

Ordinance No. 122680

Council Bill No. 116191

AN ORDINANCE relating to the City's lease of warehouse space at 3601 2nd Avenue South in Seattle; authorizing the Fleets and Facilities Department Director, on behalf of the Seattle Fire Department, to execute an amendment to a lease agreement, approved by Ordinance 116571, with MUSREF Spokane Street, LP.

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

Date Introduced:	4.14.08	
Date 1st Referred:	To: (Full Council)	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: 8-0	
Date Presented to Mayor:	Date Approved: 4.30.08	
Date Returned to City Clerk:	Date Published: 3	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department *[Signature]*

Council Bill/Ordinance sponsored by: \_\_\_\_\_  
Councilmember

### Committee Action:

4-21-08 Adopted 8-0

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_ (initial/date)

Law Dept. Review      OMP Review      City Clerk Review      Electronic Copy Loaded      Indexed

ORDINANCE 122680

AN ORDINANCE relating to the City's lease of warehouse space at 3601 2<sup>nd</sup> Avenue South in Seattle; authorizing the Fleets and Facilities Department Director, on behalf of the Seattle Fire Department, to execute an amendment to a lease agreement, approved by Ordinance 116571, with MUSREF Spokane Street, LP.

WHEREAS, Ordinance 116571 authorized the Fleets and Facilities Department to enter into a lease agreement with Schnitzer Investment Corporation for use and occupancy of certain real property located at 3601 2<sup>nd</sup> Avenue South in Seattle; and

WHEREAS, MUSREF Spokane Street, LP is the successor to all Schnitzer Investment Corporation's rights, obligations, and interests in the subject property and under the lease agreement for that property; and

WHEREAS, the original ten-year lease, executed in 1993, was amended by a First Amendment, executed in 2003, to provide a five-year lease extension ending January 31, 2008; and

WHEREAS, the Seattle Fire Department anticipates a continuing need for the amount of currently leased warehouse space for up to an additional five years; and

WHEREAS, this amount of needed warehouse space cannot be accommodated within City-owned buildings for the foreseeable future; and

WHEREAS, the current warehouse location meets the Seattle Fire Department's operational requirements and is more cost effective than moving to an alternative location; and

WHEREAS, Seattle Municipal Code 3.18.240 requires City Council approval of the lease amendment, because the total warehouse square footage leased in one calendar year exceeds 9,000 square feet; and

WHEREAS, it is standard City practice for the Fleets and Facilities Department to procure leased warehouse space on behalf of the Seattle Fire Department, pay rent to the landlord for such leased space, and subsequently receive reimbursement from the Seattle Fire Department; NOW, THEREFORE,

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



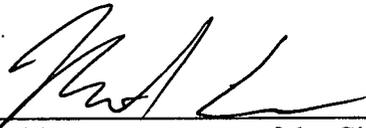
1 Section 1. As requested by the Fleets and Facilities Department Director and  
2 recommended by the Mayor, said Director is hereby authorized to execute, for and on behalf of  
3 the City of Seattle, an amendment to a lease agreement with MUSREF Spokane Street, LP,  
4 substantially in the form of Exhibit "1" attached hereto and identified as "Second Amendment of  
5 Lease," providing for the City of Seattle's tenancy and occupancy of a portion of the real  
6 property located at 3601 2<sup>nd</sup> Avenue South in Seattle.  
7

8 Section 2. The rental payments contemplated by the terms of the lease agreement  
9 authorized in Section 1 hereof shall be charged to the appropriate expenditure allowance or  
10 allowances in the budget of the Fleets and Facilities Department and shall be reimbursed to that  
11 Department by the Seattle Fire Department.  
12

13  
14 Section 3. Any act by the Fleets and Facilities Department consistent with the authority of  
15 this ordinance taken prior to the passage of the ordinance is hereby ratified and confirmed.  
16

