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C.B.
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ORDINANCE

AN ORDINANCE relating to McCurdy Park; accepting an offer from the Washington State Department of Transportation to acquire certain real property in connection with the SR 520 Project; authorizing the Superintendent of Parks and Recreation to execute a purchase and sale agreement and deed for such real property and to take other related actions; increasing appropriations in connection therewith; authorizing the Superintendent to execute an amended and restated agreement with the Museum of History and Industry for the distribution of the proceeds from the conveyance such real property; superseding Ordinance 118477, which adopted Initiative 42, for purposes of this ordinance; and ratifying and confirming prior acts; all by a three-fourths vote of the City Council.

WHEREAS, the Washington State Department of Transportation ("WSDOT") must acquire certain real property in McCurdy Park for its SR 520 bridge replacement project; and

WHEREAS, for more than 50 years, the Museum of History and Industry ("MOHAI") operated its regional history museum and certain ancillary facilities on the majority of property that WSDOT is acquiring (the "MOHAI Use Area"); and

WHEREAS, in an Agreement Regarding Assignment of Acquisition/Condemnation Proceeds ("Assignment Agreement") executed pursuant to Ordinance 123132, the City agreed that the proceeds from the acquisition of the MOHAI Use Area would be used for construction of a new historical museum at the Lake Union Armory; and

WHEREAS, pursuant to Ordinance 123408, the City sold the MOHAI museum building to WSDOT while WSDOT continued to evaluate the amount of land it required for its project and to determine funding; and

WHEREAS, pursuant to Ordinance 123437, the City and MOHAI agreed that the City would retain a portion of the MOHAI museum building proceeds until conclusion of negotiations with WSDOT over acquisition of the MOHAI Use Area; and

WHEREAS, WSDOT has presented an offer to acquire the MOHAI Use Area that the Mayor has reviewed and recommends accepting; and

WHEREAS, City Council authorization is also required to accept the WSDOT offer and to convey title to the MOHAI Use Area; and

WHEREAS, the delays in concluding the sale of the MOHAI Use Area together with mandated progress on completion of the Lake Union historical museum require an extension of the term and other minor modifications to the Assignment Agreement between the City and MOHAI, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:



Section 1. The Superintendent of Parks and Recreation or his designee ("Superintendent") is hereby authorized to execute, deliver, perform, administer and enforce a "Real Estate Purchase and Sale Agreement" substantially in the form of Attachment 1, and a "Warranty Deed" substantially in the form of Attachment 2, pursuant to which the Washington State Department of Transportation ("WSDOT") will pay the City \$14,192,700 as compensation for the conveyance of the real property described in such deed, plus \$57,300 for certain described temporary construction easements in adjacent land, for a total of \$14,250,000.

Section 2. The Superintendent is further authorized to execute an Amended and Restated Agreement Regarding Assignment/Condemnation Proceeds, substantially in the form of Attachment 3.

Section 3. The Superintendent is further authorized and directed, for and on behalf of the City, to make technical, conforming, or otherwise nonmaterial changes to the Real Estate Purchase and Sale Agreement, the Warranty Deed or the Assignment Agreement, and to execute, deliver, record, administer and perform such ancillary agreements as may be reasonably necessary or appropriate to carry out the intent of this ordinance.

Section 4. The funds described in Section 1, when received, shall be deposited in the receiving fund identified below.

| Department | Source | Purpose | Amount | Receiving Fund |
|----------------------------|---|----------------------------|-----------------|---|
| Cumulative Reserve Subfund | Washington State Department of Transportation | McCurdy Park property sale | \$14.25 Million | Cumulative Reserve Subfund - Unrestricted (00164) |

Section 5. In order to pay for necessary costs and expenses for which insufficient appropriations were made due to causes that could not reasonably have been foreseen at the time the 2013 Budget was adopted, the appropriation for the following item in the 2013 Budget is



increased from the fund shown, as follows; provided, however, that no funds shall be expended until the City has received the same from WSDOT.

| Fund | Department | Budget Control Level | Amount |
|---|----------------------------|---------------------------------------|----------------|
| Cumulative Reserve Subfund - Unrestricted (00164) | Cumulative Reserve Subfund | MOHAI Replacement Facilities (KMOHAI) | \$13.9 Million |

Unspent funds so appropriated shall carry forward to subsequent fiscal years until they are exhausted or abandoned by ordinance.

Section 6. Contingent upon receipt of funds from WSDOT and as soon as practicable thereafter, the City shall pay MOHAI the sum of \$13,900,038 in full satisfaction of the City's obligations to MOHAI as a result of WSDOT's acquisition of the MOHAI Use Area and McCurdy Park museum building.

Section 7. The requirements of Ordinance 118477, adopting Initiative 42 regarding exchanges of land held for park and recreation purposes, are hereby superseded to the extent necessary to carry out the purposes of this ordinance, the City finding there is no reasonable and practical alternative to the instant transaction.

Section 8. Any act taken pursuant to the authority and prior to the effective date of the ordinance is hereby ratified and confirmed.

Section 9. This ordinance shall take effect and be in force 30 days from and 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 a $\frac{3}{4}$ vote of all the members of the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this ____ day of _____, 2013.

President _____ of the City Council

Approved by me this ____ day of _____, 2013.

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

City Clerk

(Seal)

Attachments:

Attachment 1: Real Property Purchase and Sale Agreement

Attachment 2: Warranty Deed

Attachment 3: Amended and Restated Agreement Regarding Assignment of Acquisition/Condemnation Proceeds



REAL PROPERTY PURCHASE AND SALE AGREEMENT

This REAL PROPERTY PURCHASE AND SALE AGREEMENT (the Agreement) is made and entered into as of this day of , 2013, by and between the City of Seattle (Seller) and the State of Washington Department of Transportation (Buyer).

RECITALS

WHEREAS, Seller is the owner of certain real property located in King County, Washington, and

WHEREAS, Buyer is authorized to purchase or condemn real property pursuant to the provisions of RCW 47.12.010; and

WHEREAS, it is necessary for Buyer to acquire the Property as more particularly described on Exhibit A for the SR 520 Bridge Replacement and HOV Project,

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1. PROPERTY

Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, all of the following:

1.1 Property. That certain real property located in King County, Washington, and more particularly described on Exhibit A attached hereto and by this reference incorporated herein, together with all rights, privileges and easements appurtenant to the Property, including, but without limitation, all development rights, air rights, water, water rights and any and all easements, rights-of-way and other appurtenances used in connection with the beneficial use and enjoyment of the Property (collectively the Property).

1.2 Property Rights. A Temporary Easement more particularly described in Exhibit B attached hereto and by this reference incorporated herein ("Easement").

1.3 Improvements. The Seller previously conveyed those improvements identified under King County Recording Numbers 20101214001168 and 20101214001169 to the Buyer. This sale includes all remaining site improvements on the Property including but not limited to walkways, driveways, paving, 133 parking stalls and associated landscaping, (collectively, the "Improvements").

All of the items described in Sections 1.1, 1.2 and 1.3 are hereunder collectively referred to as the "Real Property."

1.4 Personal Property. All personal property of Seller located on or in or used in connection with the Real Property (the "Personal Property").

ARTICLE 2. PURCHASE PRICE



2.1 Purchase Price. The purchase price for the Property, including, the Personal Property is FOURTEEN MILLION ONE HUNDRED AND NINETY-TWO THOUSAND AND SEVEN HUNDRED DOLLARS (\$14,192,700) and for the Property Rights is FIFTY SEVEN THOUSAND AND THREE HUNDRED DOLLARS (\$57,300,) subject to adjustments, if any, as provided for under **Article 7** of this Agreement (collectively the "Purchase Price").

