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Mark Ellerbrook
FAS Benaroya Hall BHMC Third Lease Amend ORD
September 25, 2012
Version #6a

CITY OF SEATTLE
ORDINANCE _____
COUNCIL BILL 117611

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AN ORDINANCE authorizing the Director of Finance and Administrative Services to execute a Third Amendment to the Lease and Concession Agreement between the City of Seattle and BH Music Center; and ratifying and confirming certain prior acts.

WHEREAS, pursuant to Ordinance 117855, the City and the Seattle Symphony Orchestra ("Symphony"), executed a Master Agreement in October 1995, which agreement was amended by Ordinance 118112 in June 1996 (the "Amended Master Agreement"). The Amended Master Agreement provided for the City to develop and construct a new downtown concert hall for primary use by the Symphony ("Benaroya Hall") and detailed the terms under which the parties would cooperate to finance and construct the new facility. In September 1996, the Symphony, with the City's approval, assigned its interests under the Amended Master Agreement and the related Design and Construction Agreements to the BH Music Center ("BHMC"); and

WHEREAS, in September 1997, the City and BHMC executed a Lease & Concession Agreement (the "Lease"), pursuant to which the City leased Benaroya Hall to BHMC; and

WHEREAS, pursuant to the Amended Master Agreement and the Lease, the City issued bonds to pay for a portion of the cost of acquiring and constructing Benaroya Hall, and the BHMC agreed to repay the costs of that financing through its Concession Payments under the Lease; and

WHEREAS, in 2004, the City of Seattle refinanced the Concert Hall Bonds in order to realize a lower interest rate; and

WHEREAS, in November 2007, the City Council passed Ordinance 122555, which authorized a Second Amendment to the Lease and Concession Agreement with a modified Concession Payment schedule to reflect the City's lower borrowing costs achieved through refinancing bonds the City issued to finance the construction of Benaroya Hall; and

WHEREAS, the City and BHMC now desire to amend the Lease and Concession Agreement to allow a constant annual payment amount and to extend the term for the Concession Payments to match the lease term of Benaroya Hall to BHMC; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:



1 Section 1. The Director of Finance and Administrative Services, or his designee, is
2 authorized to sign and execute the Third Amendment to the Lease and Concession Agreement
3 between the City of Seattle and BHMC, substantially in the form of Attachment 1, such
4 amendment to take effect on January 1, 2013.

5 Section 2. Any act consistent with the authority of this ordinance taken after its passage
6 and prior to its effective date is hereby ratified and confirmed.

7
8 Section 3. This ordinance shall take effect and be in force 30 days after its approval by
9 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
10 shall take effect as provided by Seattle Municipal Code Section 1.04.020.



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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 – Third Amendment to Lease and Concession Agreement



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**THIRD AMENDMENT
TO
LEASE AND CONCESSION AGREEMENT**

THIS THIRD AMENDMENT TO LEASE AND CONCESSION AGREEMENT (this "Amendment") is entered into this ___ day of _____, 2012, but shall be deemed effective as of the 1st day of January, 2013, by and between THE CITY OF SEATTLE ("City"), a city of the first class in the State of Washington, and BH MUSIC CENTER ("Tenant"), a Washington non-profit corporation.

RECITALS

A. City and the Seattle Symphony Orchestra, a Washington nonprofit corporation ("Symphony"), executed a Master Agreement in October 1995, which was amended by a First Amendment executed in June 1996 (together, the "Amended Master Agreement"). The Amended Master Agreement provided for the development and construction of a new downtown concert hall for primary use by the Symphony and detailed the terms under which the parties would cooperate to finance and construct the new facility. In September 1996, the Symphony, with City's approval, assigned its interests under the Amended Master Agreement and the related Design and Construction Agreements to Tenant.

B. In September 1997, City and Tenant executed a Lease & Concession Agreement (the "1997 Agreement"), pursuant to which City leased to Tenant the facility to be constructed under the Amended Master Agreement. In August 1998, City and Tenant executed a First Amendment to & Restatement of the Lease and Concession Agreement (the "First Amendment and Restatement"), which amended and restated the 1997 Agreement .

