#15
CB 117391

Terry Dunning
DPR Belltown CC Lease Amendment ORD
02 February 2012
Version #2

ORDINANCE _____

AN ORDINANCE authorizing the Superintendent of Parks and Recreation to sign an amendment to a lease with 2235 Fifth Avenue, LLC, a Washington Limited Liability Company, for a building and land located at 2235 Fifth Avenue for the Belltown Community Center, as described in the 1999 Community Centers and Seattle Center Levy.

WHEREAS, by Ordinance 123766 (November 2011) the City Council approved a seven-year lease, with a five-year option to renew, with 2235 Fifth Avenue, LLC for space to develop the Belltown Community Center; and

WHEREAS, the property owner was unwilling to sign the lease as authorized because the property owner wished to create a right to terminate the lease during the option period in the event of a possible redevelopment of the property; and

WHEREAS, the approved lease did not include language allowing the building owners to terminate the lease during the five-year option period although that language had been included in early drafts of the lease; and

WHEREAS, Parks and Recreation negotiated the lease of 2235 Fifth Avenue in good faith and has determined that it is necessary for the City to receive consideration for the requested termination right; and

WHEREAS, in order to allow the City to continue to operate a community center at the lease site Parks and Recreation has negotiated language that will afford the City an opportunity to lease or acquire property rights in any future owner-developed structure on the site; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation is hereby authorized to sign a lease amendment with 2235 Fifth Avenue, LLC, substantially in the form of Attachment 1 to this ordinance, affecting the following real property :

Lot 7 in block k of bell's 5th addition to the City of Seattle, according to plat recorded in Volume 1 of Plats at page 191, in King County Washington.

DOS CITY CLERK

Except the easterly 12 feet thereof condemned in King County Superior Court Cause no. 52280 for widening 5th Avenue, as provided under Ordinance no. 13776 of the City of Seattle.

Also, except that portion thereof condemned for Monorail system in King County Superior Court Cause no. 642136, as provided under ordinance no. 93917.

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 _____, 2012, and signed by me in open session in authentication of its passage this _____ day of _____, 2012.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2012.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Lease Amendment

CITY CLERK

Terry Dunning
DPR Belltown CC Lease Amendment ATT 1
January 5, 2012
Version #1

FIRST AMENDMENT TO LEASE

THIS AMENDMENT is entered into this the ___ day of _____, 2012, by and between 2235 Fifth Avenue LLC, a Washington limited liability company ("Landlord"), and The City of Seattle, a Washington municipal corporation ("Tenant").

RECITALS

A. On or about December 13, 2011 Landlord and Tenant entered into a lease (the "Lease") for a building located at 2235 5th Avenue in Seattle, WA consisting of approximately 6,480 square feet of building space, as more particularly described in the Lease.

B. Landlord and Tenant now desire to amend the Lease as provided herein.

C. Unless otherwise noted, all capitalized terms herein have the same meanings as set forth in the Lease.

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, Landlord and Tenant hereby covenant and agree as follows:

1. Section 1.1 – Basic Lease Information, Subsection (g)(ii), Rent Commencement Date, is hereby amended by changing the Rent Commencement Date of December 1, 2011 as follows:

   (g) RENT COMMENCEMENT DATE: The Rent Commencement Date shall be the date that is the earlier to occur of the following:

   (i) the Acceptance Date as defined in Section 3.5 below; or
   (ii) December 13, 2011

2. Section 13.18 – Damage Near End of Term, is hereby amended to delete the reference to the "Redevelopment Period" in the first sentence.

3. Exhibit C: Option to Renew. Exhibit C is hereby replaced in its entirety by the attached Exhibit C.

EXCEPT as specifically amended herein, all other provisions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, this Lease Amendment is executed the day first hereinabove written.

