

Ordinance No. 121950

Council Bill No. 115342

AN ORDINANCE relating to public art museum facilities; authorizing and providing for the completion and execution of a guarantee and reimbursement agreement with the Museum Development Authority and other parties; authorizing a City guarantee for the debt service reserve established in connection with the Authority's special obligation bonds issued to pay the cost of acquiring and equipping an addition to its downtown museum facilities; and authorizing or prohibiting various other actions by the Director of Finance and other City officers in connection with the guarantee.

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

Date Introduced:	<u>8-8-05</u>	
Date 1st Referred:	<u>8-8-05</u>	
Date Re - Referred:	To: (committee) <u>Government Affairs &amp; Labor</u>	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	<u>9-29-05</u>	
Date Presented to Mayor:	<u>9-29-05</u>	
Date Returned to City Clerk:	Date Published:	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetted by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

*me) special meeting*

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Drago

*Rush!*

Councilmember  
Steenbuech

## Committee Action:

to pass as amended 7-0 J.P., R.M., P.S.

(E)

9-29-05 Passed As Amended 8-0

(Excused: Rasmussen)

FILED  
CITY OF SEATTLE  
CITY CLERK  
SEP 29 PM 11:52

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

*Law Department*

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

ORDINANCE 121950

1  
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4 completion and execution of a guarantee and reimbursement agreement with the  
5 Museum Development Authority and other parties; authorizing a City guarantee for the  
6 debt service reserve established in connection with the Authority's special obligation  
7 bonds issued to pay the cost of acquiring and equipping an addition to its downtown  
8 museum facilities; and authorizing or prohibiting various other actions by the Director  
9 of Finance and other City officers in connection with the guarantee.

10 WHEREAS, The City of Seattle, Washington (the "City"), by Ordinance 112923, passed July  
11 7, 1986, determined that a public art museum in downtown Seattle would make the  
12 considerable collections of the Seattle Art Museum, a Washington nonprofit  
13 corporation (the "Museum"), more accessible to the public; would provide a facility  
14 capable of hosting major touring exhibitions; would include space needed for the  
15 Museum's educational, administrative and curatorial activities; and would contribute to  
16 the economic viability and attractiveness of downtown Seattle; and

17 WHEREAS, the City chartered the Museum Development Authority (the "Authority") pursuant  
18 to RCW 35.21.730, et seq. and Seattle Municipal Code (SMC) Chapter 3.110  
19 (Ordinance 103387, as amended) to undertake, assist with and otherwise facilitate the  
20 development and operation of a public art museum in downtown Seattle; and

21 WHEREAS, on September 16, 1986, Seattle voters approved a measure authorizing annual  
22 taxes to fund construction of a downtown art museum facility; and

23 WHEREAS, in order to facilitate the financing of construction of a new downtown museum  
24 facility, the City and the Authority entered into a Museum Cooperation Agreement  
25 dated as of December 8, 1986, pertaining to the financing, construction and operation of  
26 the downtown museum facility. That agreement enabled \$24,795,000 of the Authority's  
27 bonds to be supported by the proceeds of the 1986 voter-approved levy. Those bonds  
28 have now been retired; and

WHEREAS, the construction of the downtown museum facility was completed in late 1991.  
That facility has been owned by the Authority and operated by the Museum, pursuant to  
the "Operating Agreement (Part II) for the Design, Development, Construction and  
Operation of a Public Art Museum" dated September 25, 1985, between the Authority  
and the Museum; and



1 WHEREAS, in October 1994, the Authority issued its bonds to refinance the cost of acquiring  
2 the site of the downtown museum facility and, by Ordinance 117317, passed September  
3 26, 1994, the City authorized a Cooperation Agreement between the City and the  
4 Authority, dated as of October 1, 1994, under which the City agreed to guarantee the  
5 payment of the 1994 bonds when due. These bonds have now been retired; and

6 WHEREAS, the Authority now has an opportunity to expand the Existing Museum Facility by  
7 the acquisition of a condominium unit now under construction and consisting of four  
8 levels (the "MDA Unit"), which is to be owned by the Authority and leased to the  
9 Museum for a term of 99 years; and

10 WHEREAS, the Authority intends to finance the acquisition and its equipping of the MDA  
11 Unit through the issuance of its Special Obligation Bonds, 2005 (the "Bonds") in a  
12 principal amount not to exceed \$65,000,000, which are expected to be repaid from rent  
13 payments received from the Museum; and

14 WHEREAS, to receive the most favorable interest rates on the Bonds, the Authority has  
15 requested that the City guarantee the replenishment of the debt service reserve fund  
16 established for the Bonds; and

17 WHEREAS, in return for a City guarantee of the debt service reserve for the Bonds, the  
18 Authority and the Museum will agree to provide the City with certain security and  
19 covenants; and