C. In November 2007, the City and BHMC agreed to a modified Concession Payment schedule to reflect the City's lower borrowing costs achieved through refinancing the Concert Hall Bonds (the "Second Amendment and Restatement". The 1997 Agreement, as amended and restated by the First Amendment and Restatement and the Second Amendment and Restatement, the "Agreement").

D. City and Tenant now desire to enter into this Amendment in order to modify the Concession Payment amount to create a constant payment amount and to extend the Concession Payment term to match the term of the lease of Benaroya Hall to the Tenant.



AGREEMENT

1
2 NOW, THEREFORE, in consideration of the mutual covenants hereinafter set
3 forth and for other good and valuable consideration, the receipt and sufficiency of
4 which are hereby acknowledged, City and Tenant agree as follows:

1. Definitions

5 Capitalized terms used and not defined in this Amendment shall have the
6 meanings given to them in the Agreement.

2. Modification of Concession Payment

7
8 (a) The Concession Payment that would otherwise be due from Tenant
9 beginning August 1, 2013 is modified so that by 2019 the annual payment amount
10 will remain constant.

11 (b) The Concession Payment term is modified to be coterminous with the
12 lease and shall end in 2037.

13 (c) To reflect the foregoing modification of the Concession Payment,
14 Exhibit C to the Agreement is hereby deleted and replaced with Exhibit C attached
15 hereto and incorporated herein.

16 (d) Section 9.A. is amended by removing the final sentence of the section
17 and replacing it with a new final sentence that states "The Concession Payment shall
18 be payable annually on or before September 30th of each year."

3. Reaffirmation of Agreement

19 The Agreement, as modified by this Amendment, shall remain in full force and
20 effect and is hereby ratified and reaffirmed.

4. Entire Agreement

21 The Agreement, together with this Amendment, embodies the entire agreement
22 of City and Tenant with respect to the subject matter thereof and hereof and
23 supersedes or incorporates all prior negotiations and agreements, written or oral.

5. Counterparts

24 This Amendment may be executed in multiple counterparts, each of which
25 shall be deemed an original and all of which together shall be one document.
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1 STATE OF WASHINGTON)
2) ss.
3 COUNTY OF KING)

4 On this _____ day of _____, 2012, before me, the undersigned, a
5 Notary Public in and for the State of Washington, duly commissioned and sworn,
6 personally appeared _____, to me
7 known to be the person who signed as _____ of The
8 City of Seattle, the city of the first class in the State of Washington that executed the
9 within and foregoing instrument, and acknowledged said instrument to be the free and
10 voluntary act and deed of said city for the uses and purposes therein mentioned, and
11 on oath stated that _____ was duly elected, qualified and acting as
12 said officer of the city, that _____ was authorized to execute
13 said instrument and that the seal affixed, if any, is the seal of said city.

14 IN WITNESS WHEREOF I have hereunto set my hand and official seal the
15 day and year first above written.

16 _____
17 (Signature of Notary)

18 _____
19 (Print or stamp name of Notary)

20 NOTARY PUBLIC in and for the State
21 of Washington, residing at _____.
22 My appointment expires: _____.



1 STATE OF WASHINGTON)
2) ss.
3 COUNTY OF KING)

4 On this _____ day of _____, 2012, before me, the undersigned, a
5 Notary Public in and for the State of Washington, duly commissioned and sworn,
6 personally appeared _____, to me
7 known to be the person who signed as _____ of BH
8 Music Hall, the Washington nonprofit corporation that executed the within and
9 foregoing instrument, and acknowledged said instrument to be the free and voluntary
10 act and deed of said corporation for the uses and purposes therein mentioned, and on
11 oath stated that _____ was duly elected, qualified and acting as said
12 officer of the corporation, that _____ was authorized to
13 execute said instrument and that the corporate seal affixed, if any, is the seal of said
14 corporation.