2235 FIFTH AVENUE LLC, a Washington limited liability company	CITY OF SEATTLE, a Municipal Corporation
_____ Gary Merlino, Managing Member	_____ Christopher Williams, Acting Superintendent

SDCI CITY CLERK

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that GARY M. MERLINO is the person who appeared before me and acknowledged that he signed the instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Managing Member of 2235 FIFTH AVENUE LLC., a Washington limited liability company, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated: _____

_____
Signature

_____
Name (Print)

_____
Title

_____
My Appointment Expires

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and acknowledged that he signed the instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of _____, a _____ entity, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated: _____

_____
Signature

_____
Name (Print)

_____
Title

_____
My Appointment Expires

SEA CITY CLERK

EXHIBIT C

Option to Renew

Tenant is granted the option to extend the term of this Lease beyond the expiration of the initial term for sixty (60) months (the "Extended Term") on the same terms and conditions contained in the Lease except for the Base Rent. The conditions which must be met for Tenant to exercise its right are as follows:

(a) Tenant shall not be in default on the date of notice;

(b) Tenant has fully and faithfully performed all of the covenants, conditions and terms of this Lease at all times;

(c) Tenant shall deliver to Landlord written notice ("Election Notice") of Tenant's election to exercise the option to extend at least six (6) months but not more than nine (9) months before the Expiration Date.

If Tenant fails to satisfy or comply with any or all of the above conditions, then the option to extend shall be void and of no force of effect. If Tenant satisfies and complies with all of such conditions and elects to exercise the option to extend, the minimum rent shall be adjusted to Fair Market Rent for comparable buildings in the Seattle-Belltown area. Upon the Tenant exercising its option to renew, the parties will use good faith efforts to reach an agreement on what constitutes Fair Market Rent for the Extended Term. In no case shall the Fair Market Rent for the Extended Term be less than minimum rent for the last year of the Lease Term. If the parties are unable to agree upon Fair Market Rent after a thirty (30) day period within which the

DNS CITY CLERK

parties shall attempt to negotiate such rent, the parties agree to submit the matter to binding arbitration with a single arbitrator in accordance with Washington law; PROVIDED, HOWEVER, that the difference in Landlord's determination of Fair Market Rent and that of Tenant's determination of market rent must vary more than five percent (5%) for any arbitration to apply. (If the difference is five percent (5%) or less, then the difference shall be split in half.) The arbitrator shall be a licensed real estate broker who has been active over the previous five (5) year period in the leasing of office spaces. If Landlord and Tenant are unable to agree on the arbitrator within ten (10) days after the election of the parties to determine Fair Market Rent by arbitration, each shall select a broker who shall be qualified under the same criteria set forth above, and so notify the other party in writing within ten (10) days after the end of such ten (10) day period. The two brokers so chosen by the parties shall then appoint the arbitrator within ten (10) days after the date of the appointment of the last appointed broker. If the two brokers so chosen by the parties are unable to agree on the arbitrator within such ten (10) day period, the arbitrator will be appointed by the director (or the equivalent) of the Seattle Office of the American Arbitration Association upon the application of either party. If either party fails to timely select its broker and so notify the other party in writing within the foregoing ten (10) day period, and the other party timely selects its broker, then the broker selected by the other party shall be the arbitrator for determining Fair Market Rent. Within thirty (30) days after the selection of the arbitrator, the arbitrator shall determine Fair Market Rent by selecting either the Fair Market Rent stated in Landlord's submission to the arbitrator or the Fair Market Rent stated in Tenant's submission. The arbitrator shall have no power to average such amounts or to

SEA CITY CLERK

designate a Fair Market Rent other than that specified in either Landlord's submission or Tenant's submission. Both parties may submit any information to the arbitrator for his or her consideration, with copies to the other party. The arbitrator shall have the right to consult experts and competent authorities for factual information or evidence pertaining to the determination of Fair Market Rent. The arbitrator shall render his or her decision by written notice to each party. The determination of the arbitrator will be final and binding upon Landlord and Tenant.

Notwithstanding anything in this Lease to the contrary, Landlord shall have the right to terminate this Lease only during the Extended Term and only in the event that Landlord elects to redevelop the Premises. As used in this Lease, "redevelopment" means the demolition of the Premises and construction of a new building at the same location, whether as a stand-alone development or as part of a larger project. Landlord's intent to redevelop the Premises must be evidenced by Landlord's application for a building permit that includes such demolition and construction. If Landlord elects to terminate this Lease as provided in this Exhibit C, then Landlord shall notify Tenant of its election at least 12 months prior to the date of Landlord's building permit or Master Use Permit application, in writing.