20 WHEREAS, the Director of Finance has negotiated a proposed guarantee and reimbursement  
21 agreement (the "Proposed Guarantee Agreement") by and among the City, the  
22 Authority, the Museum, and U.S. Bank National Association, as bond trustee, and U.S.  
23 Bank National Association, as Lockbox Agent, which Proposed Guarantee Agreement  
24 has been filed in Clerk File 307639; NOW THEREFORE,

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

26 Section 1. Approval of Guarantee and Reimbursement Agreement. A "Guarantee and  
27 Reimbursement Agreement" (the "Guarantee Agreement") by and among the City, the  
28 Authority, the Museum, U.S. Bank National Association as Bond Trustee, and U.S. Bank,



1 National Association, as Lockbox Agent, in the form of the Proposed Guarantee Agreement on  
2 file with the City Clerk in Clerk File 307639 and incorporated herein by this reference, is  
3 approved, and shall not be amended or modified except as the Director of Finance may permit:

4 A. to fill in blanks, add to Section 7.2 contact information for the parties, modify dates  
5 that depend on the dates of bond closings, correct definitions to match related documents, and  
6 correct cross-references, all in form satisfactory to the Director of Finance;

7  
8 B. to add legal descriptions in Exhibit B as called for in the Proposed Guarantee  
9 Agreement;

10 C. to reflect the actual square footage and final engineering, operational and  
11 maintenance requirements of the "as-built" Museum Expansion Unit; and

12 D. to insert Exhibits A-1, A-2, and A-3 in form satisfactory to the Director of Finance.

13 Section 2. Execution of Agreement on Behalf of City. The Director of Finance is  
14 authorized to sign the Guarantee Agreement on behalf of the City if the Director of Finance  
15 determines, prior to execution, that the following conditions have been or will be met:

16 A. the Bonds are to be issued in a principal amount not in excess of \$65,000,000;

17 B. the final maturity of the Bonds will not be later than June 30, 2031;

18 C. based on the interest rates on and other terms and conditions of the Bonds, it is  
19 reasonable to expect that the Coverage Requirement set forth in the Guarantee Agreement will  
20 be met at all times during which any of the Bonds remain outstanding;



1 D. the Authority has provided for the various security instruments and other documents  
2 required by the Guarantee Agreement to be provided at or prior to the time of Bond Closing,  
3 together with such additional instruments as the Director of Finance finds reasonably necessary  
4 to be provided at or prior to the time of Bond Closing to carry out the purposes of this  
5 ordinance;

6  
7 E. all ancillary documents referred to or governed by the Guarantee Agreement,  
8 specifically including but not limited to the Indenture, the Office Space Lease and the MDA  
9 Lease, will contain the provisions called for by the Guarantee Agreement;

10 F. the modifications permitted by Subsections 1A and 1D above to the form of the  
11 Proposed Guarantee Agreement have been properly made, and no other modifications have  
12 been made;

13  
14 G. the Bonds provide that the Authority is not acting as the agent of the City and the  
15 Authority's obligations with respect to the Bonds do not constitute obligations of the City or  
16 any entity other than the Authority, and the Bonds contain the following recitation, as required  
17 by SMC 3.110 and RCW 35.21.750: "The Museum Development Authority of Seattle is  
18 organized pursuant to Seattle Municipal Code (SMC) 3.110 and 35.21.730 -.755. RCW  
19 35.21.750 provides as follows: '[A]ll liabilities incurred by such public corporation,  
20 commission, or authority shall be satisfied exclusively from the assets and properties of such  
21 public corporation, commission or authority and no creditor or other person shall have any  
22 right of action against the city, town, or county creating such corporation, commission, or  
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1 authority on account of any debts, obligations, or liabilities of such public corporation,  
2 commission, or authority’;”

3 H. all the conditions specified in Section 3.6(b) of the Guarantee Agreement, including  
4 but not limited to that the Reserve Account is fully funded and that the Museum is in  
5 compliance with its covenant regarding Museum Net Assets, have been met; and  
6

7 I. the Authority has deposited with the Bond Trustee in the Bond Fund sufficient cash  
8 from the Museum to pay all interest accruing on the Bonds through September 1, 2006, and to  
9 pay the full amount of the call premium (net of funds that will be available from any purchase  
10 price premium) that would be required to be paid to Bondowners under the Indenture in the  
11 event of an extraordinary redemption of Bonds on September 1, 2006.  
12

13 Section 3. Limited General Authorization. Subject to the limitations in Sections 4 and  
14 5, below:

15 A. The Mayor and the Director of Finance are each separately authorized to execute  
16 such other documents as they determine are reasonably necessary to carry out the Guarantee  
17 Agreement.  
18

