committed to raising \$70 million for the project.

In 1997, the parties adopted an Action Plan to redevelop the Opera House into Marion Oliver McCaw Hall ("McCaw Hall"). In addition to the City's contribution of the existing structure, the resources needed to redevelop the existing Opera House building consist of 44% public funding and 56% private contributions. The Seattle Center Foundation and each of the Resident Entities share in the private fundraising.

Indeed, that McCaw Hall is an invaluable regional facility has been demonstrated during its 75-year history as the Civic Auditorium and Seattle Opera House and, during this transformation, by the private contributions from donors inside and outside the city limits. McCaw Hall will afford the Ballet and Opera opportunities to present performances that will result in enhanced national and international visibility for the City of Seattle. The presence of such esteemed arts organizations contributes substantially to the cultural and economic vibrancy of the City.

- Please check one of the following:

☐ **This legislation does not have any financial implications.** (Stop here and delete the remainder of this document prior to saving and printing.)

☒ **This legislation has financial implications.** (Please complete all relevant sections that follow.)

**Appropriations (in \$1,000s):** (Please only reflect the dollar amount actually appropriated by this legislation.) This legislation does not appropriate any revenues or provide expenditure authority. The 2003 Adopted Budget and the 2004 Endorsed Budget included approximately \$253k and \$442k of additional General Fund to Seattle Center respectively. These funds are appropriated in the Cultural and Community Heart of the City budget control level.

Fund Name and Number	Department	Budget Control Level*	2003 Appropriation	2004 Anticipated Appropriation
			N/A	N/A
<b>TOTAL</b>				

**Notes:**

**Anticipated Revenue/Reimbursement (in \$1,000s) Resulting From This Legislation:**

Fund Name and Number	Department	Revenue Source	2003 Revenue	2004 Revenue
<b>TOTAL</b>				

*Notes: This legislation does not appropriate any revenues or provide expenditure authority. The 2003 Adopted Budget and the 2004 Endorsed Budget included \$1.3 million and \$2.42 million of additional revenue to Seattle Center respectively. These revenues are currently being deposited in the Seattle Center Fund.*

**Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE Impact: NA. FTE changes associated with McCaw Hall were included in the 2003 Adopted Budget.**

Position Title*	Part-Time/ Full Time	2003 Positions	2003 FTE	2004 Positions**	2004 FTE**
<b>TOTAL</b>					

- **Fund Name and Number:** McCaw Hall Subfund of the Seattle Center Fund
- **Department:** Seattle Center

\* List each position separately

\*\* 2004 positions and FTE are total 2004 position changes resulting from this legislation, not incremental changes from 2003.

- **Do positions sunset in the future?** (If yes, identify sunset date):

**Spending/Cash Flow (in \$1,000s):** (Please complete this section only in those cases where part or all of the funds will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects.)

Fund Name and Number	Department	Budget Control Level*	2003 Expenditures	2004 Anticipated Expenditures
<b>TOTAL</b>				

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*\* This is line of business for operating budgets, and program or project for capital improvements*

**Notes:**

- **What is the financial cost of not implementing the legislation?** *(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)*

Without this legislation and Agreement, the City would continue operating the facility without the financial responsibility of the facility's two major tenants. In addition, the proposed Agreement establishes a set of shared financial incentives on the part of the three parties to the Agreement (the City, The Seattle Opera, and the Pacific Northwest Ballet.). The establishment of shared risks and rewards is essential to maintaining successful operations.

**What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

The alternative would be to continue to operate with a year-to-year lease arrangement that provides a greater level of risk to all parties (the City, The Seattle Opera, and the Pacific Northwest Ballet.). Ultimately, because the City owns the facility, the risk to the City could be unrecovered operations and maintenance costs.

- **Is the legislation subject to public hearing requirements?** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No

- **Other Issues** *(including long-term implications of the legislation):*

The Agreement establishes a shared approach to management of operations and maintenance of the McCaw Hall for the next 25 years between the two resident organizations (tenants) and the City. The agreement continues the past practice of providing a base level of City support for the McCaw Hall. The amount of annual support has been "capped" at \$442,208 plus inflation (CPI). The number is derived from a detailed review of the financial performance of the Seattle Opera House direct expenses in FY 2000, the last full year of operation. In that year the Opera House direct expenses

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exceeded revenues by approximately \$176,900. This was the equivalent of \$198,500 in 2004 dollars. Projections for the new facility showed that McCaw Hall direct operating expenses exceeded revenues by approximately \$253,000 in 2003 (a partial year of operations) and \$448,500 in 2004, the first full year of operation. The added level of support reflects the costs related to a 100,000 square feet increase in size (including the Kreielsheimer Promenade, and the Lecture Hall), and the City's increasing costs associated with labor and utilities. The needed level of support has already been included in the Center's 2003 Adopted and 2004 Endorsed Budgets. Beyond the base level of support, the proposed MOU calls for all other McCaw Hall direct operating expenses to be offset by revenues. Any additional cost/revenue imbalance will be the shared responsibility of the Seattle Center, Ballet and Opera.