15 IN WITNESS WHEREOF I have hereunto set my hand and official seal the
16 day and year first above written.

17 _____
18 (Signature of Notary)

19 _____
20 (Print or stamp name of Notary)

21 NOTARY PUBLIC in and for the State
22 of Washington, residing at _____.
23 My appointment expires: _____
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EXHIBIT C
Amended Concession Payment Schedule

YEAR	DATE	TOTAL TENANT PAYMENTS
1	1997	\$0
2	1998	\$0
3	1999	\$575,000
4	2000	\$592,113
5	2001	\$609,736
6	2002	\$627,883
7	2003	\$646,570
8	2004	\$665,813
9	2005	\$685,629
10	2006	\$706,034
11	2007	\$482,947
12	2008	\$0
13	2009	\$0
14	2010	\$0
15	2011	\$0
16	2012	\$0
17	2013	\$381,724
18	2014	\$381,724
19	2015	\$455,590
20	2016	\$540,000
21	2017	\$620,000



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YEAR	DATE	TOTAL TENANT PAYMENTS
22	2018	\$700,000
23	2019	\$760,000
24	2020	\$760,000
25	2021	\$760,000
26	2022	\$760,000
27	2023	\$760,000
28	2024	\$760,000
29	2025	\$760,000
30	2026	\$760,000
31	2027	\$760,000
32	2028	\$760,000
33	2029	\$760,000
34	2030	\$760,000
35	2031	\$760,000
36	2032	\$760,000
37	2033	\$760,000
38	2034	\$760,000
39	2035	\$760,000
40	2036	\$760,000
41	2037	\$760,000
	Sum	\$23,110,763
	NPV (4.1180%)	\$9,477,341



2013 BUDGET LEGISLATION FISCAL NOTE

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Finance	Mark Ellerbrook/3-0026	Jennifer Devore/5-1328

Legislation Title: AN ORDINANCE authorizing the Director of Finance and Administrative Services to execute a Third Amendment to the Lease and Concession Agreement between the City of Seattle and BH Music Center; and ratifying and confirming certain prior acts.

Summary of the Legislation: This legislation authorizes an amendment to the City's Lease and Concession Agreement with BH Music Center (BHMC) for the operation of Benaroya Hall. It modifies the Concession Payment from BHMC to create a constant payment amount to be paid annually and extends the Concession Payment term to match the term of the City's lease of Benaroya Hall to BHMC

Background: The City owns Benaroya Hall and has entered into a Lease and Concession Agreement with BHMC, a non-profit organization affiliated with the Seattle Symphony, to operate the building. The original Lease and Concession Agreement was approved through Ordinance 118732 in September 1997.

When the Hall was being designed, the Symphony requested an extra level of parking but did not have the funds to pay for it. The City agreed to issue debt to pay for the additional parking with BHMC making "concession payments" to eventually repay the borrowing. The concession payments were structured to match expected future parking revenues and, as such, the concession payments did not match the City's debt service schedule. Rather, the present value of the concession payments between 1997 and 2026 was calculated to match the present value of the City's debt service, using the true interest rate on the bonds as the discount rate.

In 2004, the Concert Hall bonds were refinanced as part of a large refunding of many City bond issues to capture lower interest rates. The City's lease with BHMC describes an intent to pass on these interest rate savings to BHMC and the lease was amended in 2007 to reflect this savings.

The 2007 amendment to the lease continued under the principle that BHMC's concession payments should have the same present value as the City's debt service. BHMC chose to take the resulting savings in the form of a concession payment holiday between August 1, 2007 and July 31, 2013, with concession payments scheduled to return to the original levels after that date.

In recognition of the long recession's impact on the Seattle Symphony and Benaroya Hall this amendment establishes a revised Concession Payment with a lower, constant payment and a longer term that now matches the lease of Benaroya Hall to BHMC. Concession payments will begin in 2013 and rise to a constant payment amount of \$760,000 by 2019. Concession payments will be made annually and continue through 2037. This maintains the principle of the



City receiving the same total concession payment amount on a present value basis as established in the original lease.