19 B. The Mayor and the Director of Finance and each of the other appropriate officers of  
20 the City are each authorized and directed to do everything as in their judgment may be  
21 necessary, appropriate, or desirable in order to carry out the terms and provisions of, and  
22 complete the transactions contemplated in furtherance of, this ordinance.  
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1 C. Without limiting any other authority of the Director of Finance delegated in Section  
2 3A and 3B, the Finance Director is specifically authorized to consult with the Law Department  
3 and outside counsel, as necessary, in order to make a judgment as to Finance Director  
4 Determined Liability. Whenever the Director of Finance receives notice from the Museum of  
5 an event, claim or lawsuit as described in the definition of Finance Director Determined  
6 Liability, the Director of Finance shall notify the President of the City Council of the same.  
7

8 D. The City Finance Director may approve a Bond Prepayment Plan under the  
9 Guarantee Agreement, but only if the Bond Prepayment Plan submitted meets the minimum  
10 requirements in Section 4.6 of the Guarantee Agreement and the Director of Finance receives  
11 evidence he or she considers to be clear and convincing that either the available insurance or  
12 condemnation proceeds are sufficient to provide for the defeasance or redemption of the Bonds  
13 to be prepaid or sufficient amounts will be available and deposited with a trustee or escrow  
14 agent in Seasoned Funds or refunding bond proceeds at the time funding is needed to carry out  
15 the Bond Prepayment Plan. Approval of any request, whether submitted in conjunction with a  
16 proposed Bond Prepayment Plan or otherwise, for the release of any security interest shall  
17 require the additional approval of the City by Ordinance.  
18  
19

20 Section 4. Consents, Approvals, and Waivers.

21 A. Except as limited by this Subsection 4A and by Subsection 4C below, the Director  
22 of Finance is authorized to, on behalf of the City, give consents and approvals, make and  
23 rescind objections, and waive performance or defaults (including determining when to issue or  
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1 rescind Declarations of Default) by others under the Guarantee Agreement or the Indenture or  
2 other documents referred to in or related to the Guarantee Agreement, all as he determines best  
3 serves the City's interests, and may condition his consents, approvals, rescissions, and waivers  
4 on terms and conditions that he determines further the City's interests, but unless expressly  
5 permitted by Subsection 4B below, neither the Mayor nor the Director of Finance nor any other  
6 City officer may, without future authorization by ordinance, take any action, including but not  
7 limited to giving or rescinding any consent or approval or objection or waiver or declaration,  
8 that has the effect of diminishing the City's security for reimbursement of advances it may  
9 make under the Guarantee Agreement.  
10

11 B. The Director of Finance may:

12 1. release any or all City security interests after the Bonds have been fully paid,  
13 purchased, redeemed, retired, or defeased if he receives a written opinion of nationally  
14 recognized bankruptcy counsel practicing regularly before Federal Bankruptcy Court addressed  
15 to the City that there is no risk of a Bankruptcy Recovery.  
16

17 2. if the Acquisition Date Conditions have been timely satisfied, give the  
18 City's Acquisition Date Notice.  
19

20 3. enforce the reimbursement obligations of either or both the Authority and the  
21 Museum, including by realizing on the security provided by either or both of them.  
22

23 4. consent to the Authority and Museum issuing their respective additional  
24 bonds, notes or other evidences of indebtedness pursuant to Section 5.6(a) of the Guarantee  
25



1 Agreement, but in no event to exceed an aggregate additional amount of indebtedness (over  
2 and above the Museum Bonds and the additional indebtedness of up to \$1,000,000 each as  
3 permitted in Section 5.6(a)) of \$5,000,000 outstanding by both of them combined at any one  
4 time.

5  
6 5. (a) Waive failures by the Museum to meet its obligation in Section 5.10(c) of  
7 the Guarantee Agreement to use donations to its capital campaign to redeem principal amounts  
8 of the Museum Bonds according to the schedule set out in that section; and (b) if more than  
9 \$70,000,000 in aggregate principal amount of Museum Bonds is issued, approve upward  
10 adjustments to the Maximum Outstanding Museum Bond Amounts shown in the schedule set  
11 out in Section 5.10(c) of the Guarantee Agreement for years up to and including the year 2013,  
12 but no such upward adjustment for any year in the schedule may be greater than the amount by  
13 which the aggregate principal amount of Museum Bonds issued exceeds \$70,000,000.  
14

15 C. In addition to other actions prohibited because they would have the effect of  
16 diminishing the City's security for reimbursement of advances it may make under the  
17 Agreement, and by way of illustration, and not in limitation, neither the Mayor nor the Director  
18 of Finance nor any other City officer shall:  
19

20 1. approve any Bond Prepayment Plan so long as all or any portion of any  
21 advance made by the City under the Guarantee Agreement, or any interest thereon, remains  
22 unreimbursed;  
23  
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1           2. without future authorization by ordinance approve a Reimbursement  
2 Schedule under which reimbursement of any City advance plus interest would take longer than  
3 5 years from the date of the advance being reimbursed;

