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James Keblas
OED Interlocal Agreement Port of Seattle ORD
October 19, 2011
Version #2

ORDINANCE _____

AN ORDINANCE authorizing the Interlocal Agreement between the City of Seattle and the Port of Seattle promoting music and musicians primarily associated with Seattle and the Puget Sound region.

WHEREAS, Seattle is acknowledged as a distinctive center for music, where a spirit of innovation continually renews a thriving music scene, and audiences who appreciate the talent of diverse musicians of all ages and musical genres provide the foundation for this city's vibrant music culture; and

WHEREAS, Seattle's music industry contributes to a healthy community and economy by directly creating jobs, and by supporting a wide variety of businesses that generate annual earnings, and sales and Business and Occupation tax revenues; and

WHEREAS, the City of Seattle welcomed the Port of Seattle as one of its inaugural partners when the City of Music initiative was launched in October of 2008; and

WHEREAS, representatives from the Port of Seattle, City of Seattle and Seattle Music Commission have been working towards infusing the region's musical tradition into the Seattle-Tacoma International Airport to introduce guests and residents to the region's diverse music culture and history; and

WHEREAS, by showcasing the region's diverse and far-reaching musical identity and activity at the Seattle-Tacoma International Airport, the Port meets its goals of giving the Airport a sense of "place," enhancing the user experience at the Airport, and exposes passengers utilizing the Airport to the region's musical culture, and

WHEREAS, the Seattle-Tacoma International Airport is operated by the Port and services the greater Seattle metropolitan area, including the mission to stimulate economic development and to create jobs, and one way of fulfilling these parts of the Port's mission is to promote the region's music industry and its musicians; and

WHEREAS, collaboration between the City of Seattle and the Port of Seattle will enhance the growth and development of Seattle's music sector and convey the City's commitment to the industry, musicians, and audiences; and

WHEREAS, the City of Seattle intends to enter into an Interlocal Agreement with the Port of Seattle to provide regional music and entertainment services at the Seattle-Tacoma International Airport, which the City of Seattle will provide through collaboration with a third-party vendor; and

WHEREAS, the City Council and the Mayor recognize that the City shall indemnify, defend and hold the Port harmless against any liability, claims, damages, losses and expenses relating to any third party claim that alleges the Port does not have the necessary rights to play any music or videos provided by the City; and

WHEREAS, the City Council and Mayor, through the Seattle Music Commission, intend to obtain similar indemnification from Play Network, the third-party vendor identified to provide regional music and entertainment services to the Seattle-Tacoma International Airport on behalf of the City; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Interlocal Agreement between the City of Seattle and Port of Seattle, attached herein as Attachment 1, is approved, and the Director of the Office of Economic Development is authorized to execute the Agreement on behalf of the City.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this _____ day of _____, 2011.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Interlocal Agreement between the City of Seattle and the Port of Seattle

INTERLOCAL AGREEMENT
BETWEEN THE CITY OF SEATTLE AND THE PORT OF SEATTLE

This Intergovernmental Agreement ("Agreement") is entered into _____, 2011 between the City of Seattle ("City") and the Port of Seattle ("Port") pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act.

BACKGROUND

The Seattle Music Commission ("SMC"), a commission established by the City, is charged with promoting music and musicians primarily associated with Seattle and the Puget Sound region. Seattle-Tacoma International Airport ("Airport") is operated by the Port and serves Seattle, King County and the greater Pacific Northwest region (collectively "the Region"). Included in the mission of the Port is to stimulate economic development and to create jobs. One way of fulfilling these parts of the Port's mission is to promote the Region's music industry and its musicians.

The City and Port share the similar goal of exposing passengers utilizing the Airport to the Region's musicians. Utilizing the efforts and expertise of the SMC, the parties believe that they can meet this objective.