2.2 Payment of Purchase Price. The Purchase Price shall be paid as follows:

(a) Deposit. Prior to or upon execution of this Agreement, Buyer has delivered (or is delivering) to First American Title Company ("Escrow Holder") the amount of FOURTEEN MILLION TWO HUNDRED FIFTY THOUSAND SEVEN HUNDRED AND EIGHTY SIX DOLLARS AND FIFTY CENTS (\$14,250,786.50), which is the Purchase Price plus the Escrow Fee, Sales Tax and Excise Tax (the "Deposit").

(b) Investment of Deposit. The Deposit shall be invested by Escrow Holder in an interest-bearing trust account. All interest on the Deposit shall accrue for the benefit of Buyer until the Closing Date (as hereafter defined in **Article 7**).

ARTICLE 3. TITLE TO REAL PROPERTY

3.1 Title to Real Property. Seller shall convey to Buyer at the Closing (as hereinafter defined in **Article 7**) (i) marketable and insurable fee simple title to the Property, by execution and delivery of a Statutory Warranty Deed (in the form attached as Exhibit ____) and (ii) the Easement in the form attached as Exhibit B. Evidence of delivery of marketable and insurable fee simple title shall be the issuance by First American Title Insurance Company (the "Title Company") of an ALTA standard coverage Owner's Policy of Title Insurance with liability in the amount of the Purchase Price (or such other amount as directed by Buyer) insuring fee simple title to the Property in Buyer and easement rights to the Property Rights, subject only to such exceptions as may be approved by Buyer in writing, pursuant to **Section 4.3 and Section 4.4** of this Agreement (the "Permitted Exceptions"). At the Closing, Seller shall also provide Buyer with a Quitclaim Deed from the Historical Society of Seattle and King County ("MOHAI") in the form attached as Exhibit ____), to release all right, title, and interest that MOHAI may have in and to the Real Property.

ARTICLE 4. BUYER'S CONDITIONS PRECEDENT TO CLOSING

Buyer's obligations under this Agreement are expressly conditioned on and subject to satisfaction of the following conditions precedent:

4.1 Performance by Seller. Seller shall have timely performed all obligations required by this Agreement to be performed by it.

4.2 Representations and Warranties True. The representations and warranties of Seller contained herein shall be true and correct as of the Closing Date.



4.3 Title. Preliminary commitments for an owner's policy of title insurance with standard coverage have been issued by First American Title Insurance Company under order number PAK-692036 Third Report dated December 13, 2012 and Supplemental Report No. 1 to Third Report dated May 29, 2013 and order number PAK-700572 Third Report dated December 13, 2012 and Supplemental Report 1 of the Third Report dated April 12, 2013 and Supplemental Report No. 2 to Third Report dated May 29, 2013

(a) Permitted Exceptions for order number PAK-692036 are:

- (1) Schedule B, Section II, General Exceptions, Part One, A-H
- (2) Schedule B, Section II, Exceptions Part Two, 9, 15, 25, 26, 30, 31, and 32 (2nd half taxes only).

(b) Permitted Exceptions for order number PAK-700752 are:

- (1) Schedule B, Section II, General Exceptions, Part One, A-H
- (2) Schedule B, Section II, Exceptions Part Two, 2, 5, 6, 8, 14, 15, 16, 17 (2nd half taxes only) and 18 (2nd half taxes only)

4.4 Intervening Exceptions. Any liens, leases, encumbrances, easements, restrictions, conditions, covenants, rights, rights-of-way and other matters affecting title to the Real Property which are created and which may appear of record or be revealed by the survey or otherwise, after the date of the Preliminary Commitments but before the Closing Date (collectively the "Intervening Liens") shall also be subject to Buyer's approval and Buyer shall have 10 business days after notice in writing of any Intervening Lien, together with a description thereof and a copy of the instrument creating or evidencing the Intervening Lien, if any, to submit written objections thereto or to give Seller notice of acceptance as a Permitted Exception. If Seller shall fail to remove any such objectionable exceptions from title prior to the Closing Date, and Buyer is unwilling to take title subject thereto, Buyer shall have the right to terminate this Agreement whereupon Escrow Holder shall return the Deposit to Buyer and neither party hereto shall have any further rights or obligations under this Agreement.

4.5 Environmental and Land Use Materials. Seller shall provide all of the following documents with regard to environmental or land use matters that may be in Seller's possession:

- (a) Environmental analysis or analyses prepared by an environmental consultant or consultants acceptable to and paid by Buyer, identifying the existence of or potential for contamination of the Real Property by hazardous substances; and
- (b) Soils and geology reports; and
- (c) Such other architectural, engineering, land use or environmental information or reports as may be in Seller's possession.

In the event that Buyer obtains additional information or becomes aware of facts which indicate the existence on the Property of, or potential for contamination of the Property by



hazardous substances, Buyer shall have the right, but not the obligation, to require further sampling and analyses by an environmental consultant acceptable to Buyer at Buyer's expense. The cost and expense of any such further sampling and analyses shall be borne by Buyer. Seller shall allow Buyer's environmental consultant access to the Property during normal business hours or at such other time as is reasonable and necessary for the purpose of sampling, which shall not unreasonably interfere with the normal business of Seller or the Property's tenants. If the environmental reports disclose the presence of underground storage tanks located on the Property or other contamination of the Property by hazardous substances, Buyer shall have the right to terminate this Agreement, whereupon Escrow Holder shall return the Deposit to Buyer and neither party hereto shall have any further rights or obligations under this Agreement, unless Seller and Buyer shall mutually agree in writing on an allocation of responsibility (including payment of costs and expenses associated therewith) for the performance of any remedial action necessary on the Property as a result of any leakage from underground tanks and resulting contamination of the soil or groundwater or other contamination of the Property by hazardous substances. In the event the parties mutually agree on an allocation of responsibility for such removal and remedial action, all such work shall be completed in accordance with all applicable federal, state and local laws. If the parties mutually agree on allocation of responsibility than Closing shall proceed.

The foregoing conditions contained in this **Article 4** are intended solely for the benefit of Buyer. If any of the foregoing conditions are not satisfied, Buyer shall have the right at its sole election either to waive the condition in question and proceed with the purchase or, in the alternative, to terminate this Agreement, whereupon this Agreement shall terminate, Escrow Holder shall return the Deposit to Buyer, and none of the parties hereto shall have any further rights or obligations under this Agreement.

ARTICLE 5. SELLER'S CONDITIONS PRECEDENT TO CLOSING

Seller's obligations under this Agreement are expressly conditioned on and subject to satisfaction of the following conditions precedent:

5.1 Approval. Legislation through the City Council approving the sale of the Real Property to Buyer will be enacted and become effective.

5.2 Performance by Buyer. Buyer shall have timely performed all obligations required by this Agreement to be performed by it.

5.3 Representations and Warranties True. The representations and warranties of Buyer contained herein shall be true and correct as of the Closing Date.

The foregoing conditions contained in this **Article 5** are intended solely for the benefit of Seller. If any of the foregoing conditions are not satisfied, Seller shall have the right at its sole election either to waive the condition in question and proceed with the purchase or, in the alternative, to terminate this Agreement, whereupon this Agreement shall terminate, Escrow Holder shall return the Deposit to Buyer, and neither party hereto shall have any further rights or obligations under this Agreement.

ARTICLE 6. OPERATIONS PENDING CLOSING



6.1 Operations Pending Closing. At all times before the Closing, Seller shall manage and operate the Real Property in a manner consistent with Seller's past practices. Seller agrees (a) to maintain all usual and necessary business records pertaining to the Real Property, consistent with Seller's past practices; (b) to maintain the Real Property in its current condition and state of repair (normal wear and tear excepted); (c) to maintain its existing property and casualty insurance on the Real Property; and (d) not construct any additional improvements on the Real Property without the prior written consent of Buyer. Should Seller fail to maintain the Real Property as herein provided, the Buyer shall have the right to terminate this Agreement whereupon this Agreement shall terminate, Escrow Holder shall return the Deposit to Buyer and neither party hereto shall have any further rights or obligations under this Agreement.