4           3. without future authorization by ordinance waive, or consent to a delay in, any  
5 of the conditions set forth in Sections 3.6(b) or 3.6(c) of the Guarantee Agreement as  
6 preconditions to the Bond Closing or as preconditions to the Acquisition Date;  
7

8           4. without future authorization by ordinance waive the requirement that the  
9 Bonds be called for extraordinary redemption not later than September 1, 2006, under  
10 conditions described in Section 3.6 of the Guarantee Agreement, nor consent to a delay or  
11 waiver or extension of the July 14, 2006, deadline for giving notice that preconditions to the  
12 Acquisition Date have been satisfied;

13           5. without future authorization by ordinance reduce or waive any of the  
14 requirements of Sections 5.10(a) or 5.10(b) or 5.12 of the Guarantee Agreement (which include  
15 the covenant by the Museum with regard to Museum Net Assets), nor allow the escrow  
16 instructions described in Section 5.10(a) and 5.12 to fail to call for immediate recording or  
17 filing or delivery to the City, as applicable, of the Standby Security Documents in the event the  
18 City notifies the escrow agent that the Museum is not in compliance with any one or more of  
19 the covenants in Section 5.10 or that an event described in Section 5.12 has occurred, nor  
20 waive the escrow agent's obligation immediately to record or file or deliver, as applicable, the  
21 Standby Security Documents if the Director of Finance gives such notice;  
22  
23  
24  
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28



1           6. without future authorization by ordinance waive or consent to reduction of  
2 the Coverage Requirement;

3           7. without future authorization by ordinance waive or consent to reduction or  
4 modification of the insurance requirements set out in Exhibit I to the Guarantee Agreement;

5           8. without future authorization by ordinance consent to any deviation from or  
6 waive the requirements for the flow of funds in the Lockbox Account in Section 4.1(b)(2) of  
7 the Guarantee Agreement;

8           9. without future authorization by ordinance, consent to any amendments to any  
9 of the Leases or to the Condominium Documents would have the effect of diminishing the  
10 City's security for reimbursement;

11           10. without future authorization by ordinance consent to allowing prior or  
12 parity liens on the Revenues as that term is defined in the Indenture;

13           11. without future authorization by ordinance waive or consent to extension of  
14 the 120 day maximum period for approval of a proposed Bond Prepayment Plan; nor  
15

16           12. without future authorization by ordinance waive or consent to extension of  
17 the 120 day maximum period for cure of a default by any other party to the Guarantee  
18 Agreement.  
19

20           Section 5. No Amendment or Modification of Guarantee Agreement. Except as may  
21 be authorized by future ordinance, no modifications or amendments to the Guarantee  
22



1 Agreement, once executed, shall be made, except those expressly permitted by Subsections 1B,  
2 1C, and 4B5 of this ordinance.

3 Section 6. Headings and Definitions. The section headings in this ordinance are used  
4 for convenience only and shall not constitute a substantive portion of this ordinance. Reference  
5 is made to the Guarantee Agreement for the definitions of terms capitalized and not defined in  
6 this ordinance.  
7

8 Section 7. Effective Date. This ordinance shall take effect and be in force 30 days  
9 from and after its approval by the Mayor, but if not approved and returned by the Mayor within  
10 10 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.  
11

12 Passed by the City Council the 29<sup>th</sup> day of September 2005, and signed by me  
13 in open session in authentication of its passage this 29<sup>th</sup> day of September 2005.  
14

15 Jean Drago  
16 President \_\_\_\_\_ of the City Council

17 Approved by me this 29<sup>th</sup> day of Sept, 2005. 61

18 Gregory J. Nickels  
19 \_\_\_\_\_  
20 Gregory J. Nickels, Mayor

21 Filed by me this 29<sup>th</sup> day of September 2005.

22 Jessica E. Piperno  
23 \_\_\_\_\_  
24 City Clerk

25 (Seal)



**FISCAL NOTE FOR CAPITAL PROJECTS ONLY**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Finance	Ben Noble 684-8160	Joe McGovern 684-8347

**Legislation Title:**

AN ORDINANCE relating to public art museum facilities; authorizing and providing for the completion and execution of a guarantee and reimbursement agreement with the Museum Development Authority and other parties; authorizing a City guarantee for the debt service reserve established in connection with the Authority's special obligation bonds issued to pay the cost of acquiring and equipping an addition to its downtown museum facilities; and authorizing or prohibiting various other actions by the Director of Finance and other City officers in connection with the guarantee.