The City and Port agree as follows:

1. The City, through the SMC, shall be responsible for:

a. Providing the Airport with a remotely-hosted, Web-based music player ("Player") to utilize on the Airport's Wi-Fi splash page for the playback of the Music (as defined below).

b. Providing a professionally curated playlist of music from, or closely associated with, the Region (the "Music") that may be played with the Player and publicly over the Airport's loudspeaker systems. The Music shall be subject to review by the Port for appropriate use in an airport environment, and the City shall promptly remove any Music to which the Port objects. For use in connection with the loudspeaker systems, the City shall provide the playlist in a format(s) reasonably requested by the Port.

c. Getting local musicians to record public announcements, as reasonably requested by the Port, that may be broadcast over the Airport's loudspeaker systems. Unless otherwise agreed by the Port (as provided below), the City shall be responsible for producing the recorded public announcements in a manner, and at a fidelity consistent with, the intended use and shall provide the announcements in a format(s) reasonably requested by the Port.

d. Creating or otherwise providing videos associated with the Music that may be displayed on screens in the Airport. The City shall provide the videos in a format(s) reasonably requested by the Port.

e. Securing – at no cost to the Port – all rights, clearances and/or licenses necessary for the Port's reasonable use and/or public performance of the materials identified in subsections a. through d. of this Section 1 for the term of this Agreement. The City acknowledges that the Port does not currently have (and does not intend to procure) performance licenses from any entity.

f. The City may make use of a third party vendor to fulfill some or all of its obligations under this Section 1 provided that vendor is selected in a manner consistent with the requirements of Chapter 39.34 of the Revised Code of Washington to provide the above, procured in accord with the City's processes.

2. The Port shall be responsible for:

a. Linking to or otherwise making available the Player on the Airport's Wi-Fi splash page and publicly playing or displaying, as appropriate, the Music and other content provided by the City, all in accordance with the reasonable license requirements and restrictions clearly communicated to the Port by the City (or the City's vendor).

b. Reasonably cooperating with the City to provide the necessary technical infrastructure to provide access to the Music via the Player.

c. Reasonably cooperating with the City to provide the necessary technical infrastructure for utilization of the Airport's loudspeaker systems for the public announcements.

d. Reasonably cooperating with the City to provide the necessary technical infrastructure to play the videos.

e. Reviewing the Music to be sure that individual selections are appropriate for an airport environment.

f. Developing any terms of use or privacy policy for the Port's Wi-Fi system and resolving any technical problems related to that system. The Port shall refer Player-related problems to the City.

g. Providing promotional credit to the City, and/or any third party vendor the City uses, for the Player, the Music and other City-provided content on the Wi-Fi splash page at or near the icon for the Player. The Port may provide such other and further promotional credit for the Player, the Music and other City-provided content as the parties agree without the necessity of a formal amendment to this Agreement. Solely in connection with such credit, the Port shall have a limited, non-exclusive, and royalty free license to make use of such marks as provided by the City and/or its third party vendor, which marks shall not (unless otherwise agreed) be materially modified except as to size in connection the Port's use.

h. Notwithstanding anything to the contrary above, the Port shall have no obligation to play/display the City-provided content in any particular location or any minimum number of

times over the term of this Agreement. The Port shall, in its sole discretion, be responsible for determining the appropriate location(s) and manner in which to link to the Player and publicly play/display the City-provided Music and other content at the Airport. In addition, the City acknowledges that the Port, for both technical and contractual reasons, may not be able to utilize the videos. In the event the Port is unable to utilize the videos, the Port must immediately notify the City and, to the extent possible, work cooperatively with the City to seek resolution of the inability to utilize the videos.

i. The Port reserves the right to contract directly with musician(s) obtained by the City for public announcements and produce such announcements without further City involvement. In that event, any contract(s) between the Port and the musician(s) and/or relating to the production of the announcement(s) shall not be binding upon or have any effect on the City.

3. Except to the extent attributable to either: (i) the Port's failure to comply with the reasonable license requirements and restrictions clearly communicated to the Port or (ii) public announcement material specifically provided or produced by the Port, the City shall indemnify, defend and hold the Port harmless against any liability, claims, damages, losses and expenses (including, but not limited to, reasonable attorneys' fees, experts' fees and consultants' fees and other expenses of litigation or arbitration) relating to any third party claim that alleges the Port does not have the necessary rights to play any Music, video or other content provided by the City. The Port shall promptly notify City of any such claim and shall provide City with reasonable cooperation at City's expense. City may utilize counsel of its own choice; the Port may participate in any defense at its own expense. Prior to City's entering into a settlement, Port must consent, but shall not unreasonably withhold such consent.

4. This Agreement shall be of indefinite duration. Either the Port or the City may at any time terminate this Agreement upon 90 days' notice to the other party. The parties shall meet at least on a quarterly basis to assess the progress of the activities pursuant to the Agreement, and may decide additional ways to cooperate in promoting regional musicians. Any material changes to the parties' respective obligations will be reflected in a written amendment to this Agreement.