Please check one of the following:

This legislation does not have any financial implications.

This legislation has financial implications.

Summary of Changes to Revenue Generated Specifically from this Legislation:

	Revenue Source	2013 Proposed	2014 Endorsed
Total Fees and Charges Resulting From Passage of This Ordinance			(\$511,007)

Revenue Change Notes: No change in revenue expected from amended concession agreement for 2013. Revenue in 2014 will be \$511,007 less than anticipated under the 2007 concession agreement.

Anticipated Total Revenue from Entire Program, Including Changes Resulting from this Legislation:

Fund Name and Number	Revenue Source	Total 2013 Revenue	Total 2014 Revenue
General Subfund (00100)	Benaroya Hall – Concession Payment (439090)	\$381,724	\$381,724
TOTAL		\$381,724	\$381,724

Total Revenue Notes: These figures reflect the resumption of concession payments beginning in 2013.

Other Implications:

- a) Does the legislation have indirect financial implications, or long-term implications?



Yes. This legislation provides a predictable stream of concession payments throughout the remainder of the City's lease of Benaroya Hall to BHMC.

- b) What is the financial cost of not implementing this legislation? The City would receive the current scheduled concession payments from Benaroya Hall but, due to the impact of the prolonged recession on the Symphony's finances, future payments may not be sustainable.
- 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
- e) Is the legislation subject to public hearing requirements? No
- f) Other Issues:

Please list attachments to the fiscal note below:

Attachment A: Concert Hall Bonds financial calculation, July 2012.



ATTACHMENT A

Concert Hall Bonds Financial Calculation, September 2012

Year	Date	Present Value			Revised Payments, 2007		2012 Proposed	
		Original Concession Payments	Present Value @ 5.9391%	Value @ 4.1180% 2004 -	Generate Original PV Concession Payments	PV @ 4.1180% 2004 -	Extension w/ Ramp-up Payments	PV
1	1997							
2	1998							
3	1999	\$575,000	\$483,614	\$483,614	\$575,000	\$483,614	\$575,000	\$483,614
4	2000	\$592,113	\$470,088	\$470,088	\$592,113	\$470,088	\$592,113	\$470,088
5	2001	\$609,736	\$456,941	\$456,941	\$609,736	\$456,941	\$609,736	\$456,941
6	2002	\$627,883	\$444,162	\$444,162	\$627,883	\$444,162	\$627,883	\$444,162
7	2003	\$646,570	\$431,739	\$431,739	\$646,570	\$431,739	\$646,570	\$431,739
8	2004	\$665,813	\$419,664	\$482,111	\$665,813	\$482,111	\$665,813	\$482,111
9	2005	\$685,629	\$407,927	\$476,824	\$685,629	\$476,824	\$685,629	\$476,824
10	2006	\$706,034	\$396,518	\$471,595	\$706,034	\$471,595	\$706,034	\$471,595
11	2007	\$727,047	\$385,428	\$466,423	\$482,947	\$309,825	\$482,947	\$309,825
12	2008	\$748,686	\$374,649	\$461,309	\$0	\$0	\$0	\$0
13	2009	\$770,968	\$364,170	\$456,250	\$0	\$0	\$0	\$0
14	2010	\$793,913	\$353,985	\$451,246	\$0	\$0	\$0	\$0
15	2011	\$817,542	\$344,085	\$446,298	\$0	\$0	\$0	\$0
16	2012	\$841,874	\$334,462	\$441,404	\$0	\$0	\$0	\$0
17	2013	\$866,929	\$325,107	\$436,563	\$381,724	\$192,226	\$381,724	\$192,226
18	2014	\$892,731	\$316,015	\$431,776	\$892,731	\$431,776	\$381,724	\$184,624
19	2015	\$919,300	\$307,176	\$427,041	\$919,300	\$427,041	\$455,590	\$211,634
20	2016	\$946,661	\$298,586	\$422,358	\$946,661	\$422,358	\$540,000	\$240,924
21	2017	\$974,835	\$290,235	\$417,726	\$974,835	\$417,726	\$620,000	\$265,676
22	2018	\$1,003,848	\$282,117	\$413,145	\$1,003,848	\$413,145	\$700,000	\$288,093
23	2019	\$1,033,725	\$274,227	\$408,615	\$1,033,725	\$408,615	\$760,000	\$300,416
24	2020	\$1,064,490	\$266,557	\$404,134	\$1,064,490	\$404,134	\$760,000	\$288,534
25	2021	\$1,096,172	\$259,103	\$399,702	\$1,096,172	\$399,702	\$760,000	\$277,122
26	2022	\$1,128,796	\$251,856	\$395,319	\$1,128,796	\$395,319	\$760,000	\$266,162
27	2023	\$1,162,391	\$244,812	\$390,984	\$1,162,391	\$390,984	\$760,000	\$255,635
28	2024	\$1,196,986	\$237,965	\$386,696	\$1,196,986	\$386,696	\$760,000	\$245,524
29	2025	\$1,232,611	\$231,310	\$382,456	\$1,232,611	\$382,456	\$760,000	\$235,814
30	2026	\$1,269,296	\$224,840	\$378,262	\$1,269,296	\$378,262	\$760,000	\$226,487
31	2027						\$760,000	\$217,529
32	2028						\$760,000	\$208,926
33	2029						\$760,000	\$200,662
34	2030						\$760,000	\$192,726
35	2031						\$760,000	\$185,104
36	2032						\$760,000	\$177,783
37	2033						\$760,000	\$170,751
38	2034						\$760,000	\$163,998
39	2035						\$760,000	\$157,511
40	2036						\$760,000	\$151,282
41	2037						\$760,000	\$145,298
TOTAL (PV)		\$24,597,579	\$9,477,341	\$12,134,781	\$19,895,291	\$9,477,341	\$23,110,763	\$9,477,341