The following is a summary of the major features of the proposed Agreement.

**General Terms of the Agreement:**

1. The Seattle Center will operate McCaw Hall principally as a performing arts facility for the Resident Entities as the principal and resident users, as described in the Action Plan, and for other users as the Resident Entities' schedules allow.
2. Each Resident Entity commits to the use of McCaw Hall as its primary venue for the presentation of its regular season performances.
3. The term of the Agreement is 25 years with two 15-year renewal options. If either Resident Entity declines to extend the term of the Agreement, the Agreement shall terminate five years from the next date for termination set forth herein.

**Responsibilities**

1. A "Marion Oliver McCaw Hall Operating Board" (the "MOB") is created that consists of one representative from Seattle Center and one representative from each Resident Entity. The MOB will have authority to develop and recommend policies, subject to Mayoral and City Council approval, when required, for: financial management, operations, staffing levels, and booking policies.

**Financial Terms and Commitments**

1. City Direct Operating Support - The City shall provide "Direct Operating Support" of not more than the \$253,280 for a partial year of operations in 2003 and \$442,208 for a full year of operations in 2004. Commencing January 2005, this amount shall be adjusted annually to reflect increases in the Seattle-Tacoma-Bremerton All-Urban Consumers CPI All Items (1982-84=Base).

2. **Annual Use Fee** - The Resident Entities shall each pay the City an annual fee for the use of McCaw Hall in such amount as, when added to the City's Direct Operating Support and the other building revenues will project a balanced / break-even budget at each year end. If, in any year, it is anticipated that a Resident Entity's use fees will be greater than twenty-five percent (25%) of the entire Operating Budget for that year, the parties agree to re-open negotiation of this paragraph to explore and find a mutually acceptable method for distributing operating expenses.
3. **Risk and Reward Sharing** - If, in any year, the McCaw Hall operating revenues together with the City's Direct Operating Support exceed the building's operating expenses, such excess revenue shall be applied to the McCaw Hall operating fund to reduce each of the Resident Entities' use fees for the following year by 50% of the excess and to reduce the City's Direct Operating Support by 50% of the excess. If, in any year, the McCaw Hall operating expenses exceed the building's operating revenues together with the City's Direct Operating Support, then the City's Direct Operating Support for the following year shall increase by 50% of the loss, and the Resident Entities shall pay the City during that year, for deposit into the McCaw Hall Subfund, the remaining 50%, which shall be derived from (i) increased Resident Entity use fees; (ii) application of any of the operating fund balance, if one exists; and/or (iii) additional funding sources identified by the MOB.
4. **Debt Service Re-opener** - The parties agree to renegotiate the specific terms of this Agreement that are affected by any capital funding shortfall and funding decisions prior to July of 2005. If the parties cannot reach agreement on a satisfactory mechanism for addressing such shortfall then the City or the Resident Entities shall have the right to terminate this agreement upon one year's written notice.
5. The Seattle Center shall have the right to use McCaw Hall for the duration of the Seattle International Children's Festival, the Folklife Festival, Bumbershoot and for Seattle Center-produced community events, for up to fourteen (14) total days per year, with no payment of rent into the McCaw Hall operating budget, and with expenses accounted for outside of the McCaw Hall operating budget.

#### **Major Maintenance Responsibilities**

1. Seattle Center shall be responsible for the maintenance, repair and replacement of the exterior of McCaw Hall (e.g., roofs, walls, foundations, structures and structural elements).
2. At such time that any redevelopment of Mercer Arts Arena occurs, the City shall insure that any use or construction that could interfere or compete with the performance standards of McCaw Hall shall be taken under consideration and mitigated in coordination with the Resident Entities.

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6/18/03):  
McCaw Hall Agreement:  
Version # 1:

3. It is the intent to create a fund, with annual contributions, for the purpose of implementing major maintenance and preservation of this premier City asset. The City's contribution to this fund shall be consistent with any adopted policies regarding asset preservation.

**Leasehold Improvements**

1. The Resident Entities may provide leasehold improvements to McCaw Hall, which remain the property of the Resident Entities. Upon expiration of this Agreement, earlier termination, or should either of the Resident Entities dissolve, such leasehold improvements shall be distributed to the non-profit Seattle Center Foundation.

**Further Agreements.**

1. In consultation with the City's Law Department, the Director is authorized to enter into individual facility use agreements with each of the Resident Entities, that are consistent with the Agreement and which establish other specific terms and conditions necessary for the use of McCaw Hall, including such items as dates and times of usage, annual use fees, Insurance, Indemnification, and damage and destruction.