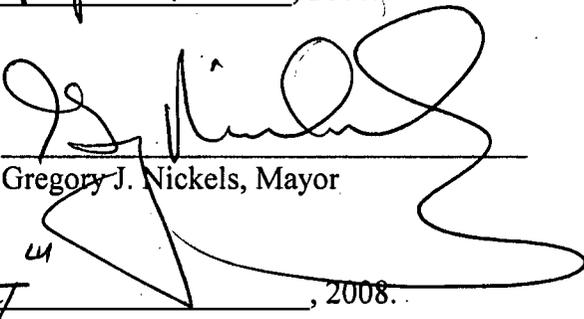
17 Section 4. This ordinance shall take effect and be in force thirty (30) days from and after  
18 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
19 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.  
20

21 Passed by the City Council the 21<sup>st</sup> day of April, 2008, and  
22 signed by me in open session in authentication of its passage this 21<sup>st</sup> day of  
23 April, 2008.  
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27 \_\_\_\_\_  
28 President \_\_\_\_\_ of the City Council

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Approved by me this 30<sup>th</sup> day of April, 2008.

  
\_\_\_\_\_  
Gregory J. Nickels, Mayor

Filed by me this 30<sup>th</sup> day of April, 2008.

  
\_\_\_\_\_  
City Clerk

(Seal)

Exhibit 1 – Second Amendment of Lease



**Exhibit 1**

**SECOND AMENDMENT OF LEASE**

THIS SECOND AMENDMENT OF LEASE is made in duplicate as of this \_\_\_\_ day of \_\_\_\_\_, 2008 by and between **MUSREF SPOKANE STREET LP**, a Washington limited partnership ("Lessor") and **THE CITY OF SEATTLE**, a municipal corporation duly organized and existing under the laws of the State of Washington ("Lessee").

**RECITALS**

- A. On or about February 4, 1993, Lessee entered into a lease agreement with Schnitzer Investment Corp. (the "Lease") for use and occupancy of certain real property located at 3601 2<sup>nd</sup> Ave. South, Seattle, Washington, and legally described in the Lease (the "Premises"). **MUSREF SPOKANE STREET LP** is the successor to all Schnitzer's rights, obligations, and interests in the Premises and under the Lease.
- B. The Lease term was extended pursuant to the terms and conditions set forth in the First Amendment signed on January 28, 2003 and February 14, 2003 (the "First Amendment"), which extended term expires January 31, 2008. Additionally, the Lease includes terms and conditions stated in an Addendum effective June 30, 2000.
- C. Lessee and Lessor desire to extend the Lease, subject to the terms and conditions set forth in this Second Amendment (the "Second Amendment").
- D. Capitalized terms used in this Second Amendment shall have the meanings given to them in the Lease, except as amended by this Second Amendment.

In consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, Lessor and Lessee agree as follows:

- 1. **EXTENSION TERM:** The term of the Lease is hereby extended for an additional five (5) year period, commencing February 1, 2008, and shall expire at midnight on January 31, 2013 (the "Extension Term"). The Extension Term shall be upon the same terms and conditions as set forth in the Lease and the First Amendment, except as otherwise expressly provided herein.
- 2. **RENT:** Effective March 1, 2008, Lessee shall pay to Lessor basic monthly rent (the "Rent"), as follows:

3/1/2008 – 1/31/2009	\$9,696.20 per month
2/1/2009 – 1/31/2010	\$9,987.09 per month
2/1/2010 – 1/31/2011	\$10,286.70 per month
2/1/2011 – 1/31/2012	\$10,595.30 per month
1/1/2012 – 1/31/2013	\$10,913.16 per month



4. **BROKER:** Lessee represents and warrants to Lessor that it has not retained or used a real estate broker or agent in connection with this Lease. Based upon the accuracy of this representation, Lessor agrees to provide Lessee with \$15,000 allowance (the "Allowance") toward the cost of Tenant Improvements, including but not limited to those provided for in paragraph 5 below.