6.2 Condition of Title. Seller hereby agrees from and after the date hereof until the Closing, or the termination of this Agreement that (i) it will take no action that will adversely affect title to or development of the Real Property, (ii) it will not lease, mortgage, encumber or permit the encumbrance of all or any portion of the Real Property without Buyer's prior written consent; and (iii) it will not enter into any written or oral contracts or agreements with respect to the operation of the Real Property which cannot be canceled by Buyer on not more than 30 days written notice without premium or penalty.

ARTICLE 7. CLOSING AND ESCROW

7.1 Deposit With Escrow Holder and Escrow Instructions. Upon execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with Escrow Holder and this Agreement shall serve as the instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such additional and supplemental escrow instructions as may be appropriate to enable the Escrow Holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplemental escrow instructions the terms of this Agreement shall control.

7.2 Closing.

(a) The Closing hereunder shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of First American Title Insurance Company, 818 Stewart Street, Suite 800, Seattle, WA 98101, on or before September 30, 2013 ("Closing Date"). Such Closing Date may not be otherwise extended without the written approval of Seller and Buyer except as otherwise provided in this Agreement. All documents shall be deemed delivered on the date the Deed is recorded.

(b) In the event the Closing does not occur on or before the Closing Date, Escrow Holder shall, unless it is notified by both parties to the contrary within 10 business days after the Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return shall not, however, relieve either party hereto of any liability it may have for its wrongful failure to close.

7.3 Delivery by Seller. On or prior to the Closing Date, Seller shall deposit with Escrow Holder, the following:



(a) The Warranty Deed, duly executed and acknowledged by Seller and accepted by Buyer, together with a duly signed real estate excise tax affidavit; and

(b) Any documents required to eliminate of record any non-permitted exception; and

(c) Such ordinances, resolutions, authorizations, certificates, court orders or other documents or agreements relating to Seller, as shall be reasonably required in connection with this transaction; and

(d) The MOHAI Memorandum of Lease Termination and Quitclaim Deed in the forms attached as Exhibits ____ and ____, duly executed and acknowledged by Tenant, together with a duly signed real estate excise tax affidavit and ; and

(e) Any other instruments reasonably necessary to close this Agreement, including, but not limited to closing statements, releases and delivery of instruments required by the Title Company and/or Escrow Holder.

7.4 Delivery by Buyer. On or before the Closing Date, Buyer shall deposit with Escrow Holder, the following:

(a) Purchase Price, as provided under the conditions set forth under **Section 2.2** herein.

(b) Any other instruments reasonably necessary to close this Agreement, including, but not limited to closing statements, releases and delivery of instruments required by the Title Company and/or Escrow Holder;

7.5 Prorations. Escrow Agent shall pay all taxes and assessments, if any, from the funds provided in Article 2.2. Do not prorate. Buyer will cooperate with Seller to obtain any refund

7.6 Costs and Expenses. Any closing costs, including those fees listed as title charges, recording and transfer charges, and/or additional closing charges, are to be charged to the Buyer and shown as such on the closing statement. No recording fee or excise tax is to be charged to the Seller. All fees and charges are to be billed to the Buyer at PO Box 47338, Olympia, WA 98504-7338. Please note that the initial preliminary commitment premium has been previously paid. Copies of the Seller's closing statement shall be provided to the Buyer at closing.

7.7 Disbursement of Funds. The Purchase Price, shall be disbursed to the Seller at Closing. All interest accrued on the original Deposit shall be disbursed to the Buyer at Closing per Article 2.2(b).

ARTICLE 8. REPRESENTATIONS AND WARRANTIES

8.1 Seller's Representations. Seller represents and warrants to Buyer as follows:



(a) Title. At the Closing Date, Seller shall have good, marketable and indefeasible title to the Real Property and Seller is aware of no matters which adversely affect title thereto that have not been disclosed to Buyer.

(b) Litigation. There is no claim, litigation, proceeding or governmental investigation pending, or, so far as is known to Seller, threatened against or relating to Seller, Seller's properties or business, the Real Property, or the transactions contemplated by this Agreement, or any dispute arising out of any contract or commitment entered into regarding the Real Property, nor is there any basis known to Seller for any such action.

(c) No Defaults. Neither the execution of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of the terms hereof, will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement or instrument which affects the Real Property or to which the Real Property is subject or any applicable laws or regulations of any governmental body having jurisdiction over the Real Property.

(d) No Prior Options, Sales or Assignments. Seller has not granted any options nor committed nor obligated itself in any manner whatsoever to sell the Real Property or any portion thereof to any party other than Buyer.

(e) Insurance. Seller has not received any notices from any insurance companies, governmental agencies or from any other parties with respect to any violations or other matters concerning the Real Property.

(f) Special Assessments. Seller has not been notified during Seller's ownership of the Real Property of contemplated improvements to the Real Property or the area surrounding the Real Property which would result in the assessment of a special improvement or similar lien against the Real Property.

(g) Use and Operation of Property. Seller knows of no facts nor has Seller failed to disclose to Buyer any fact known to Seller which would prevent Buyer from using and operating the Real Property after Closing in the normal manner in which other Washington State Department of Transportation highways are operated.

(h) Environmental Compliance. Seller has not caused or permitted the Real Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste except in compliance with all applicable federal, state, and local laws, rules and regulations, and has not caused or permitted, and Seller has no knowledge of the presence of any release of any Hazardous Substances on or off-site of the Real Property. Hazardous Substances shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq., and the Washington Model Toxic Control Act, RCW 70.105D et seq., including all revisions and/or amendments to such laws and regulations, and shall include gasoline and other petroleum products.

(i) Reports. All certificates, schedules and other documents containing factual information to be delivered by Seller, or by Seller's agents in connection with this Agreement, are and shall, to the best of Seller's knowledge, be true and correct and do not and



shall not contain any untrue statement of material fact or omit to state any material fact, the disclosure of which is necessary to make the statements contained therein and herein, in light of the circumstances under which they are made, not misleading.

(j) Construction Liens. To the extent any improvements have been made or will be made to the Real Property prior to the Closing Date which might form the basis of mechanics' or materialmen's liens, Seller agrees to keep the Real Property free from liens which might result and to indemnify, defend, protect and hold harmless Buyer from any and all such liens and all attorneys' fees and other costs incurred by reason thereof.

Seller hereby agrees to defend, protect, indemnify and hold harmless Buyer from any and all loss, damage, liability or expense, including reasonable attorneys' fees and costs, Buyer may suffer as a result of any breach of or any inaccuracy in the foregoing representations and warranties; provided that this provision is subject to the limitations of RCW 4.24.115 to the extent applicable.

8.2 Buyer's Representations. Buyer represents and warrants to Seller and Tenant as follows:

(a) Authority. Buyer is an agency of the State of Washington. Buyer has full right, power and authority to execute this Agreement, and assuming it has been duly authorized, executed and delivered by Seller and Tenant, this Agreement is a valid and binding obligation of the Buyer. No other authorizations or approvals, whether of governmental bodies or otherwise, will be necessary in order for Buyer to enter into this Agreement.

(b) No Default. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated thereunder will: (i) conflict with or result in the breach of any law, regulation, writ, injunction or decree of any court or governmental instrumentality applicable to buyer, or (ii) constitute a breach of any evidence of indebtedness or agreement to which Buyer is a party or by which Buyer is bound.

Buyer hereby agrees to defend, protect, indemnify and hold harmless Seller from any and all loss, damage, liability or expense, including reasonable attorneys' fees and costs, Seller may suffer as a result of any breach of or any inaccuracy in the foregoing representations and warranties; provided that this provision is subject to the limitations of RCW 4.24.115 to the extent applicable.