In the event of termination due to redevelopment of the Premises and only during the Extended Term, Tenant shall have the right of first negotiation of a satisfactory lease or purchase agreement with Landlord for ground-floor space within the redevelopment of equal or greater size and utility to the leased Premises and at Fair Market Value. Tenant's right of first negotiation shall commence on the date Landlord provides Tenant with written notice of termination and expire 30

SEA CITY CLERK

days after Landlord provides Tenant with written notice of receipt of building permit. If the parties are unable to agree on the Fair Market Value of the redeveloped premises, then the parties shall submit the matter to binding arbitration as described above. If the parties are unable to negotiate a satisfactory agreement during this period, then this Le ase shall terminate in accordance with Landlord's notice and the parties shall thereafter have no further obligations with respect to one another under this Lease, with the exception of those obligations expressly stated to survive termination.

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Form revised: December 6, 2011

FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Terry Dunning/684-4860	Amy Williams/233-2651

Legislation Title: AN ORDINANCE authorizing the Superintendent of Parks and Recreation to sign an amendment to a lease with 2235 Fifth Avenue, LLC, a Washington Limited Liability Company, for a building and land located at 2235 Fifth Avenue for the Belltown Community Center, as described in the 1999 Community Centers and Seattle Center Levy.

Summary and background of the Legislation:
The Belltown Community Center is funded by the 1999 Community Center Levy. The new center will be located at 5th and Bell, along the new Bell Street Boulevard. The City is leasing property for the community center, as attempts over many years to buy property or co-locate in new development have proved too expensive. The recently approved lease, authorized by Ordinance 123767 (November 2011) is for seven years with a five-year option to renew.

The proposed new provision gives the landlord the right to terminate the lease during the five-year option period. Termination language was included in early drafts of the lease; it was removed when, during lease negotiations, the lease term changed from nine to seven years. While the landlord reviewed several drafts of the lease that did not include the termination language, he did not realize it was not part of the agreed-upon version until after the City Council authorized the lease. Once the landlord realized the cancellation language had been removed, he refused to sign the lease without a commitment from the City that a recommendation would be made to the City Council to adopt an amendment reinstating the language. The cancellation provision can only be enforced when the landlord provides evidence, by applying for a Master Use Permit or Building Permit, for the redevelopment of the site.

Department of Parks and Recreation (DPR) agreed to reinstate the termination language in order to keep this long-awaited project moving forward, and because all City costs are amortized over the initial seven-year term. In return for reinstating the language, DPR will receive an option to acquire either a leasehold or condominium interest in a ground floor space, equal to or greater in size to the leased space, in the landlord's future development at the community center site, if the development occurs within the five-year option period.

The amendment also deletes language in the body of the lease referencing "Redevelopment Period" as this language is no longer relevant to the intent of the lease and was included by error in the original lease document.

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Project Name:	Project I.D.:	Project Location:	Start Date:	End Date:
Belltown Neighborhood Center	K73484	2235 Fifth Avenue	December 5, 2011	2018

Please check any of the following that apply:

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

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

__X__ **This legislation has financial implications.**

Appropriations:

Fund Name and Number	Department	Budget Control Level*	Existing 2012 Appropriation	New 2012 Appropriation (if any)	2013 Anticipated Appropriation
1999 Seattle Center/ Comm-unity Centers Fund 33800	Parks and Recreation	1999 Community Center Improvements	$1,892,434	$0	$0
TOTAL	**NA**	**NA**	**$1,892,434**	**$0**	**$0**

Appropriations Notes: The estimated cost of the Belltown Community Center project from 2011 through the term of the lease is $1,951,745. To date $2,024,370 has been appropriated for this project, and $131,936 has been spent through 2010 leaving a balance of $1,892,434. Additional appropriation authority will be requested in the later years of the lease as needed.

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Spending Plan and Future Appropriations for Capital Projects:

Spending Plan and Budget	2012	2013	2014	2015	2016	2017	Total
Spending Plan	1,058,660	129,600	129,600	129,600	130,950	130,950	**1,709,360**
Current Year Appropriation							
Future Appropriations	0						**0**

Spending Plan and Budget Notes: This project anticipates that certain operating expenses addressed in the lease will be passed on to a non-profit operator who has not yet been selected, but whose selection will occur before the center opens.