5. **TENANT IMPROVEMENTS:**

(a) Lessee has advised Lessor that Lessee would like to improve the Premises by installing an emergency generator that shall become property of the Lessee upon payment, as provided for in paragraph 5(b) below, and associated enclosure (the "Tenant Improvements"). Lessee shall remove the Lessee Improvements at the end of the Lease term and restore the Premises to its pre-existing condition, repairing any damage resulting from such removal. If Lessee wishes to proceed with the Tenant Improvements, it shall provide Lessor with a preliminary design and plans and specifications, prepared by a mutually agreed upon contractor, for the Tenant Improvements for Lessor's review and approval thereof, which approval will not be unreasonably delayed or denied. Lessor shall approve the design and plans and specifications within thirty (30) days after receipt of same or provide Lessee with an alternative proposal. The Lessor and Lessee will use diligent efforts to promptly finalize the design and plans and specifications and cost schedule, and once mutually approved, the Lessor shall proceed with diligence to cause the Tenant Improvements to be constructed and installed based on the mutually approved design and plans and specifications. After completion, Lessor will provide Lessee with a schedule of the costs which it incurred in connection with the design, permitting, construction, management and construction of the Tenant Improvements (the "Cost Schedule").

(b) Lessee shall have thirty (30) days from its receipt of the Cost Schedule within which to either reimburse Lessor for such costs, less the Allowance. Interest shall accrue on the cost schedule at the rate of one percent (1%) per month from date delivered until paid.

(c) Lessee's rights under this paragraph 5 shall terminate unless Lessee has provided Lessor with a preliminary design and plans and specifications for the Tenant Improvements by March 1, 2009. In no event shall Lessor be obligated to proceed with the Tenant Improvements if the cost thereof will exceed One Hundred Thousand Dollars (\$100,000).

6. **INSURANCE:** Section 5 of the First Amendment, amending Section 8 of Part B "General Terms and Conditions" of the Lease, is omitted in its entirety and replaced with the following:

**Insurance:** The Lessor shall secure and maintain in effect during the full term of this lease, and any extensions thereof, property and commercial liability insurance having policy limits in the amount set forth in Part A hereof. The Lessor acknowledges and accepts the Lessee's general liability insurance program, and Lessee is not required to insure the Premises or provide Lessor with any insurance coverage.



**7. EFFECT OF AMENDMENT:** Lessor and Lessee intend the Second Amendment to continue the existing Lease Agreement. So long as this Second Amendment is approved by the Seattle City Council and signed by both parties, this Second Amendment shall be effective as of February 1, 2008, regardless of the date of execution. Except as expressly amended by the Addendum, First Amendment and this Second Amendment, the Lease remains unmodified and in full force and effect as written.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Second Amendment as of the date first above written.

LESSOR:

**MUSREF SPOKANE STREET LP**  
a Washington Limited Partnership

By: MUSREF GP SPOKANE STREET LLC

By: METZLER US FUND LLC, its Manager

By: METZLER MANAGEMENT, INC., its Manager

By: \_\_\_\_\_

Its: Vice President

LESSEE:

**CITY OF SEATTLE**  
a municipal corporation duly organized and  
existing under the laws of the State of Washington.

By: \_\_\_\_\_  
Brenda Bauer, Director  
Fleets and Facilities Department  
City of Seattle

Signed at: Seattle, Washington



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared \_\_\_\_\_, known to me to be the Vice President of **METZLER MANAGEMENT, INC.**, manager of **METZLER US FUND LLC**, manager of **MUSREF GP SPOKANE STREET LLC**, \_\_\_\_\_ of **MUSREF SPOKANE STREET LP**, the limited partnership that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited partnership, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of **CITY OF SEATTLE**, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
FFD / SFD	Kieu-Anh King/4-4678 Barbara Brannan / 4-0414 Chris Santos/ 6-1478	Katie Wise/3-9580

**Legislation Title:**

AN ORDINANCE relating to the City's lease of warehouse space at 3601 2<sup>nd</sup> Avenue South in Seattle; authorizing the Fleets and Facilities Department Director, on behalf of the Seattle Fire Department, to execute an amendment to a lease agreement, approved by Ordinance 116571, with MUSREF Spokane Street, LP.