ARTICLE 9. POSSESSION

9.1 Possession of the Real Property shall be delivered to Buyer on the Closing Date. Seller shall afford authorized representatives of Buyer reasonable access to the Real Property for the purposes of satisfying Buyer with respect to the representations, warranties, and covenants of Seller contained herein and with respect to satisfaction of any conditions precedent to the Closing contained herein

ARTICLE 10. DEFAULT, REMEDIES

10.1 Specific Performance.

(a) If Seller fails to perform any of its obligations hereunder either prior to or at Closing for any reason other than Buyer's failure to tender performance of its obligations hereunder, then Buyer shall have all available legal and equitable remedies, including the remedy of specific performance.

(b) If Buyer fails to perform any of its obligations hereunder either prior to or at Closing for any reason other than Seller's failure to tender performance of its obligations hereunder, then Seller shall have all available legal and equitable remedies, including the remedy of specific performance.

10.2 Attorneys' Fees. In the event either party hereto finds it necessary to bring an action against the other party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach or default hereunder or thereunder, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to attorneys fees, witness fees and costs.

ARTICLE 11. MISCELLANEOUS

11.1 Indemnity. Seller shall indemnify, defend, protect and hold harmless Buyer from and against any and all liabilities, obligations, damages, penalties, fees, commissions, costs, expenses and other charges, including without limitation reasonable attorneys' fees, which Buyer may suffer or incur in connection with (i) its ownership of the Real Property resulting from any action or inaction of Seller, its agents or employees occurring before the Closing; (ii) the falsity or breach of any representation or warranty set forth in **Article 7** hereof; (iii) any misrepresentation in or omission of any material documents, items or information to be submitted by Seller to Buyer relating to the Real Property or its operations; or (iv) any failure of Seller to perform any of its obligations hereunder. The foregoing indemnity shall survive the Closing and shall be in addition to, and not in derogation of any other rights Buyer may enjoy under this Agreement or under law for breach of, any representation or warranty set forth in this Agreement. Promptly after the receipt by Buyer of notice of any claim or the commencement of any action or proceeding for which Seller has agreed to indemnify Buyer, Buyer shall give Seller written notice of such claim or the commencement of such action or proceeding and Seller shall thereafter vigorously defend on behalf of Buyer, but at Seller's sole cost and expense, any such action or proceeding for which indemnification is sought utilizing counsel satisfactory to Buyer. No settlement of any such action or proceeding shall be made without Buyer's prior written approval (unless Buyer has previously been discharged from all liability in connection with such action or proceeding); provided that this provision is subject to the limitations of RCW 4.24.115 to the extent applicable. Notwithstanding anything in this Agreement to the contrary, it is understood and agreed by and between Seller and Buyer that this **Section 11.1** shall not apply to any environmental issues.

11.2 Environmental Obligations. It shall be Seller's obligation to comply with applicable law and to discharge Seller's obligations under all federal, state, foreign and local laws or administrative orders, including but not limited to those relating to Environmental Conditions existing as of the Closing Date, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., the Resource Conservation and Recovery act of 1976, 42 U.S.C. §6901, et seq., the Federal Clean Air Act, 42 U.S.C. §7401, et seq., the Federal Clean Water Act, 33 U.S.C. §1252, et seq., the

Washington Hazardous Waste Management Act, the Washington State Environmental Policy Act (SEPA), the Washington Water Pollution Control Act, the Washington Clean Air Act, and the Washington Model Toxics Control Act, chapter 70.105D RCW, et seq., including all amendments and/or revisions to said laws and regulations promulgated thereunder. For the purposes of this Agreement, Environmental Conditions shall include conditions with respect to soil, surface waters, groundwater and other waters of the state, and other similar Environmental Conditions on-site and off-site of the Real Property. Such obligation, and any liability that Seller may have for any breach thereof, shall survive the Closing.

11.3 Brokers and Finders. Each party represents to the other that no broker or finder has been involved in this transaction. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith, Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, hereby agrees to indemnify Seller against and hold harmless Seller from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of such claim, and Seller, if such claim is based upon any agreement alleged to have been made by Seller, hereby agrees to indemnify Buyer against and hold harmless Buyer from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which Buyer may sustain or incur by reason of such claim. The provisions of this **Section 11.3** shall survive the termination of this Agreement or the Closing.

11.4 Notices. All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail return receipt requested, postage prepaid to:

Buyer at: Department of Transportation
Attn: Real Estate Program Administrator

Physical:
7345 Linderson Way SW
Tumwater, WA 98501

Mailing:
Post Office Box 47338
Olympia, WA 98504-7338

Seller at:

or to such other address as either party hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. If the last day of a period falls on a day on which the recording office of the county in which the Real Property is closed, the expiration of the period shall be extended to the first day thereafter in which any such recording office is open.



11.5 Amendment, Waiver. No modification, termination or amendment of this Agreement may be made except by written agreement signed by all parties. No failure by Seller or Buyer to insist upon the strict performance of any covenant, duty agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice and only by notice as provided in **Section 11.4** hereof, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. All the terms, provisions, and conditions of this Agreement shall inure to the benefit of and be enforceable by Seller's or Buyer's respective successors and assigns.

11.6 Survival All provisions of this Agreement which involve obligations, duties or rights which have not been determined or ascertained as of the Closing Date or the recording of the Deed and all representations, warranties and indemnifications made in or to be made pursuant to this Agreement shall survive the Closing Date and/or the recording of the Deed.

11.7 Captions The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

11.8 Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties with respect to the purchase and sale of the Real Property and supersedes all prior and contemporaneous agreements and understandings between the parties hereto relating to the subject matter hereof.

11.9 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11.10 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

11.11 Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by Seller or Buyer, Seller and Buyer hereby agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, at the Closing any and all such further acts, deeds and assurances as Buyer, Seller, as the case may be, may reasonably require to (a) evidence and vest in the Buyer the ownership of and title to the Real Property, and (b) consummate the transactions contemplated hereunder.

11.12 Eminent Domain Power. Buyer has the power of eminent domain and has informed Seller that it is of the opinion that it could acquire the Real Property through the exercise of that power in compliance with constitutional and statutory requirements and anticipates the potential exercise of that power if it were to become necessary to achieve Buyer's legitimate purposes. Nothing in this Agreement shall constitute, or be construed as constituting



any limitation upon Buyer or any waiver by Buyer with respect to its exercise of the power of eminent domain in connection with any property.

11.13 Confidentiality. Should any potentially exempt records become the subject of a request for public disclosure, Buyer shall use its best efforts to immediately notify Seller of such request and the date by which it anticipates responding, which date shall in no event be less than eight (8) days after Buyer's first notice of the disclosure request to Seller. Seller must then within eight (8) days of receipt of said notice in writing to Buyer (a) specifically identify each record, or part thereof, and (b) fully explain why such record(s) contain proprietary information that is exempt from disclosure under RCW 42.17.310(i)(h) or is subject to protection pursuant to Chapter 19.108 RCW or other state law so that Buyer may consider each record and explanation in responding to the requester. If Seller fails to specifically identify potentially exempt records or parts thereof, or fails to fully explain why such records are not subject to disclosure within that eight (8) day period, Buyer may make such disclosure. If Seller made timely record identification and explanation as to why the records are exempt and Buyer, in its sole discretion, believes Seller has a valid claim that the records contain proprietary information, trade secrets, confidential information, or other exempt material, Buyer shall deny the request for disclosure of such records, or excise such information prior to disclosure, or Seller, at its sole expense, may seek a judicial declaration of the rights of the parties. If such denial of a request for disclosure of records or excision of information is challenged in court, Seller agrees that it will, at its sole expense, defend the non-disclosure of information and shall indemnify Buyer for any and all penalties assessed and costs (including the fees and costs of Buyer's attorneys) that Buyer incurs in such defense including any attorney's fees assessed against Buyer under RCW 42.17.340(4). If prior to, during, or after judicial consideration Buyer in its sole discretion believes Seller does not have a valid claim, it shall so notify Seller not less than three (3) days prior to the date Buyer intends to make the disclosure to allow Seller to take such further action as Tenant deems appropriate prior to disclosure.