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CITY OF SEATTLE  
03 SEP 10 PM 3:19  
CITY CLERK

City of Seattle  
GREGORY J. NICKELS, Mayor  
Seattle Center  
VIRGINIA ANDERSON, Director

September 9, 2003

Home to:

**THE ARTS**

Book-It Repertory Theatre  
Center House Theatre  
Intiman Theatre  
KCTS/Channel 9  
Northwest Craft Center  
Pacific Northwest Ballet  
Pottery Northwest  
Seattle Center Academy  
Seattle Children's Theatre  
Seattle Opera  
Seattle Repertory Theatre  
Seattle Shakespeare Company  
Theatre4  
Theatre Puget Sound

**SPORTS TEAMS**

Seattle Storm  
Seattle SuperSonics  
Seattle Thunderbirds

**ATTRACTIONS**

Experience Music Project  
Fun Forest Amusement Park  
International Fountain  
Pacific Science Center  
Seattle Center House  
Seattle Center Monorail  
Space Needle  
The Children's Museum

**FESTIVALS**

Bite of Seattle  
Bumbershoot  
FestAl Cultural Festivals  
Northwest Folklife Festival  
Seattle International  
Children's Festival  
Whirligig  
Winterfest

Accommodations for  
people with disabilities  
provided on request.

City Clerk's Office

Please find attached an Agreement between The City of Seattle, Pacific Northwest Ballet Association and Seattle Opera. Relating to the Use and Management of Marion Oliver McCaw Hall.

The ordinance number for the Agreement is 121206.

Thank you.



FILED  
CITY OF SEATTLE

03 SEP 10 PM 3:19

# **AGREEMENT**

between the City of Seattle, CITY CLERK  
Pacific Northwest Ballet Association and Seattle Opera  
Relating to the Use and Management of Marion Oliver McCaw Hall

This Agreement is entered into this 9th day of Sept, 2003 by and between  
The City of Seattle ("City"), a first class city of the State of Washington, the  
Pacific Northwest Ballet Association ("Ballet"), and Seattle Opera ("Opera"), both  
world-class Washington non-profit corporations.

## **Background and Principles Underlying this Agreement:**

1. The people of the City of Seattle are proud to support a flourishing and continually developing arts community.
2. The real property and improvements commonly known as the Opera House are owned by the City and operated, managed and maintained by Seattle Center. Two of the goals of Seattle Center are to be the "Cultural and Community Heart of the City", and the "Nation's Best Gathering Place."
3. The Ballet and the Opera, collectively referred to herein as "Resident Entities", have presented their art, since their inception, in the Opera House.
4. As of the year 2001, the Opera House was in poor condition and in need of major repairs to bring the building up to current codes (seismic and life safety). There was a value to the structure, even in its poor condition, in the range of \$70 million to \$100 million.
5. In 1997, the parties adopted an Action Plan to redevelop the Opera House into Marion Oliver McCaw Hall ("McCaw Hall"). In addition to the City's contribution of the existing structure, the resources needed to redevelop the existing Opera House building consist of 44% public funding and 56% private contributions. The Seattle Center Foundation and each of the Resident Entities share in the private fundraising.
6. In recognition of the amount of private funds raised by the Resident Entities and their commitment to future use of McCaw Hall, the City commits to continuing its financial support of McCaw Hall as set forth in this Agreement.
7. All parties understand and acknowledge that the Mayor and Seattle City Council must approve and authorize Seattle Center to enter into this agreement.
8. Seattle Center enters into this Agreement on the express condition that Seattle Center operate McCaw Hall principally as a performing arts facility

for the Resident Entities as the principal and resident users, as described in the Action Plan, and for other users as the Resident Entities' schedules allow. McCaw Hall must first and foremost serve the operating needs of the Resident Entities.

9. The Resident Entities may provide leasehold improvements to McCaw Hall, which remain the property of the Resident Entities. Upon expiration of this Agreement, earlier termination, or should either of the Resident Entities dissolve, such leasehold improvements shall be distributed to the non-profit Seattle Center Foundation.
10. Seattle Center and the Resident Entities will develop a new management structure for McCaw Hall that will enhance the responsiveness of building management to the needs of the Resident Entities and their patrons, and ensure the long-term excellence of the facility. As an example, such structure will address maintenance, support, and staffing.
11. McCaw Hall shall be operated by the Seattle Center, on behalf of the City, under the oversight of a "Marion Oliver McCaw Hall Operating Board" (the "MOB"), consisting of one representative from Seattle Center and one representative from each Resident Entity. The MOB will have authority to develop and recommend policies, subject to Mayoral and City Council approval, when required, for:
  - Long Range Capital Improvements
  - Operating Levels of Service & Expenses
  - Staffing and Levels of Service including encouraging of women and minority business and equal opportunity goals
  - Operating Standards for McCaw Hall
  - Management of and recommendation for uses of any endowment funds (when such are received)
  - Management of fund balances (if any)
  - McCaw Hall Booking Policies

The Director will review the recommendations of the MOB in good faith, will not unreasonably withhold approval or recommendation of the same to the Mayor and City Council, and will respond in a manner that acknowledges and values the historical relationship between the City and the Resident Entities; that recognizes the world-class reputation of the Resident Entities and as such, their importance to a healthy arts community; and that honors the profound working relationship developed for the funding of the McCaw Hall renovation.