**Summary and background of the Legislation:**

The City-chartered Museum Development Authority ("MDA") and the Seattle Art Museum ("SAM") have embarked upon three significant capital projects: an expansion of the existing downtown facility, the construction of the Olympic Sculpture Park along the Belltown waterfront, and an infrastructure upgrade of the Seattle Asian Art Museum in Volunteer Park.

The attached bill relates to the first of these three projects. It authorizes the City to guaranty up to \$65 million of bonds issued by the MDA for the expansion of the downtown museum. This financing will enable SAM and the MDA to acquire 355,000 square feet of expansion space in the new building currently being jointly developed by the Museum and Washington Mutual. The MDA will pay the approximately annual debt service of Approximately \$4.2 million on these bonds. In the unlikely event that the MDA is unable to make these payments, the City is obligated to take over these payments on its behalf.

The expansion of SAM downtown is part of a major joint development with Washington Mutual that includes a 42-story high-rise office tower for the bank's world headquarters on the east side of the block bounded by First and Second Avenues and University and Union Streets. On the west side of the block, the adjacent new museum space will add approximately 355,000 square feet to the 150,000 square feet in the existing museum.

Opening in 2007, the Museum will initially occupy the first four floors of the new space, totaling approximately 116,000 square feet, while leasing the balance to Washington Mutual for office space until such time as the Museum wants to further expand. SAM may incrementally occupy the balance of the space during the 25-year life of the lease agreement with Washington Mutual.

The museum expansion project is expected to cost approximately \$140 million. Funding for this project includes Museum property funds (\$12 m currently on hand for the entire capital program), private donations, and the MDA bonds guaranteed by the City. Of the total \$180 million of private donations that SAM is expecting for the entire capital program (downtown expansion, sculpture park, and Volunteer Park), it has already raised \$120 m (of which \$53 m is



cash in-hand). Most of the remaining \$60 m is expected to be raised by early 2007.

**This legislation creates, funds, or anticipates a new CIP Project.**

**X This legislation does not have any financial implications.** This legislation would have financial implications for the City only if the MDA is unable to make payments of principal and interest on the bonds guaranteed by the City. Even in this unlikely event, the City has negotiated security provisions to protect its interests.

That said, the full \$65 million of the guarantee will count against the City's total legal Councilmanic debt limit and against a second cap in City debt policy that limits the total amount of debt guarantees outstanding at any one time. However, neither of these constraints is binding at this time:

- State law limits the City's total limit on Councilmanic debt to 1.5% of the assessed value of the City's taxable property. This amounts to \$1.32 billion (as measured at the end of 2004). Currently, there is more than \$550 million in capacity available under this limit.
- In addition, City policy limits total outstanding debt guarantees to 15% of the total Councilmanic debt limit (or about \$200 million). With approval of the \$65 million MDA bond guarantee, the City would have roughly \$105 million in outstanding debt guarantees. This represents 8% of the City's \$1.3 billion Councilmanic debt limit, or about half of the 15% limit imposed by City policy.

**This legislation has financial implications.**

• **What is the financial cost of not implementing the legislation:**

The MDA has been unable to obtain credit support from other sources at acceptable terms. If the MDA were to utilize credit support from an outside financial institution, it is likely that the credit provider would require a significant security interest in the Museum's assets. By providing the credit support itself, the City maintains closer control over the Museum. Also, the City's high credit will provide the MDA with access to very low cost financing. Debt service savings could exceed \$400,000 per year.

• **What are the possible alternatives to the legislation that could achieve the same or similar objectives**

The Museum explored the possibility of purchasing insurance to back the MDA bonds, but the costs were quite high and the terms unfavorable.

The City could roll the financing of the museum expansion together with its regular annual limited tax general obligation bond issue, tentatively scheduled for first quarter, 2006. However, the MDA needs the cash sooner and is concerned about rising interest rates.

• **Is the legislation subject to public hearing requirements:**



Yes, because this legislation involves a “covered capital project”, as defined by the City Council’s “Standard Operating Procedure” (Resolution 30096), the City was required to hold a “CLEAN” hearing. This hearing was held on August 8th.

• **Other Issues**

Total capital costs to be funded from the bond issue are approximately \$58 million. The bond issue will also finance a debt service reserve of up to \$4.2 million. The maximum size of the issue would be \$65 m, which includes a 3% contingency for issuance costs and other pricing adjustments.