11.14 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Buyer and Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

11.15 Neutral Authorship. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

11.16 Governing Law, Time. This Agreement and the right of the parties hereto shall be governed by and construed in accordance with the laws of the State of Washington and the parties agree that in any such action venue shall lie in either King or Thurston County, Washington. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.



Terry Dunning
DPR MOHAI 2013 ORD ATT 1
July 3, 2013
Version 1

Seller:
City of Seattle

By _____
Its _____

Buyer:
State of Washington,
Department of Transportation

By _____
James M. Salter, Acquisition Program Manager

Approved as to Form:

Amanda Phily
Assistant Attorney General



EXHIBIT A

All that portion of the hereinafter described Tract X lying Southerly of the following described line:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 144+00 on the SR 520 line survey of SR 520, SR 5 Vicinity to Evergreen Point Bridge and 257.29 feet Northerly therefrom; thence Easterly, parallel with said line survey to a point opposite HES 145+55± thereon, said point being on the most Westerly line of said Tract X; thence Northerly, along said Westerly line, to a point opposite said HES and 378.05 feet Northerly therefrom; thence Easterly to a point opposite HES 146+45± on said line survey and 378.07 feet Northerly therefrom, said point being on the Northerly line of said Tract X; thence Northerly to a point opposite said HES and 403.60 feet Northerly therefrom; thence Northeasterly, along a curve to the left, having a radius of 67.50 feet an arc distance of 85.72 feet, to a point opposite HES 147+03± on said line survey and 467.84 feet Northerly therefrom, said point being on the Westerly line of said Tract X; thence Northerly, along said Westerly line, to a point opposite HES 147+04± on said line survey and 500.13 feet Northerly therefrom; thence Easterly to a point opposite HES 151+85.59 on said line survey and 418.42 feet Northerly therefrom; thence Southeasterly to a point opposite HES 152+88.37 on said line survey and 275.07 feet Northerly therefrom and the terminus of said line description.

TRACT X:

Parcel A:

Lot 11, Block 4, Montlake Park, according to the plat thereof recorded in Volume 18 of Plats, page 20, in King County Washington.

Parcel B:

A tract of land delineated on and designated "Park" in the plat of Montlake Park, according to the plat thereof recorded in Volume 18 of Plats, page 20, in King County, Washington, and lying Easterly of Blocks 4 and 6 and East Park Drive as shown on the face of said plat;

AND Blocks 9, 10 and 11, Lake Washington Shore Lands, according to the official maps thereof on file in the Office of the Commissioner of Public Lands at Olympia, Washington.

Parcel C:

Lot 3, Block 11-A, Supplemental Map of Lake Washington Shorelands, as shown on the official map of said shorelands filed in the Office of Commissioner of Public Lands at Olympia, Washington, September 15, 1916;



EXCEPT that portion thereof condemned for highway in Superior Court Cause Number 597685 and/or conveyed to the State of Washington by deeds recorded under Recording Numbers 5538441 and 5538444.

Parcel D:

That portion of the Old Canal right-of-way (Canal Reserve) in the Northeast quarter and the Northwest quarter of Section 21, Township 25 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at the Southwest corner of Lot 11, Block 4, Montlake Park, an Addition to the City of Seattle, according to the plat thereof recorded in Volume 18, page 20; thence on the South line of said Addition, the said line also being the North line of the Canal Reserve, South 89°42'49.4" East 400 feet; thence South 0°17'10.6" West 120 feet; thence North 89°42'49.4" West 400 feet; thence North 0°17'10.6" East 120 feet to the place of beginning;

EXCEPT any portion in Lot 3, Block 11-A, Supplemental Map of Lake Washington Shorelands, as shown on the official map of said shorelands filed in the Office of Commissioner of Public Lands at Olympia, Washington, September 15, 1916;

AND EXCEPT that portion thereof condemned for highway in Superior Court Cause Number 597685 and/or conveyed to the State of Washington by deeds recorded under Recording Numbers 5538441 and 5538444.

Parcel E:

That portion of the Old Canal right-of-way (Canal Reserve) in the Northeast quarter of Section 21, Township 25 North, Range 4 East, W.M., in King County, Washington, lying Northerly of Primary State Highway No. 1, now known as State Route 520, as established by Superior Court Cause Number 597685 and Deeds recorded under Recording Numbers 5538441 and 5538444;

AND lying Southerly of the following described parcel:

Beginning at the Southwest corner of Lot 11, Block 4, Montlake Park, an Addition to the City of Seattle, according to the plat thereof recorded in Volume 18, page 20; thence on the South line of said Addition, the said line also being the North line of the Canal Reserve, South 89°42'49.4" East 400 feet; thence South 0°17'10.6" West 120 feet; thence North 89°42'49.4" West 400 feet; thence North 0°17'10.6" East 120 feet to the place of beginning;

Parcel F:

Those certain site improvements not previously conveyed under King County Recording

Terry Dunning
DPR MOHAI 2013 ORD ATT 1
July 3, 2013
Version 1

Number 20101214001168 within the "MOHAI Use Area" lying within the hereinbefore described Parcels A, B, C, D and E.

Parcel G:

All right, title and interest per the terms, easements, covenants, agreements and restrictions as disclosed by those documents recorded under King County Recording Numbers 3133042, 4207669, 4955020, 5411110, and 5447962.

The lands herein described contain an area of 121,666 square feet, more or less, the specific details concerning all of which are to be found on sheets 5 and 7 of that certain plan entitled SR 520, SR 5 Vicinity to Evergreen Point Bridge, now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval June 17, 2005, revised May 2, 2013



EXHIBIT B

That portion of the hereinafter described Tract X lying within the following described tract of land:

Beginning at a point opposite Highway Engineer's Station (hereinafter described as HES) 146+45± on the SR 520 line survey of SR 520, SR 5 Vicinity to Evergreen Point Bridge and 778.18 feet Northerly therefrom, said point also being on the Westerly of said Tract X; thence Southerly, along said Westerly line, to a point opposite said HES and 728.54 feet Northerly therefrom; thence Southeasterly, along a curve to the right, having a radius of 67.50 feet an arc distance of 85.72 feet, to a point opposite HES 147+10± on said line survey and 663.78 feet Northerly therefrom, said point being on the Westerly line of said Tract X; thence Southerly, along said Westerly line, to a point opposite HES 147+04± on said line survey and 500.13 feet Northerly therefrom; thence Easterly to a point opposite HES 151+85.59 on said line survey and 418.42 feet Northerly therefrom; thence Southeasterly to a point opposite HES 152+88.37 on said line survey and 275.07 feet Northerly therefrom; thence Northeasterly to a point opposite HES 153+41.85 on said line survey and 304.75 feet Northerly therefrom; thence Northwesterly to a point opposite HES 152+30 on said line survey and 459 feet Northerly therefrom; thence Northerly to a point opposite HES 152+38 on said line survey and 510 feet Northerly therefrom; thence Northwesterly to a point opposite HES 147+73 on said line survey and 606.43 feet Northerly therefrom; thence Northerly to a point opposite HES 147+81 on said line survey and 670.83 feet Northerly therefrom; thence Northwesterly, along a curve to the left, having a radius of 107 feet an arc distance of 147.96 feet Northerly therefrom to the point of beginning.

TRACT X:

Parcel A:

Lot 11, Block 4, Montlake Park, according to the plat thereof recorded in Volume 18 of Plats, page 20, in King County, Washington.