12. McCaw Hall shall be operated for the benefit of the three parties. As specified in Business Term 3, below, the City shall sustain its commitment

to support the operation of McCaw Hall. Any net revenue resulting from third-party use of McCaw Hall shall be applied toward operation and maintenance of McCaw Hall. The Resident Entities shall reimburse Seattle Center for those expenses, as determined by the MOB, that are not included in their annual use fees and are required for their respective productions.

13. The City intends to develop an asset preservation strategy and establish a capital reserve account for the purpose of restoring and refurbishing McCaw Hall to preserve the capital investment made therein.
14. Each Resident Entity commits to the use of McCaw Hall as its primary venue for the presentation of its regular season performances. The number of performances may vary from year to year. This commitment of the Resident Entities does not preclude performances by either of them in other venues, whether local, national or international.
15. In conformity with the booking policies adopted by the MOB, Resident Entities will share first priority in the use of each and all spaces in McCaw Hall and in booking dates; other users will be scheduled around use by the Resident Entities. Resident Entities recognize that Seattle Center will rent space in McCaw Hall in accordance with booking policies developed by the MOB when neither Resident Entity is using the particular space.

**The Business Terms of this Agreement are:**

**1. Condition and Delivery of McCaw Hall.**

Each Resident Entity agrees to accept McCaw Hall in its renovated condition, provided it is constructed substantially in conformance with the plans and specifications for the renovation approved by the Performance Hall Executive Leadership Team. The City shall enforce and pass through, as appropriate, to the Resident Entities liquidated damages proceeds from the construction contractor and collected by the City in the event McCaw Hall is not substantially complete by June 20, 2003, and financial loss is experienced by one or both of the Resident Entities.

**2. Agreement Term.**

The term of this Agreement is 25 years with two 15-year renewal options. Twenty-four months prior to the expiration of the original 25-year term and, again, 24 months prior to the expiration of the first extended term (if such option has been exercised), Seattle Center shall notify the Resident Entities of the impending termination of this Agreement. If either Resident Entity does not wish to extend the term of this Agreement, it shall so notify Seattle Center no less than

eighteen months prior to such expiration date. If both Resident Entities fail to give such notice, this Agreement shall automatically be extended for 15 years. If either Resident Entity declines to extend the term of this Agreement, then this Agreement shall terminate five years from the next date for termination set forth herein. In such event, the City shall negotiate a new agreement to ensure that the remaining Resident Entity remains, to the extent practicable, in as nearly the same position with regard to McCaw Hall as it is under this Agreement.

**3. Operating Budget / Debt Service / Use Fees.**

**A. Operating Budget**

The annual Operating Budget for McCaw Hall shall include the operating expense line items identified on the attached Exhibit A. Seattle Center shall supply central services to McCaw Hall, including, among other things, event booking, marketing, computer services, fiscal services, Seattle Center administration and campus maintenance and landscaping services, but such services shall not be included in the annual operating budget.

**B. Use Fees**

Except as provided below in the case of an annual net operating loss, the City shall provide "Direct Operating Support" to McCaw Hall of not more than the following amounts:

YEAR	AMOUNT
2003 (6 months)	\$253,280
2004	\$442,208

Commencing January 2005, and in each January thereafter throughout the term of this Agreement, the City's Direct Operating Support shall be that amount set forth above for 2004 adjusted annually to reflect increases in the Seattle-Tacoma-Bremerton All-Urban Consumers CPI All Items (1982-84=Base).

The Resident Entities shall each pay the City an annual fee for the use of McCaw Hall in such amount as, when added to the City's Direct Operating Support and the other building revenues enumerated in Exhibit A, will project a balanced / break-even budget at each year end. In determining the amount of such fees, Seattle Center shall reasonably estimate the building revenues and expenses for each calendar year and propose use fees based on these estimates. The MOB will have an opportunity to review these estimates and agree to them. If, in any year, due to a reduction in performances by a Resident Entity or failure of the City to license a reasonable number of open dates to other users, it is anticipated that a

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Resident Entity's use fees will be greater than twenty-five percent (25%) of the entire Operating Budget for that year, and upon request of the MOB, the parties agree to re-open negotiation of this paragraph to explore and find a mutually acceptable method for distributing operating expenses.

If, in any year, the McCaw Hall operating revenues together with the City's Direct Operating Support exceed the building's operating expenses, such excess revenue may be applied to the McCaw Hall operating fund to reduce each of the Resident Entities' use fees for the following year by a total of 50% of the excess and to reduce the City's Direct Operating Support by 50% of the excess, or as otherwise determined by the MOB.