Funding Source: 1999 Community Centers and Seattle Center Levy

Funding Source (Fund Name and Number, if applicable)	2012	2013	2014	2015	2016	2017	Total
1999 Seattle Center/ Community Centers Fund 33800	1,058,660	129,600	129,600	129,600	130,950	130,950	**1,709,360**
TOTAL	1,058,660	129,600	129,600	129,600	130,950	130,950	**1,709,360**

Funding Source Notes: Fund balance as of December 31, 2010, was $2,061,382.

Bond Financing Required: N/A

Type	Amount	Assumed Interest Rate	Term	Timing	Expected Annual Debt Service/Payment
TOTAL	**NA**	**NA**	**NA**	**NA**	**NA**

Bond Notes:

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Uses and Sources for Operation and Maintenance Costs for the Project:

O&M	2012	2013	2014	2015	2016	2017	Total
Uses							
Start Up	0	0	0	0	0	**0**	**0**
On-going	0	0	0	0	0	**0**	**0**
1999 Seattle Center/Community Centers Fund 33800							

Operation and Maintenance Notes: Operation and maintenance of the site will be the responsibility of a non-profit recreational service provider. Steps are currently underway to negotiate an agreement with a potential provider and it is the intent of DPR to secure an agreement before opening the facility to the public.

Periodic Major Maintenance Costs for the Project: N/A

Major Maintenance Item	Frequency	Cost	Likely Funding Source
TOTAL	**N/A**	**N/A**	**N/A**

Funding sources for replacement of project: N/A

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Title and Department*	Position # for Existing Positions	Fund Name & #	PT/FT	2012 Positions	2012 FTE	2013 Positions **	2013 FTE **
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

Position Notes:

Do positions sunset in the future? N/A

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?** Yes, the proposed lease is for seven years, and it obligates the City to pay lease payments for the duration. Funding for the payments will be fully paid for by the 1999 Levy.

2012 CITY CLERK

b) **What is the financial cost of not implementing the legislation?** There is no financial cost of not implementing the legislation. However, it is unlikely, based on the long search to find this lease option, that another opportunity will be feasible to implement the Levy Belltown project.

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?** Alternatives that have been explored include purchase of a building or condominium space in a building. Neither of these alternatives is financially feasible.

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.