Parcel B:

A tract of land delineated on and designated "Park" in the plat of Montlake Park, according to the plat thereof recorded in Volume 18 of Plats, page 20, in King County, Washington, and lying Easterly of Blocks 4 and 6 and East Park Drive as shown on the face of said plat;

AND Blocks 9, 10 and 11, Lake Washington Shore Lands, according to the official maps thereof on file in the Office of the Commissioner of Public Lands at Olympia, Washington.



Parcel C:

Lot 3, Block 11-A, Supplemental Map of Lake Washington Shorelands, as shown on the official map of said shorelands filed in the Office of Commissioner of Public Lands at Olympia, Washington, September 15, 1916;

EXCEPT that portion thereof condemned for highway in Superior Court Cause Number 597685 and/or conveyed to the State of Washington by deeds recorded under Recording Numbers 5538441 and 5538444.

Parcel D:

That portion of the Old Canal right-of-way (Canal Reserve) in the Northeast quarter and the Northwest quarter of Section 21, Township 25 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at the Southwest corner of Lot 11, Block 4, Montlake Park, an Addition to the City of Seattle, according to the plat thereof recorded in Volume 18, page 20; thence on the South line of said Addition, the said line also being the North line of the Canal Reserve, South 89°42'49.4" East 400 feet; thence South 0°17'10.6" West 120 feet; thence North 89°42'49.4" West 400 feet; thence North 0°17'10.6" East 120 feet to the place of beginning;

EXCEPT any portion in Lot 3, Block 11-A, Supplemental Map of Lake Washington Shorelands, as shown on the official map of said shorelands filed in the Office of Commissioner of Public Lands at Olympia, Washington, September 15, 1916;

AND EXCEPT that portion thereof condemned for highway in Superior Court Cause Number 597685 and/or conveyed to the State of Washington by deeds recorded under Recording Numbers 5538441 and 5538444.

Parcel E:

That portion of the Old Canal right-of-way (Canal Reserve) in the Northeast quarter of Section 21, Township 25 North, Range 4 East, W.M., in King County, Washington, lying Northerly of Primary State Highway No. 1, now known as State Route 520, as established by Superior Court Cause Number 597685 and Deeds recorded under Recording Numbers 5538441 and 5538444;

AND lying Southerly of the following described parcel:

Beginning at the Southwest corner of Lot 11, Block 4, Montlake Park, an Addition to the City of Seattle, according to the plat thereof recorded in Volume 18, page 20; thence on the South line of said Addition, the said line also being the North line of the Canal Reserve, South 89°42'49.4" East 400 feet; thence South 0°17'10.6" West 120 feet;



thence North 89°42'49.4" West 400 feet; thence North 0°17'10.6" East 120 feet to the place of beginning;

Parcel F:

That portion of the harbor area fronting Blocks 9, 10 and 11, Lake Washington Shorelands, according to the official maps thereof on file in the Office of the Commissioner of Public Lands at Olympia, Washington, described as follows:

Beginning at the meander corner between Sections 16 and 21 in Township 25 North, Range 4 East, W.M., in King County, Washington; thence South 89°42'46" East, 157.031 feet to the Inner Harbor Line, as shown on Lake Washington Shorelands, according to the official maps thereof on file in the Office of the Commissioner of Public Lands at Olympia, Washington, and the TRUE POINT OF BEGINNING; thence South 89°42'46" East 250 feet; thence South 00°17'13.9" West, 100 feet; thence South 89°42'46.1" East 303.012 feet; thence South 213.083 feet to the Northwest corner of Lot 1, Block 11-A, Supplemental Map of Lake Washington Shorelands, according to the official maps thereof on file in the Office of the Commissioner of Public Lands at Olympia, Washington; thence South 46°49'30.6" West, 443.176 feet; thence North 89°42'49.4" West, 232.247 feet; thence north 00°16'19.3" East, 617.933 feet to the TRUE POINT OF BEGINNING;

EXCEPT that portion lying within SR 520, as established by decree entered in King County Superior Court Cause Number 597685.

The lands herein described contain an area of 61,628 square feet, more or less, the specific details concerning all of which are to be found on sheet 7 of that certain plan entitled SR 520, SR 5 Vicinity to Evergreen Point Bridge, now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval June 17, 2005, revised May 2, 2013



Terry Dunning
DPR MOHAI 2013 ORD ATT 2
July 3, 2013
Version #1

After recording return document to:

State of Washington
Department of Transportation
Real Estate Services Office
P O Box 47338
Olympia WA 98504-7338

Document Title: Warranty Deed

Reference Number of Related Document: 20101214001168, 3133042, 4207669, 4955020, 5411110, and 5447962

Grantor(s): City of Seattle

Grantee(s): State of Washington, Department of Transportation

Legal Description: Ptns of the NW¼, Sec 21, Twp 25 N, Rge 4 E. W.M.

Additional Legal Description is on Pages 4-6 of Document.

Assessor's Tax Parcel Number: 560500-0450-03, 560500-0646-08 and 411610-0015-04

WARRANTY DEED

State Route 520, SR 5 Vicinity to Evergreen Point Bridge

The Grantor(s), **The City of Seattle**, for and in consideration of the sum of TEN AND NO/100 (\$10.00) Dollars, and other valuable consideration, hereby convey(s) and warrant(s) to the **State of Washington, acting by and through its Department of Transportation**, Grantee, the following described real property situated in King County, in the State of Washington, under the imminent threat of the Grantee's exercise of its rights of Eminent Domain:

RES-302
Revised 06/10

Page 1 of () Pages

FA No.
Project No. 852004L &
852002W
Parcel No. 1-22190

ATT 2 to DPR MOHAI 2013 ORD



WARRANTY DEED

For legal description see Exhibit A and for additional terms and conditions see attached Exhibit B, both attached hereto and made a part hereof.

Also the Grantor requests the Assessor and Treasurer of King County to set over to the remainder of the hereinafter described Tract "X", the lien of all unpaid taxes, if any, affecting the real estate herein conveyed, as provided for in RCW 84.60.070.

It is understood and agreed that delivery of this deed is hereby tendered and that the terms and obligations hereof shall not become binding upon the State of Washington unless and until accepted and approved hereon in writing for the State of Washington, by and through its Department of Transportation, by its authorized agent.

Dated: _____,

THE CITY OF SEATTLE

By: _____

Mayor

Attested by:

City Clerk

Accepted and Approved

STATE OF WASHINGTON
Department of Transportation

By: _____

James M. Salter,



WARRANTY DEED

Acquisition Program Manager

Date: _____



WARRANTY DEED

STATE OF WASHINGTON)

County of King)

On this ____ day of _____, 201_, before me personally appeared _____, to me known to be the Mayor, for the City of Seattle, and that he executed the within and foregoing instrument to be the free and voluntary act and deed of said City of Seattle, for the uses and purposes therein set forth, and on oath states that he is authorized to execute said instrument.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington, residing at _____
My commission expires _____



WARRANTY DEED

EXHIBIT A

All that portion of the hereinafter described Tract X lying Southerly of the following described line:

Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 144+00 on the SR 520 line survey of SR 520, SR 5 Vicinity to Evergreen Point Bridge and 257.29 feet Northerly therefrom; thence Easterly, parallel with said line survey to a point opposite HES 145+55± thereon, said point being on the most Westerly line of said Tract X; thence Northerly, along said Westerly line, to a point opposite said HES and 378.05 feet Northerly therefrom; thence Easterly to a point opposite HES 146+45± on said line survey and 378.07 feet Northerly therefrom, said point being on the Northerly line of said Tract X; thence Northerly to a point opposite said HES and 403.60 feet Northerly therefrom; thence Northeasterly, along a curve to the left, having a radius of 67.50 feet an arc distance of 85.72 feet, to a point opposite HES 147+03± on said line survey and 467.84 feet Northerly therefrom, said point being on the Westerly line of said Tract X; thence Northerly, along said Westerly line, to a point opposite HES 147+04± on said line survey and 500.13 feet Northerly therefrom; thence Easterly to a point opposite HES 151+85.59 on said line survey and 418.42 feet Northerly therefrom; thence Southeasterly to a point opposite HES 152+88.37 on said line survey and 275.07 feet Northerly therefrom and the terminus of said line description.