**To protect the City against a SAM and WM insolvency, the City has negotiated the following terms:**

1. An arrangement such that the rental payments from the SAM-owned portion of the new condominium buildings will be paid directly into a Lockbox Account from which disbursements will be made directly to the trustee for the bondholders.
2. SAM is obligated to keep the office space leased and generating rental income, unless it receives City permission to terminate the lease on portions of the space.
3. General obligation pledges of the MDA and of SAM to reimburse the City from any available source for any debt service payments advanced by the City (plus interest based on the City’s cost to obtain the funds). The MDA’s pledge also includes a specific pledge of all revenue that the MDA receives. SAM’s pledge also includes a specific pledge of certain donations, its operating revenues and the unrestricted interest income from a portion of its endowment.
4. A deed of trust and assignment of rents for the existing Art Museum and the MDA-owned portion of the new condominium building.
5. SAM has assigned the proceeds of rents from the expansion space (floors 5-12) to the MDA, who has in turn assigned this interest to the City.
6. An escrowed deed of trust and assignment of rents on the expansion space, to be recorded from SAM in favor of the City if: (1) SAM’s net assets (as defined in the agreement) ever fall below \$90 million, (2) SAM fails to repay bonds issued for other purposes on the agreed schedule, (3) SAM ever asserts that it is not obligated to pay rent to the MDA; or (4) the MDA/SAM lease terminates because of condemnation.  
(The \$90 million trigger is intended to allow the City to put a claim on these assets ahead of other potential creditors if SAM is heading towards insolvency. Per the terms of the Guarantee Agreement, the City will have access to sufficient financial information from SAM in order to track its financial condition.)
7. A pledge that SAM will not grant any other party any lien or deed of trust on its share of the new condominium building (the portion leased to WAMU).
8. Property loss insurance will be maintained on both the MDA- and SAM-owned portions of the building, including 24-months of lost rent coverage. (Terrorism insurance is also required, but there is a cap on the maximum premium and thus potentially a limit on the



scope of this coverage as well. The market for such insurance is very dynamic and may change significantly when new federal regulations take effect at the beginning of 2006.)

In addition to these specific guarantees, the City-guaranteed bonds are subject to an early redemption, if the new condominium building is not completed and the condominium agreements and real estate security documents are not finalized to the City's satisfaction by July 14, 2006. The Bond Trustee will hold the bond proceeds until this date. If the condominium agreements and/or real estate security documents are not complete to the City's satisfaction, the bonds would be redeemed and the City's guarantee would terminate.



**ORDINANCE \_\_\_\_\_**

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6 WHEREAS, The Authority intends to finance the acquisition and its equipping of the MDA  
7 Unit through the issuance of its Special Obligation Bonds, 2005 (the "Bonds") in a  
8 principal amount not to exceed \$65,000,000, which are expected to be repaid from rent  
payments received from the Museum; and

9 WHEREAS, To receive the most favorable interest rates on the Bonds, the Authority has  
10 requested that the City guarantee the replenishment of the debt service reserve fund  
11 established for the Bonds; and

12 WHEREAS, In return for a City guarantee of the debt service reserve for the Bonds, the  
13 Authority and the Museum will agree to provide the City with certain security and  
covenants; and

14 WHEREAS, the Director of Finance has negotiated a proposed guarantee and reimbursement  
15 agreement (the "Proposed Guarantee Agreement") by and among the City, the  
16 Authority, the Museum, and U.S. Bank, National Association, as bond trustee, and  
17 Wells Fargo Bank, National Association, as Lockbox Agent, which Proposed Guarantee  
Agreement has been filed in Clerk File -----; NOW THEREFORE,

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

19 Section 1. Approval of Guarantee and Reimbursement Agreement. A "Guarantee and  
20 Reimbursement Agreement" (the "Guarantee Agreement") by and among the City, the  
21 Authority, the Museum, U.S. Bank National Association as Bond Trustee, and Wells Fargo  
22 Bank, National Association, as Lockbox Agent, in the form of the Proposed Guarantee  
23 Agreement on file with the City Clerk in Clerk File ----- and incorporated herein by this  
24

1 reference, is approved, and shall not be amended or modified except as the Director of Finance  
2 may permit:

3 A. to fill in blanks, add to Section 7.2 contact information for the parties, modify dates  
4 that depend on the date of Bond Closing, correct definitions to match related documents, and  
5 correct cross-references, all in form satisfactory to the Director of Finance;

6  
7 B. to add legal descriptions in Exhibit B as called for in the Proposed Guarantee  
8 Agreement;

9 C. to reflect the actual square footage and final engineering, operational and  
10 maintenance requirements of the "as-built" Museum Expansion Unit; and

11 D. to insert Exhibits A-1, A-2, and A-3 in form satisfactory to the Director of Finance.

12  
13 Section 2. Execution of Agreement on Behalf of City. The Director of Finance is  
14 authorized to sign the Guarantee Agreement on behalf of the City if the Director of Finance  
15 determines, prior to execution, that the following conditions have been or will be met:

16 A. the Bonds are to be issued in a principal amount not in excess of \$65,000,000;

17 B. the final maturity of the Bonds will not be later than December 31, 2030;

18 C. based on the interest rates on and other terms and conditions of the Bonds, it is  
19 reasonable to expect that the Coverage Requirement set forth in the Guarantee Agreement will  
20 be met at all times during which any of the Bonds remain outstanding;