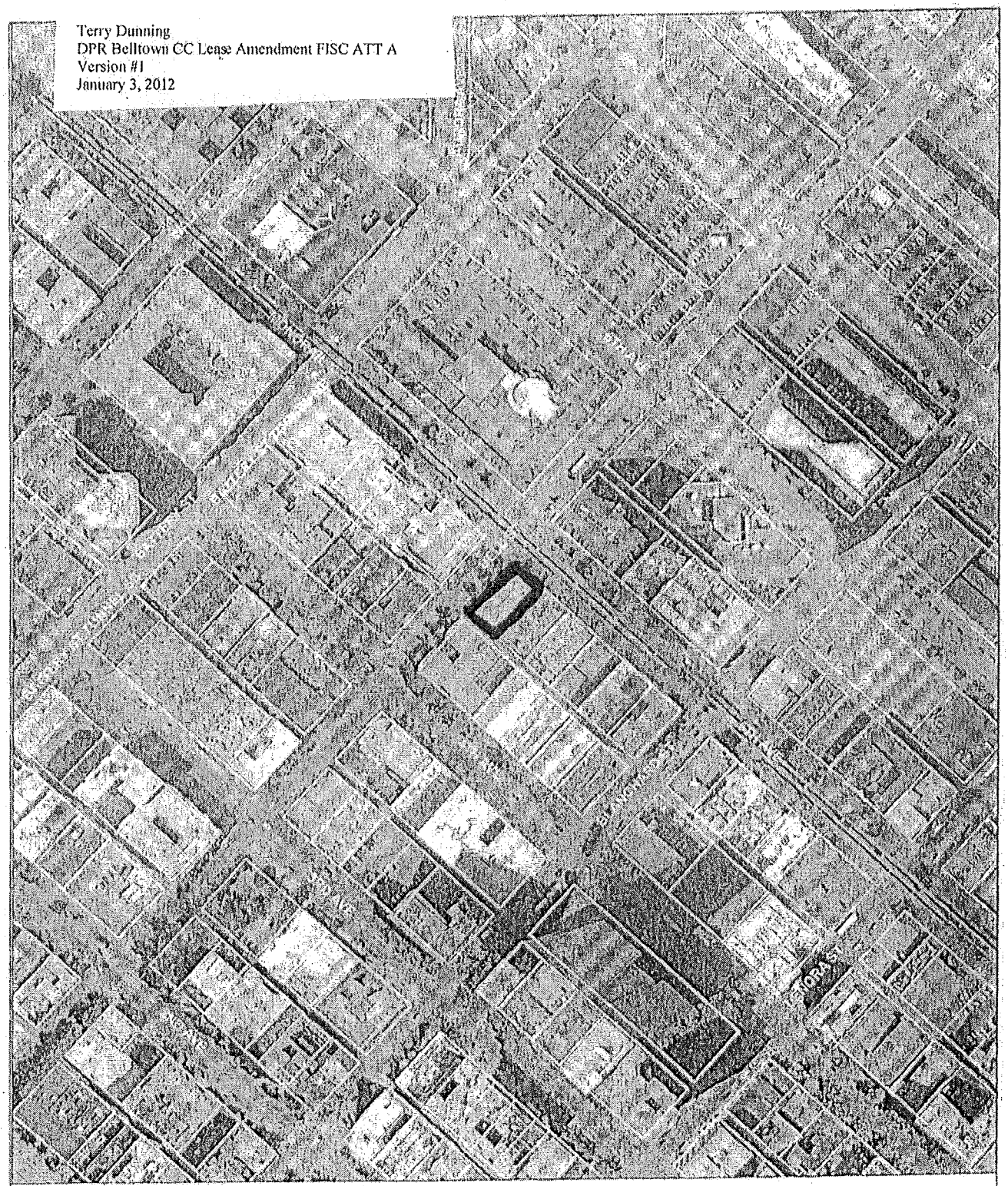
g) **Does this legislation affect a piece of property?** Yes, it is a lease agreement for space at 2235 Fifth Avenue.

h) **Other Issues:** None.

List attachments to the fiscal note below:
Attachment A – Location Map

CITY CLERK

Terry Dunning
DPR Belltown CC Lease Amendment FISC ATT A
Version #1
January 3, 2012



Belltown Community Center Location Map - Fiscal Note Attachment A

SEATTLE PARKS AND RECREATION

Legend
- Parcel of Interest
- Parcels

100 0 100
Feet

1 inch = 200 feet

N W E S

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No Warranties of any sort, including accuracy, fitness or merchantability accompany this product.

Map date August 17, 2011

ATT A to DPR Belltown CC Lease Amendment FISC

SEATTLE CITY CLERK

City of Seattle
Office of the Mayor

January 10, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am transmitting the attached proposed Council Bill that authorizes the Superintendent of Parks and Recreation to sign an amendment to the lease with 2235 5th Avenue, LLC for the Belltown Community Center. The proposed amendment authorizes the landlord to terminate the lease during its option period with a one-year notice and grants the City an option to acquire a future interest in any new development by 2235 5th Avenue, LLC at the site.

Shortly after the City Council authorized the lease for the Belltown Community Center (Ordinance 123767, November 2011), the landlord insisted on including language allowing termination of the lease during the five-year option period. He notified the City that he would not sign the lease until the language was included. Department of Parks and Recreation staff negotiated the termination provision, with the landlord agreeing to give the City the opportunity to lease or own space in a future new development at the community center site. Because of time constraints necessitating commencement of construction of the improvements, the landlord agreed to execute the original lease in anticipation of the City Council's prompt consideration of this amendment.

Approval of the lease amendment will remove any uncertainty and allow the long-awaited Belltown Community Center project to proceed, meeting the needs of the community and the building owner. Should you have questions, please contact Terry Dunning at 684-4860.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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600 Fourth Avenue, 7th Floor
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