TRACT X:

Parcel A:

Lot 11, Block 4, Montlake Park, according to the plat thereof recorded in Volume 18 of Plats, page 20, in King County, Washington.

Parcel B:

A tract of land delineated on and designated "Park" in the plat of Montlake Park, according to the plat thereof recorded in Volume 18 of Plats, page 20, in King County, Washington, and lying Easterly of Blocks 4 and 6 and East Park Drive as shown on the face of said plat; AND Blocks 9, 10 and 11, Lake Washington Shore Lands, according to the official maps thereof on file in the Office of the Commissioner of Public Lands at Olympia, Washington.



WARRANTY DEED

Parcel C:

Lot 3, Block 11-A, Supplemental Map of Lake Washington Shorelands, as shown on the official map of said shorelands filed in the Office of Commissioner of Public Lands at Olympia, Washington, September 15, 1916;

EXCEPT that portion thereof condemned for highway in Superior Court Cause Number 597685 and/or conveyed to the State of Washington by deeds recorded under Recording Numbers 5538441 and 5538444.

Parcel D:

That portion of the Old Canal right-of-way (Canal Reserve) in the Northeast quarter and the Northwest quarter of Section 21, Township 25 North, Range 4 East, W.M., in King County, Washington, described as follows:

Beginning at the Southwest corner of Lot 11, Block 4, Montlake Park, an Addition to the City of Seattle, according to the plat thereof recorded in Volume 18, page 20; thence on the South line of said Addition, the said line also being the North line of the Canal Reserve, South $89^{\circ}42'49.4''$ East 400 feet; thence South $0^{\circ}17'10.6''$ West 120 feet; thence North $89^{\circ}42'49.4''$ West 400 feet; thence North $0^{\circ}17'10.6''$ East 120 feet to the place of beginning;

EXCEPT any portion in Lot 3, Block 11-A, Supplemental Map of Lake Washington Shorelands, as shown on the official map of said shorelands filed in the Office of Commissioner of Public Lands at Olympia, Washington, September 15, 1916;

AND EXCEPT that portion thereof condemned for highway in Superior Court Cause Number 597685 and/or conveyed to the State of Washington by deeds recorded under Recording Numbers 5538441 and 5538444.

Parcel E:

That portion of the Old Canal right-of-way (Canal Reserve) in the Northeast quarter of Section 21, Township 25 North, Range 4 East, W.M., in King County, Washington, lying Northerly of Primary State Highway No. 1, now known as State Route 520, as established by Superior Court Cause Number 597685 and Deeds recorded under Recording Numbers 5538441 and 5538444;

AND lying Southerly of the following described parcel:

Beginning at the Southwest corner of Lot 11, Block 4, Montlake Park, an Addition to the City of Seattle, according to the plat thereof recorded in Volume 18, page 20; thence on the South line of said Addition, the said line also being the North line of the Canal Reserve, South



WARRANTY DEED

89°42'49.4" East 400 feet; thence South 0°17'10.6" West 120 feet; thence North 89°42'49.4" West 400 feet; thence North 0°17'10.6" East 120 feet to the place of beginning;

Parcel F:

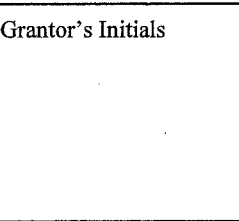
Those certain site improvements not previously conveyed under King County Recording Number 20101214001168 within the "MOHAI Use Area" lying within the hereinbefore described Parcels A, B, C, D and E.

Parcel G:

All right, title and interest per the terms, easements, covenants, agreements and restrictions as disclosed by those documents recorded under King County Recording Numbers 3133042, 4207669, 4955020, 5411110, and 5447962.

The lands herein described contain an area of 121,666 square feet, more or less, the specific details concerning all of which are to be found on sheets 5 and 7 of that certain plan entitled SR 520, SR 5 Vicinity to Evergreen Point Bridge, now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval June 17, 2005, revised May 2, 2013

Grantor's Initials



WARRANTY DEED

EXHIBIT B

The conveyance herein is subject only to the following:

Release of Damages Agreement and the terms and conditions thereof:

Between: Edward L. Blaine and Julia H. Blaine

And: United States of America

Recording Information: 429584; October 24, 1906

Exceptions and Reservations contained in deed from the state of Washington, whereby the Grantor excepts and reserves all oil, gases, coal, ores, minerals, fossils, etc., and the right of entry for opening, developing and working the same and providing that such rights shall not be exercised until provision has been made for full payment of all damages sustained by reason of such entry; recorded under Recording Numbers 660935 and 9605131415. Right of State of Washington or its successors, subject to payment of compensation therefor, to acquire rights of way for private railroads, skid roads, flumes, canals, water courses or other easements for transporting and moving timber, stone, minerals and other products from this and other property, as reserved in deed referred to above.

Any prohibition of or limitation of use, occupancy or improvement of the land resulting from the rights of the public or riparian owners to use any portion which is now or has been formerly covered by water.

Paramount rights and easements in favor of the United States for commerce, navigation, fisheries and the production of power.

Right of the State of Washington in and to that portion of the property herein described which lies below the line of ordinary high water of Lake Washington, as said line existed prior to October 25, 1913.

Affects: Those portions of the shorelands lying outside the boundaries of Blocks 9, 10 and 11, Lake Washington Shore Lands

Easement and the terms and conditions referenced therein, including, but not limited to, the following:

Grantee: City of Seattle

Purpose: Ingress, egress, light, air and view

Recorded: April 11, 1962

Recording number: 5411111

Easement and the terms and conditions referenced therein, including, but not limited to, the



WARRANTY DEED

following:

In favor of: State of Washington

Purpose: Slope

Condemned in King County Superior

Court Cause No.: 597685

Condemnation of access to state highway and of light, view and air by decree to the State of Washington:

Superior Court Cause Number: 597685



**AMENDED AND RESTATED AGREEMENT REGARDING
ASSIGNMENT OF ACQUISITION/CONDEMNATION PROCEEDS**

This Amended and Restated Agreement Regarding Assignment of Acquisition/Condemnation Proceeds (this "Condemnation Agreement") is by and between The City of Seattle (the "City"), a Washington municipal corporation, acting through its Department of Parks and Recreation ("Parks"), and the Historical Society of Seattle and King County, a Washington nonprofit corporation doing business as the Museum of History and Industry ("MOHAI").

RECITALS

The following facts and circumstances form the background of this Condemnation Agreement:

A. Since 1914, MOHAI has been collecting, preserving and presenting the history of the Pacific Northwest and, in doing so, has generated broad public appreciation for our region's diverse cultural, social and economic history.

B. Pursuant to that certain agreement by and between MOHAI and the City dated January 18, 1950, MOHAI financed and constructed the first phase of its facility upon City-owned land at McCurdy Park.

C. There have been four subsequent expansions and MOHAI until recently used facilities consisting of museum buildings (collectively, the "MOHAI Facility"), landscaping and other improvements related to museum access and parking (the "Other Improvements").