• **Summary of the Legislation:**

This legislation authorizes the Fleets and Facilities Department (FFD) to amend a lease agreement with MUSREF Spokane Street, LP to continue providing the Seattle Fire Department (SFD) with approximately 13,950 square feet of warehouse space at 3601 2<sup>nd</sup> Avenue South in Seattle for an additional five years. The amendment requires legislation, because the amount of leased warehouse space exceeds FFD statutory authority for leasing under Seattle Municipal Code 3.18.240.

• **Background:**

Since 1993, FFD has leased the space on behalf of SFD for storing supplies and equipment for all fire stations, and the property is known as the SFD Commissary. The current location (3601 2<sup>nd</sup> Avenue South in Seattle) provides easy and necessary access to SR 99, I-5, and the West Seattle Bridge. The site includes sufficient space for pickup and delivery of goods by SFD personnel.

The rental rate for the past several years has been below market, prompting a 2008 rate increase of approximately 23% over 2007. The amendment to the lease agreement increases the base rent from \$6.71 per square foot to \$8.28 per square foot. The new rate, however, is still comparable to other warehouse space available in the area.

The lease extension has a start date of February 1, 2008. FFD negotiated one month of free rent, plus a \$15,000 tenant improvement allowance.

**X This legislation has financial implications.**

***Appropriations:***

**NOTES:**

This legislation does not contain an appropriation. The legislation does, however, commit the City to five additional years of lease expense at the new Seattle Fire Department Commissary Warehouse. Details on lease expenses for 2008 and 2009 are included in the following tables.

SFD does not have sufficient appropriation authority in its 2008 budget for the \$15,000 increase in rent cost, but will work with the Department of Finance to identify savings in other SFD budgetary line items to re-allocate to meet this increased need. Increased SFD appropriation authority for 2009 will be incorporated into the 2009 SFD budget request.

**Anticipated Revenue/Reimbursement: Resulting From This Legislation:**

None

**Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact:**

None.

**Spending/Cash Flow:**

Fund Name and Number	Department	Budget Control Level*	2008 Expenditures	2009 Anticipated Expenditures
General Subfund (00100)	Seattle Fire Department	Operations F3000	\$135,838	\$151,912
<b>TOTAL</b>			<b>\$135,838</b>	<b>\$151,912</b>

**NOTE:** The table below is an estimate of total 2008 and 2009 SFD expense for leasing the commissary warehouse. Assumptions include one month per year at the previous lease rate, plus one month free rent in 2008.

For 2009, the base rent rate and SFD operating expense increase by 3% over 2008. Annual rent adjustments of 3% and annual increases of 3% for operating expenses are typical of the market. In addition to the base rent, SFD is responsible for an FFD administrative charge of 3% on the base rent and operating expenses.

Year	Square Feet	Rent/sq ft	Rent/month	Annual Rent	Oper Exp/Yr	FFD OH 3%	Total
2008	13,950	\$8.28	\$9,626	\$104,762	\$27,120	\$3,956	\$135,838
2009	13,950	\$8.53	\$9,914	\$119,554	\$27,933	\$4,425	\$151,912



- **What is the financial cost of not implementing the legislation?**  
Another commercial space would have to be leased for the SFD Commissary. Though the annual rent and operating costs might be about the same, the costs of moving and altering a new space could exceed \$75,000.
- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**  
The only viable alternative is to move to a similar warehouse space in another building at considerable expense, as noted above.
- **Is the legislation subject to public hearing requirements:**  
No.
- **Other Issues**  
None.

**Please list attachments to the fiscal note below:**

None.