21  
22 D. the Authority has provided for the various security instruments and other documents  
23 required by the Guarantee Agreement to be provided at or prior to the time of Bond Closing,  
24 together with such additional instruments as the Director of Finance finds reasonably necessary  
25  
26

1 to be provided at or prior to the time of Bond Closing to carry out the purposes of this  
2 ordinance;

3 E. all ancillary documents referred to or governed by the Guarantee Agreement,  
4 specifically including but not limited to the Indenture, the Office Space Lease and the MDA  
5 Lease, will contain the provisions called for by the Guarantee Agreement;

6  
7 F. the modifications permitted by Subsections 1A and 1D above to the form of the  
8 Proposed Guarantee Agreement have been properly made, and no other modifications have  
9 been made;

10  
11 G. the Bonds provide that the Authority is not acting as the agent of the City and the  
12 Authority's obligations with respect to the Bonds do not constitute obligations of the City or  
13 any entity other than the Authority, and the Bonds contain the following recitation, as required  
14 by SMC 3.110 and RCW 35.21.750: "The Museum Development Authority of Seattle is  
15 organized pursuant to Seattle Municipal Code (SMC) 3.110 and 35.21.730 -.755. RCW  
16 35.21.750 provides as follows: '[A]ll liabilities incurred by such public corporation,  
17 commission, or authority shall be satisfied exclusively from the assets and properties of such  
18 public corporation, commission or authority and no creditor or other person shall have any  
19 right of action against the city, town, or county creating such corporation, commission, or  
20 authority on account of any debts, obligations, or liabilities of such public corporation,  
21 commission, or authority';"

1 H. all the conditions specified in Section 3.6(b) of the Guarantee Agreement, including  
2 but not limited to that the Reserve Account is fully funded and that the Museum has Museum  
3 Net Assets of at least \$90 million, have been met; and

4 I. the Authority has deposited with the Bond Trustee in the Bond Fund sufficient cash  
5 from the Museum to pay all interest accruing on the Bonds through September 1, 2006, and to  
6 pay the full amount of the call premium that would be required to be paid to Bondowners under  
7 the Indenture in the event of an extraordinary redemption of Bonds on September 1, 2006.

8  
9 Section 3. Limited General Authorization. Subject to the limitations in Sections 4 and  
10 5, below:

11 A. The Mayor and the Director of Finance are each separately authorized to execute  
12 such other documents as they determine are reasonably necessary to carry out the Guarantee  
13 Agreement.  
14

15 B. The Mayor and the Director of Finance and each of the other appropriate officers of  
16 the City are each authorized and directed to do everything as in their judgment may be  
17 necessary, appropriate, or desirable in order to carry out the terms and provisions of, and  
18 complete the transactions contemplated in furtherance of, this ordinance.  
19

20 Section 4. Consents, Approvals, and Waivers.

21 A. Except as limited by this subsection 4A and by subsection 4C below, the Director of  
22 Finance is authorized to, on behalf of the City, give consents and approvals, make and rescind  
23 objections, and waive performance or defaults (including determining when to issue or rescind  
24 Declarations of Default) by others under the Guarantee Agreement or the Indenture or other  
25  
26

1 documents referred to in or related to the Guarantee Agreement, all as he determines best  
2 serves the City's interests, and may condition his consents, approvals, rescissions, and waivers  
3 on terms and conditions that he determines further the City's interests, but unless expressly  
4 permitted by subsection 4B below, neither the Mayor nor the Director of Finance nor any other  
5 City officer may, without future authorization by ordinance, take any action, including but not  
6 limited to giving or rescinding any consent or approval or objection or waiver or declaration,  
7 that has the effect of diminishing the City's security for reimbursement of advances it may  
8 make under the Guarantee Agreement.  
9

10 B. The Director of Finance may:

11 1. release any or all City security interests after the Bonds have been fully paid,  
12 purchased, redeemed, retired, or defeased if he receives a written opinion of nationally  
13 recognized bankruptcy counsel practicing regularly before Federal Bankruptcy Court addressed  
14 to the City that there is no risk of a Bankruptcy Recovery.  
15

16 2. subject to Subsection 4C below, approve a Bond Prepayment Plan under the  
17 Guarantee Agreement, but only if the Bond Prepayment Plan submitted meets the minimum  
18 requirements in Section 4.6 of the Guarantee Agreement and the Director of Finance receives  
19 evidence he or she considers to be clear and convincing that either the available insurance or  
20 condemnation proceeds are sufficient to provide for the defeasance or redemption of the Bonds  
21 to be prepaid or sufficient amounts will be available and deposited with a trustee or escrow  
22 agent in Seasoned Funds or refunding bond proceeds at the time funding is needed to carry out  
23 the Bond Prepayment Plan.  
24  
25  
26

1           3. if the conditions precedent to the Acquisition Date (Section 3.6(c) of the  
2 Guarantee Agreement) have been timely satisfied, give the City's Acquisition Date Notice.