Notes from 2007 Re-structure:

- 1) The original Lease was based on two concepts: a) the Symphony (later BHMC) would pay an amount equivalent to the initial construction cost of the garage; and b) since parking revenues would grow over time, Symphony payments would gradually increase until the present value of the payments matched the initial construction cost. The discount rate was to be the interest rate (true interest cost) on the City's bonds.
- 2) Based on these concepts, section 9A of the First Amended Lease calls for a total Concession Payment of \$24,597,576. The figures above repeat the annual Concession Payments listed in Exhibit C. Totals do not add due to rounding.
- 3) The City refinanced the original bonds in 2004 at a true interest cost of 4.117967%.
- 4) To receive the benefit of the lower interest rate, the Concession Payment can be reduced through a payment holiday. This holiday begins in mid-2007 and extends through 2012.





City of Seattle
Office of the Mayor

September 24, 2012

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

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill for consideration with the 2013 Proposed and 2014 Endorsed Budget. This legislation authorizes an amendment to the City's Lease and Concession Agreement with BH Music Center (BHMC), which is a non-profit affiliate of the Seattle Symphony that operates Benaroya Hall on behalf of the City. The proposed lease amendment would extend BHMC's "Concession Payment" through the term of the initial lease, allowing BHMC to make level concession payments on an annual basis as opposed to fluctuating payments based on an escalating schedule.

When Benaroya Hall was being designed, the City agreed to issue debt to pay for additional parking, whereby BHMC would make concession payments to eventually repay the borrowing. The present value of the concession payments between 1997 and 2026 was calculated to match the present value of the City's debt service, using the true interest rate on the bonds as the discount rate. In 2004, the Concert Hall bonds were refinanced to capture lower interest rates and in 2007 the City amended the concession payment in order to pass the interest rate savings to BHMC, consistent with the intent of the original agreement.

This proposed Bill would further amend BHMC's concession payments to provide for level payments over the life of the original lease, rather than escalating debt service over a shorter term as currently structured. The modified concession payments proposed by this legislation are included in my 2013 proposed budget proposal.

Thank you for your consideration of this legislation. Should you have questions, please contact Fred Podesta at 386-0041.

Sincerely,


Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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