If, in any year, the McCaw Hall operating expenses exceed the building's operating revenues together with the City's Direct Operating Support, then the City's Direct Operating Support for the following year shall increase by 50% of the loss, and the Resident Entities shall pay the City during that year, for deposit into the Operating Fund, the remaining 50%, which shall be derived from (i) increased Resident Entity use fees; (ii) application of any of the operating fund balance, if one exists; and/or (iii) additional funding sources identified by the MOB.

Notwithstanding the foregoing, the Resident Entities shall not be required to compensate the City for any net operating loss if and to the extent such loss is attributable to a Force Majeure event. For purposes of this agreement, a "Force Majeure" event means an event outside the reasonable control of the parties or their agents.

**C. Debt Service Re-opener.**

The Resident Entities acknowledge that the City has put short-term financing in place in order to complete the construction of McCaw Hall, the costs of which are included in the total capital budget. It is recognized that this short-term financing must be retired, renewed, or replaced by July of 2005. The Resident Entities agree to work with the City to find solutions to any shortfall in capital funding that may exist at that time, including, but not limited to, and in priority order: 1) completion of full funding participation by State and County governments; and 2) exploration and identification of other public or private capital funding sources, excluding any use of City of Seattle General Fund.

The parties agree to renegotiate the specific terms of this Agreement that are affected by any capital funding shortfall and funding decisions prior to July of 2005. If the parties cannot reach agreement on a satisfactory mechanism for addressing such shortfall then the City or the Resident

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Entities shall have the right to terminate this agreement upon one year's written notice.

So long as debt service remains outstanding on the building, the City agrees that raising the full amount of funds originally anticipated from public sources will remain a top priority for the City's legislative agenda with the federal, state and county governments and the Resident Entities agree to participate in that process.

**4. McCaw Hall Funds / Separate Subfund.**

The City shall place all revenues derived from the operation of McCaw Hall into a separate, interest-bearing Subfund, and operational expenses for McCaw Hall shall be paid out of such Subfund.

**5. Uses of Space and Schedule.**

- The MOB will develop, for adoption by the City, policies for using and scheduling space in McCaw Hall that are clear and comprehensive. Resident Entities will have priority for use of each and every space in McCaw Hall and first choice of dates for using McCaw Hall. The MOB will develop a booking and priority policy that shall be appended to this Agreement without the need for formal amendment, which ensures these goals are met, and balances the needs of both Resident Entities.
- The agreed-upon use dates for each Resident Entity will be detailed in facility use agreements for each Resident Entity.
- In recognition of the City's Direct Operating Support to McCaw Hall, Seattle Center shall have the right to use McCaw Hall for the duration of the Seattle International Children's Festival, the Folklife Festival, Bumbershoot and for Seattle Center-produced community events, for up to fourteen (14) total days per year, with no payment of rent into the McCaw Hall operating budget, and with expenses accounted for outside of the McCaw Hall operating budget. Such use shall be in recognition of and subject to the McCaw Hall booking policies.

**6. Direct Event Expenses.**

- The MOB will develop and recommend to the Director direct event operating standards and a schedule of associated costs for the following ("Direct Event Expenses"):

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Front of House staff  
Event Attendants  
Technical staff  
Equipment use  
Stage door security

The cost of standard stage or communications equipment, insurance, utilities, cleaning, maintenance, and repair are intentionally excluded from Direct Event Expenses.

- Each Resident Entity's Direct Event Expenses will be calculated on the services it actually uses, at staffing levels agreed upon by the MOB and as required to directly support each event.
- Seattle Center will develop an estimated annual operating budget in a detailed line item format, including estimated Direct Event Expenses, for the Resident Entities' next fiscal year for each Resident Entity, based upon projected usage of McCaw Hall by each Resident Entity and will submit copies to each Resident Entity and the MOB no later than October 1 of each year for their review and approval prior to the budget being presented to the City Council. In setting this time frame, the parties recognize the City's biennial budgeting process and the need to make budget projections two and one-half years prior to each season. Such projections submitted to the City Council will include estimated revenues and staff positions and total expenditure requests. The budget will include all use fees, labor rates and proposed equipment charges.
- Resident Entities shall pay their estimated Direct Event Expenses periodically as described in their respective facility use agreements. Within 30 days following each production, Seattle Center will provide a statement of actual Direct Event Expenses incurred for such production. On or before 90 days after the end of each calendar year, Seattle Center will deliver to each Resident Entity a certified statement of actual Direct Event Expenses showing expenses, dates, and rates on a detailed line item basis. If the annual statement shows an overpayment, it will be accompanied by a check in the amount of the overpayment, or be credited against the next fiscal year's advance payment; if the annual statement shows an underpayment by a Resident Entity, such Resident Entity shall pay Seattle Center the deficit within 30 days of receipt of the annual statement.