5. Each party shall use reasonable efforts to perform its responsibilities with respect to this Agreement; however, neither party provides the other party any warranties with respect thereto. No party shall be responsible to the other for any failure to perform its responsibilities due to any circumstances beyond the party's reasonable control.

6. Except as provided in Section 3 above, neither party shall be liable to the other party for any damages whatsoever, including any indirect, special, incidental or consequential damages of any character.

7. The parties may eventually allow the download of Music provided by the City. To the extent that the parties conclude, based on use of the Player or other reasons, that downloads are both practical and commercially feasible, the parties shall negotiate in good faith how to implement such downloads and how to share any revenues resulting from such downloads. Any agreement to proceed with downloads must be reflected in the written amendment to this Agreement.

8. Nothing in this Agreement shall create a work-for-hire under the United State Copyright Act or otherwise operate as an assignment or permanent transfer of any intellectual property rights associated with any content (in whatever form) provided by either party under or in connection with this Agreement. Each party specifically reserves all right, title and interest that such party may have in any such content; provided, however, each party shall – to the extent not otherwise provided and necessary to effectuate the intent and purposes of this Agreement in light of the parties' stated responsibilities – be deemed to have granted the other party a limited, non-exclusive, royalty free license to such content for the term of this Agreement.

9. Each party shall bear its own expenses unless otherwise agreed for specific projects.

10. General:

a. This Agreement expresses the entire understanding of the parties with respect to its subject matter. No other documents, oral statements or other communications shall be binding in any way. This Agreement may only be amended in a written amendment executed by the parties and after approval by each party's governing body, if required.

b. City and Port are independent contractors and shall so represent themselves to all third parties. Neither party has the right to bind the other in any manner whatsoever and nothing in this Agreement shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise.

c. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall remain in full force and effect.

d. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

e. The parties shall coordinate the announcement of entering into this Agreement. Such announcement shall state that the parties are proceeding to develop the relevant capabilities and not commit to a specific date for availability to the general public.

This Agreement is effective as of the date written above.

City of Seattle	Port of Seattle
By: _____	By: _____
Printed: _____	Printed: Tay Yoshitani
Title: _____	Title: CEO

Form revised: July 12, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Office of Economic Development	James Keblas / 684-5030	Greg Shiring / 386-4085

Legislation Title: AN ORDINANCE authorizing the Interlocal Agreement between the City of Seattle and the Port of Seattle promoting music and musicians primarily associated with Seattle and the Puget Sound region.

Summary of the Legislation:
Representatives from the Port of Seattle, City of Seattle and Seattle Music Commission have been working towards infusing the region's musical tradition into the Seattle-Tacoma International Airport to introduce guests and residents to the region's diverse music culture and History. This legislation executes an Interlocal Agreement between the City of Seattle and the Port of Seattle to provide regional music and entertainment services at the Seattle-Tacoma International Airport, which the City of Seattle will provide through collaboration with a third party vendor.

Background:
The Seattle Music Commission (SMC), a commission established by the City, is charged with promoting music and musicians primarily associated with the City and the Puget Sound region. Seattle-Tacoma International Airport is operated by the Port and services the greater Seattle metropolitan area. Included in the mission of the Port is to stimulate economic development and to create jobs. One way of fulfilling these parts of the Port's mission is to promote the region's music industry and its musicians.

The City and Port share the similar goal of exposing passengers utilizing the Airport to the region's musicians. Utilizing the efforts and expertise of the SMC, the parties believe that they can meet this objective.

The goal of this effort is to enhance the user experience at Sea-Tac Airport by showcasing our region's musical performers and culture. This agreement will involve four elements, including: 1) airing local music culture videos on monitors throughout the airport, 2) building a local music player on the free WiFi homepage, 3) having local music playing overhead and, 4) playing PSA announcements by local musicians across the airport.

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

COUNCIL CLERK

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
This legislation does not require any change in the Office of Economic Development's (OED) appropriation authority. OED will use existing staff time and resources to launch the program, and the non-profit, Play Network, will provide resources at no cost to the City.

b) **What is the financial cost of not implementing the legislation?**
None

c) **Does this legislation affect any departments besides the originating department?**
No

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

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

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

g) **Does this legislation affect a piece of property?**
No

h) **Other Issues:**
None

List attachments to the fiscal note below:

COUNCIL CLERK