3           4. enforce the reimbursement obligations of either or both the Authority and the  
4 Museum, including by realizing on the security provided by either or both of them.

5           5. consent to the Authority and Museum issuing their respective additional  
6 bonds, notes or other evidences of indebtedness pursuant to Section 5.6 of the Guarantee  
7 Agreement in the ordinary course of business consistent with their respective operating  
8 practices over the course of the 12 months immediately preceding the seeking of such consent,  
9 but in no event to exceed \$1,000,000 outstanding by each of them at any one time.

10  
11           C. In addition to other actions prohibited because they would have the effect of  
12 diminishing the City's security for reimbursement of advances it may make under the  
13 Agreement, and by way of illustration, and not in limitation, neither the Mayor nor the Director  
14 of Finance nor any other City officer shall:

15  
16           1. approve any Bond Prepayment Plan so long as all or any portion of any  
17 advance made by the City under the Guarantee Agreement, or any interest thereon, remains  
18 unreimbursed;

19  
20           2. without future authorization by ordinance approve a Reimbursement  
21 Schedule under which reimbursement of any City advance plus interest would take longer than  
22 5 years from the date of the advance being reimbursed;



1           8. without future authorization by ordinance consent to any deviation from or  
2 waive the requirements for the flow of funds in the Lockbox Account in Section 4.1(b)(2) of  
3 the Guarantee Agreement;

4           9. without future authorization by ordinance, consent to any amendments to any  
5 of the Leases or to the Condominium Documents would have the effect of diminishing the  
6 City's security for reimbursement;

7           10. without future authorization by ordinance consent to allowing prior or  
8 parity liens on the Revenues as that term is defined in the Indenture;

9           11. without future authorization by ordinance waive or consent to extension of  
10 the 120 day maximum period for approval of a proposed Bond Prepayment Plan; nor

11           12. without future authorization by ordinance waive or consent to extension of  
12 the 120 day maximum period for cure of a default by any other party to the Guarantee  
13 Agreement.

14           Section 5. No Amendment or Modification of Guarantee Agreement. Except as may  
15 be authorized by future ordinance, no modifications or amendments to the Guarantee  
16 Agreement, once executed, shall be made, except those expressly permitted by Subsections 1B  
17 and 1C of this ordinance.

18           Section 6. Headings and Definitions. The section headings in this ordinance are used  
19 for convenience only and shall not constitute a substantive portion of this ordinance. Reference  
20 is made to the Guarantee Agreement for the definitions of terms capitalized and not defined in  
21 this ordinance.

1 Section 7. Effective Date. This ordinance shall take effect and be in force 30 days  
2 from and after its approval by the Mayor, but if not approved and returned by the Mayor within  
3 10 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.  
4

5 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2005, and signed by me  
6 in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2005.  
7

8  
9 \_\_\_\_\_  
10 President \_\_\_\_\_ of the City Council  
11

12 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2005.  
13

14 \_\_\_\_\_  
15  
16 Gregory J. Nickels, Mayor  
17

18 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2005.  
19

20 \_\_\_\_\_  
21  
22 City Clerk  
23

24  
25 (Seal)  
26

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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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190617  
CITY OF SEATTLE, CLERKS OFFICE

No.

**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

CT:121950 TITLE ONLY

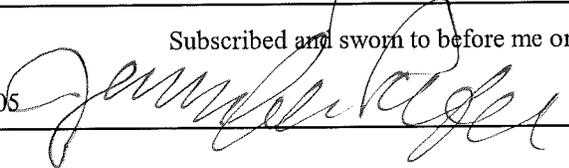
was published on

10/06/05

The amount of the fee charged for the foregoing publication is the sum of \$ 39.75, which amount has been paid in full.

  
\_\_\_\_\_  
Subscribed and sworn to before me on

10/06/05

  
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle

Affidavit of Publication

## State of Washington, King County

### City of Seattle

#### TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed at the Special Meeting by the City Council on September 29, 2005, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

#### ORDINANCE NO. 121950

AN ORDINANCE relating to public art museum facilities; authorizing and providing for the completion and execution of a guarantee and reimbursement agreement with the Museum Development Authority and other parties; authorizing a City guarantee for the debt service reserve established in connection with the Authority's special obligation bonds issued to pay the cost of acquiring and equipping an addition to its downtown museum facilities; and authorizing or prohibiting various other actions by the Director of Finance and other City officers in connection with the guarantee.

Publication ordered by JUDITH PIPPIN,  
City Clerk

Date of publication in the Seattle Daily  
Journal of Commerce, October 6, 2005.  
10/6(190617)