**7. Fixed Operating Costs, Operating Standards for McCaw Hall.**

As part of the City's budget process, with final authorization for staff positions and expenditures residing with the Mayor and the City Council, the MOB will

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recommend to the Director the levels of fixed facility staffing necessary for the management and operation of McCaw Hall. The MOB will also all recommend to the Director operating standards for McCaw Hall, which shall be reviewed annually with a mechanism for changes to be made if they are not satisfactory to the Resident Entities. The Operating Standards will apply to McCaw Hall for all uses.

Operating standards will be set for:

A. Front of House

- Maintenance and janitorial level of service
- Catering and concessions level of service and staffing
- Use of public areas (such as art in the lobby)
- Restrictions for non-resident users of the space
- Box office operations and staffing
- Storage spaces and usage
- Use of exterior signage as well as the ability to market and promote future shows in interior spaces

B. Backstage

- Maintenance and janitorial level of service
- Staffing levels, level of service, and standards of service
- Restrictions for non-resident uses of the space
- Storage spaces and usage
- House hang locations
- House inventory (such as equipment, soft goods, lighting)
- Resident Entities' exclusive use spaces and restrictions upon access to such spaces.

Other than reasonable repairs made to comply with these established levels of maintenance, Seattle Center may not make modifications, alterations or repairs which decrease the ability of either Resident Entity to operate within McCaw Hall or increase the cost of either Resident Entity's operations within McCaw Hall in any material respect without the approval of each Resident Entity, except that Seattle Center may make emergency repairs without prior approval, and shall inform the Resident Entities of such emergencies and the completed repairs within twenty-four (24) hours thereafter. All repairs will be scheduled to minimize interference with the Resident Entities' scheduled use of McCaw Hall.

The MOB shall be responsible for oversight and enforcement of the Operating Standards in accordance with all applicable laws.

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**8. Major Maintenance Responsibilities.**

Seattle Center shall be responsible for the maintenance, repair and replacement of the exterior of McCaw Hall including, but not limited to, roofs, walls, foundations, structures and structural elements, all areas immediately adjacent thereto and all campus systems serving the building so that they are in good working order and repair. At such time that any redevelopment of Mercer Arts Arena occurs, the City shall insure that any use or construction that could interfere or compete with the performance standards of McCaw Hall shall be taken under consideration and mitigated in coordination with the Resident Entities.

**9. Capital Improvements Reserve Fund.**

It is the intent of the parties to this Agreement to create a fund, with annual contributions, for the purpose of implementing major maintenance and preservation of this premier City asset. The City's contribution to this fund shall be consistent with any adopted policies regarding asset preservation. Any party may propose capital improvements at any time. The MOB will recommend all capital improvements to be made to McCaw Hall. Seattle Center will submit to the MOB in writing, and in reasonable detail, cost estimates and proposed work schedules for any capital improvements under consideration by the MOB. Approved capital improvements will be made as funds are available. Any capital projects funded from this fund shall be subject to Seattle Center's reasonable project management charges.

**10. Equipment Rentals and Equipment Replacement Account.**

The MOB will recommend a long-range replacement schedule based on the useful lives of the theatrical and other equipment. Resident Entities will not pay equipment rental fees for each individual event. Seattle Center will, however, charge third-party users for equipment rented whenever such charge can be included as part of the negotiations to obtain an event. Any third-party rental fees will be held in the McCaw Hall Subfund, accounted for separately from other revenues, and used solely for the purchase of new or replacement theatrical and other equipment.

**11. Special Events.**

When a Resident Entity is not using the auditorium, and subject to the established booking policies, each Resident Entity will be able to use portions of McCaw Hall outside the auditorium including, but not limited to, lobbies, catering areas, lecture space(s), donor rooms, rehearsal spaces, and box office, for use fees to be established for each specific use. Otherwise, all such spaces shall be

included with the use of the auditorium, if needed. The gift shop is solely for the use of the Resident Entities and is not subject to any separate use fee.

**12. Service Providers.**

The MOB will recommend to the Director the ticket providers, concession vendors and caterers for McCaw Hall, and no service provider for McCaw Hall shall be selected by the Director who has been disapproved by either Resident Entity, in its reasonable discretion. The MOB will also recommend the terms, levels of service, cost structure and performance standards for the ticket providers, concession vendors, caterers and all other service providers to McCaw Hall.

**13. Allocation of Liability.**

Each Resident Entity will be liable only for its own acts or omissions.

**14. Further Agreements.**

In consultation with the City's Law Department, the Director is authorized to enter into individual facility use agreements with each of the Resident Entities, that are consistent with this Agreement and which establish other specific terms and conditions necessary for the use of McCaw Hall, including such items as dates and times of usage, annual use fees, Insurance, Indemnification, and damage and destruction.

SEATTLE CENTER

By Virginia Anderson  
Virginia Anderson, Director

PACIFIC NORTHWEST BALLET ASSN.

By DD:PB  
D. David Brown, Executive Director

SEATTLE OPERA

By Kelly Tweeddale  
Kelly Tweeddale, Administrative Director

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EXHIBIT A

Operating Budget Line Item Detail

**REVENUES**

Rent from non-Resident Entity Users  
    McCaw Hall  
    Lecture Hall  
    Front of House Spaces  
Reimbursed Labor  
    Non-Resident Entity Users  
    Resident Entities  
Food and Beverage  
    Concessions  
    Catering  
Ancillary Revenues from non-Resident Entity Users  
    Equipment Rental (to replacement fund)  
    Ticketing Revenues  
    Program / Novelty Revenues  
Resident Group User Fees for operating expenses  
    Opera  
    Ballet  
Annual City of Seattle Direct Operating Support  
Other

**EXPENSES**

Direct Event Labor: Admissions, Stage, Sound, Event Security, Event Attendants  
    Non-Resident Entity Events  
    Resident Entity Events  
Utilities  
    Electricity  
    Water / Sewage  
    Garbage / Recycling  
    Gas Allocation (Central Plant)  
Direct Facility Fixed Costs  
    Janitorial  
    Maintenance: Laborers, Electricians, Carpenters, Engineers, Plumbers, Painters, Metal Fabricators  
    Management; administrative staff permanently assigned to building  
    Technical Staff: Stage, sound  
    Stage Door Security  
Equipment Replacement (from replacement fund)  
Elevator Maintenance  
Kitchen Equipment Loan Payments

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## ORDINANCE

AN ORDINANCE relating to the Seattle Center Department; authorizing the Seattle Center Director to execute an Agreement between the City of Seattle, the Pacific Northwest Ballet Association and the Seattle Opera relating to the use and management of Marion Oliver McCaw Hall; and creating a new McCaw Hall Subfund of the Seattle Center Fund for segregating McCaw Hall operational expenses and earnings.

WHEREAS, the Pacific Northwest Ballet (Ballet) and the Seattle Opera (Opera) are world-renowned companies who have, since their inception, presented their art in the Seattle Center Opera House; and

WHEREAS, in recognition of the fact that the Opera House had significant seismic problems that would have required some \$82 million to repair and had generally outlived its useful life, on November 2, 1999, the voters of Seattle approved a special property tax levy lid lift to provide \$29,000,000 toward the renovation of the Opera House into the Marion Oliver McCaw Hall (McCaw Hall); and

WHEREAS, the City of Seattle requested the Ballet and the Opera to help raise significant private dollars for the new hall and, together with the Seattle Center Foundation, have committed to raising \$70 million for the project; and

WHEREAS, the status of McCaw Hall as an invaluable regional facility has been demonstrated during its 75-year history as the Civic Auditorium and Seattle Opera House and, during this transformation, by the private contributions from donors inside and outside the city limits; and

WHEREAS, McCaw Hall will afford the Ballet and Opera opportunities to present performances that will result in enhanced national and international visibility for the City of Seattle; and

WHEREAS, the presence of such esteemed arts organizations contributes substantially to the cultural and economic vibrancy of the City; and

WHEREAS, the Ballet and Opera are prepared to enter into a long-term relationship with the City in which all parties share in the risks and rewards of operating and maintaining McCaw Hall; and

WHEREAS, in entering a joint management agreement the City desires to have efficient and accurate accounting structures for the new McCaw Hall.

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**NOW THEREFORE,**

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

Section 1. The Seattle Center Director is authorized to execute, for and on behalf of The City of Seattle, an agreement with the Pacific Northwest Ballet Association and the Seattle Opera, substantially in the form of the agreement attached hereto and identified as "Agreement between the City of Seattle, Pacific Northwest Ballet Association and Seattle Opera Relating to the Use and Management of Marion Oliver McCaw Hall."

Section 2. The Director of Finance, in consultation with the Seattle Center Director, is authorized and directed to create a McCaw Hall Subfund, a subfund of the Seattle Center Fund, into which shall be deposited all revenues derived from the operation of McCaw Hall and from which the operating and maintenance expenses of the McCaw Hall shall be paid. Any unused funds, interest earnings or excess revenues above current operating expenses shall be retained in the McCaw Hall Subfund to pay future McCaw Hall maintenance or operating expenses. The Seattle Center Director is authorized to make transfers between the Seattle Center Fund and the McCaw Hall Subfund in order to make the necessary accounting transactions in accordance with the Agreement attached hereto. Any income derived from investment of balances in this subfund, shall be deposited into the subfund.

Section 3. The City Council requests that the Seattle Center Director report to the Parks, Education and Libraries Committee or its functional successor at least once on the proposed terms and conditions of the individual facility use agreements with the Ballet and Opera before such agreements are executed, and periodically as requested by the Committee, on the overall financial condition and operations of McCaw Hall, including a list of public benefits.

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

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MAP/gsr  
McCawOr6  
6/2/03  
V #6

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

5  
6  
7 Passed by the City Council the \_\_\_\_ day of \_\_\_\_, 2003, and signed by  
8 me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_,  
9 2003.

10  
11 \_\_\_\_\_  
12 President of the City Council

13 Approved by me this \_\_\_\_ day of \_\_\_\_, 2003.

14  
15 \_\_\_\_\_  
16 Mayor

17  
18 Filed by me this \_\_\_\_ day of \_\_\_\_, 2003.

19  
20 \_\_\_\_\_  
21 City Clerk

22 (SEAL)

23  
24 Attachment 1 – Agreement between the City of Seattle, Pacific Northwest Ballet  
25 Association and Seattle Opera Relating to the Use and Management of Marion Oliver  
26 McCaw Hall.

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for the Resident Entities as the principal and resident users, as described in the Action Plan, and for other users as the Resident Entities' schedules allow. McCaw Hall must first and foremost serve the operating needs of the Resident Entities.

9. The Resident Entities may provide leasehold improvements to McCaw Hall, which remain the property of the Resident Entities. Upon expiration of this Agreement, earlier termination, or should either of the Resident Entities dissolve, such leasehold improvements shall be distributed to the non-profit Seattle Center Foundation.
10. Seattle Center and the Resident Entities will develop a new management structure for McCaw Hall that will enhance the responsiveness of building management to the needs of the Resident Entities and their patrons, and ensure the long-term excellence of the facility. As an example, such structure will address maintenance, support, and staffing.
11. McCaw Hall shall be operated by the Seattle Center, on behalf of the City, under the oversight of a "Marion Oliver McCaw Hall Operating Board" (the "MOB"), consisting of one representative from Seattle Center and one representative from each Resident Entity. The MOB will have authority to develop and recommend policies, subject to Mayoral and City Council approval, when required, for:

- Long Range Capital Improvements
- Operating Levels of Service & Expenses
- Staffing and Levels of Service *including encouraging of women and minority business*
- Operating Standards for McCaw Hall *and equal employment opportunity*
- Management of and recommendation for uses of any endowment funds (when such are received)
- Management of fund balances (if any)
- McCaw Hall Booking Policies

The Director will review the recommendations of the MOB in good faith, will not unreasonably withhold approval or recommendation of the same to the Mayor and City Council, and will respond in a manner that acknowledges and values the historical relationship between the City and the Resident Entities; that recognizes the world-class reputation of the Resident Entities and as such, their importance to a healthy arts community; and that honors the profound working relationship developed for the funding of the McCaw Hall renovation.

12. McCaw Hall shall be operated for the benefit of the three parties. As specified in Business Term 3, below, the City shall sustain its commitment to support the operation of McCaw Hall. Any net revenue resulting from

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**STATE OF WASHINGTON - KING COUNTY**

--SS.

160910  
City of Seattle, Clerk's Office

No. ONLY PUBLICATION

**Affidavit of Publication**

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 12<sup>th</sup> 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:121202-121207 TITLE

was published on

7/14/2003

7/14/2003

Notary public for the State of Washington,  
residing in Seattle

Affidavit of Publication



## State of Washington, King County

City of Seattle
<b>TITLE-ONLY PUBLICATION</b> The full text of the following ordinance, passed by the City Council on June 23, 2003, and published here by title only, will be mailed, at no cost, on request for two months after this publication. For further information, contact the Seattle City Clerk at 684-6344.
<b>ORDINANCE NO. 121207</b> AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.
<b>ORDINANCE NO. 121208</b> AN ORDINANCE relating to the Seattle Center Department; authorizing the Seattle Center Director to execute an Agreement between the City of Seattle, the Pacific Northwest Ballet Association and the Seattle Opera relating to the use and management of Marjorie Oliver McCaw Hall; and creating a new McCaw Hall Subfund of the Seattle Center Fund for segregating McCaw Hall operational expenses and earnings.
<b>ORDINANCE NO. 121209</b> AN ORDINANCE amending the 2003 Budget and the 2003-2008 Capital Improvement Program (CIP); changing appropriations to various departments and funds in the 2003 Budget; establishing new appropriations; establishing new CIP projects in the Department of Parks and Recreation; and making cash transfers between various City funds and subfunds; all by a three-fourths vote of the City Council.
<b>ORDINANCE NO. 121204</b> AN ORDINANCE accepting funding from non-City sources; authorizing Seattle Municipal Court and Department of Parks and Recreation to accept specified grants and private funding.
<b>ORDINANCE NO. 121203</b> AN ORDINANCE relating to the 1997 Families and Education Levy; adding a service component to the Levy program; and making an appropriation from the Educational and Developmental Services Fund for that component as recommended by the Families and Education Levy Oversight Committee; all by a three-fourths vote of the City Council.
<b>ORDINANCE NO. 121202</b> AN ORDINANCE relating to funds for a pedestrian safety campaign; accepting funding; increasing an expenditure allowance in the 2003 budget of Seattle Transportation by making a reimbursable appropriation; and ratifying and confirming prior acts; all by three-fourths vote of the City Council.
Date of publication in the Seattle Daily Journal of Commerce, July 14, 2003.