D. The MOHAI Facility and Other Improvements occupy approximately 182,468 square feet of land as depicted on Exhibit A to this Condemnation Agreement (the "MOHAI Use Area") and are located on the grounds of two City-owned parks, McCurdy Park and East



1 Montlake Park and other City land, as well as on adjacent property owned by the Arboretum
2 Foundation.

3 E. The Washington State Department of Transportation ("WSDOT"), the Federal
4 Highway Administration and the Central Puget Sound Regional Transit Authority ("Sound
5 Transit") are planning the SR-520 bridge replacement project (the "SR 520 Project"), which will
6 require the demolition of the MOHAI Facility and Other Improvements, the use of the MOHAI
7 Use Area on a temporary basis and ultimately the permanent acquisition of some or all of the
8 MOHAI Use Area.
9

10 F. MOHAI began to explore other options for its facilities based on its concerns
11 about the long-term viability of the MOHAI Use Area as MOHAI's permanent home given its
12 location adjacent to SR 520 and the likelihood that the SR 520 Project would require MOHAI's
13 relocation.
14

15 G. To this end, the City and MOHAI identified another City-owned property, the
16 former Naval Reserve Armory at Lake Union Park (the "Armory"), as an appropriate site for
17 MOHAI's primary public venue and on October 2, 2006, the City Council adopted Resolution
18 Number 30917, which supported and encouraged negotiations between Parks and MOHAI to
19 investigate the development of the Armory for that purpose.
20

21 H. On September 29, 2008, following the parties' due diligence activities with
22 respect to the viability of the Armory as MOHAI's primary public venue, the City Council
23 adopted Resolution Number 31092, which provides specific principles that Parks and MOHAI
24 must incorporate into binding agreements addressing the development and operation of a new
25 regional history museum at the Armory.
26



1 I. Resolution Number 31092 also provides that the City will contribute certain
2 compensation it receives from WSDOT in conjunction with the SR 520 Project's effects on the
3 MOHAI Facility and Other Improvements and the MOHAI Use Area to MOHAI's development
4 of the Armory facilities and will assign the authority to negotiate with WSDOT for the amount of
5 that compensation to MOHAI, subject to the City's approval of any final agreement with
6 WSDOT.

7
8 J. Pursuant to Ordinance 123132, the City and MOHAI negotiated a set of project
9 agreements, including this Condemnation Agreement, in which the parties agreed that the
10 proceeds from the acquisition of the MOHA Use Area will be used for construction of the new
11 historical museum.

12
13 K. In October 2010, the City accepted an offer from WSDOT for the MOHAI
14 museum building while WSDOT continued to evaluate the amount of land it required for its
15 project, and to determine funding. The City and MOHAI agreed that the City would retain a
16 portion of the museum building proceeds under an Agreement Regarding Distribution of
17 MOHAI Facility Proceeds.

18
19 L. The project agreements obligated MOHAI to proceed with its new museum
20 project as soon as practicable. MOHAI was able to begin construction with the proceeds of the
21 acquisition of the Montlake building it had received plus other resources that originally were
22 identified for other project-related purposes. Replacement of the facilities and functions
23 provided at the former Montlake facility has now largely been accomplished. With the
24 repayment of the portion of its compensation from WSDOT's acquisition of the Montlake
25 building that the parties agreed the City would temporarily retain and the eventual payment to
26



1 MOHAI of its share of the proceeds from the acquisition of the City-owned portion of the
2 MOHAI Use Area, the parties wish to confirm that MOHAI may use such funds to reimburse or
3 repay the other sources of funding it temporarily diverted to pay new museum construction and
4 other capital costs and to adjust the term of the original agreement given WSDOT's delay in
5 concluding the acquisition of the MOHAI Use Area.
6

7 **AGREEMENT**

8
9 Now, therefore, the parties agree as follows:

10 1. Conditional Assignment. The City hereby assigns to MOHAI, subject to
11 review and approval by the City as provided in Section 6, all compensation that the City receives
12 from WSDOT for the following:(a) All compensation paid by WSDOT to the City for the
13 MOHAI Facility and Other Improvements; and
14

15 (b) 40% but not to exceed \$7 million of all compensation paid by WSDOT to
16 the City for any real property interest in the land in the MOHAI Use Area.

17 2. Limitation on Scope. Nothing in this Condemnation Agreement affects the
18 parties' rights with respect to the following:
19

20 (a) The City's rights to negotiate for and receive the residual fee value and
21 any other compensation associated with the MOHAI Use Area (net of the compensation
22 available to MOHAI under Section 1(b));

23 (b) The City's rights to real property, improvements and other interests
24 outside of the MOHAI Use Area;
25



1 (c) The City's rights (outside of the context of condemnation) to receive
2 compensation to mitigate for the SR 520 Project's impacts on park land, whether in the form of
3 cash compensation for replacement of any lost park land or conveyance of replacement property;
4 and

5 (d) MOHAI's right to relocation benefits and other compensation to which
6 MOHAI is entitled under state or federal law as a result of being displaced by the SR 520
7 Project.
8

9 3. MOHAI Authority. MOHAI is hereby granted exclusive authority to negotiate
10 with WSDOT for the compensation for the property interests identified in Section 1 above.
11 MOHAI, at its own cost and expense, shall be solely responsible for conducting all negotiations
12 with WSDOT for the compensation associated with such interests.. MOHAI's authority under
13 this Condemnation Agreement is personal to MOHAI and may not be contracted or further
14 delegated or assigned without the City's consent. Notwithstanding the foregoing, MOHAI may
15 employ attorneys, architects, engineers, surveyors, appraisers and such other consultants as
16 MOHAI reasonably determines to be necessary in order to establish the value of the property
17 interests identified in Section 1 and negotiate with WSDOT, all at MOHAI's own cost and
18 expense.
19

20
21 4. Arboretum Foundation. The City owns the MOHAI Facility, a portion of which
22 is located on Arboretum Foundation property. The City agrees to support MOHAI's efforts to
23 secure 100% of the compensation for the MOHAI Facility.

24 5. Hold Harmless for WSDOT. If required by WSDOT, the City shall agree to
25 indemnify, defend, and hold WSDOT, its officers, agents and employees harmless from and
26



1 against all claims, suits, losses, damages, fines, penalties, liabilities and expenses arising out of
2 adverse claims to ownership of the MOHAI Facility, specifically including claims related to the
3 portion thereof located on land owned by the Arboretum Foundation. MOHAI, however, shall
4 reimburse the City for any amount the City actually pays WSDOT under the terms of this
5 indemnity. In the event any such claim is made by WSDOT, the City and MOHAI will enter
6 into a joint interest agreement committing the City to vigorous, good faith defense against such
7 claim; addressing other matters such as mutual cooperation and support; and reserving to
8 MOHAI the right to prior approval of any settlement of any such claim that would trigger
9 payment by MOHAI under its reimbursement obligation, which approval shall not be
10 unreasonably withheld.
11

12 6. City Approval. Acceptance of any offer of settlement or other award from
13 WSDOT; final assignment of proceeds to be paid to MOHAI for WSDOT's acquisition of the
14 property interests identified in Section 1; and transfer to WSDOT of the property interests that
15 are the subject of a proposed settlement must be approved by the Seattle City Council, by
16 ordinance. Before conditionally accepting any such offer of settlement or other award from
17 WSDOT, MOHAI shall obtain the consent of the Mayor or his designee (collectively, the
18 "Mayor") for such settlement, which consent shall not be unreasonably withheld, conditioned or
19 denied. All settlement offers shall clearly enumerate the interests for which compensation is
20 being paid and the total compensation for each such interest, including the cost per square foot
21 for all real property interests being acquired. At the Mayor's request, MOHAI shall deliver such
22 supporting documentation as the Mayor may reasonably request. Following the Mayor's
23 provision of his consent to the settlement and upon MOHAI's request, the Mayor will prepare
24
25
26



and transmit to the City Council the legislation necessary for the acceptance of the proposed settlement; the final assignment to MOHAI of the proceeds from such settlement; and the transfer to WSDOT of the property interests that are the subject of the proposed settlement.

7. Use of Settlement Proceeds. The proceeds paid to MOHAI under this Agreement for the property interests identified in Section 1 shall be reserved for capital costs associated with replacing the functions and facilities at its Montlake location including but not limited to those facilities and functions included in the proposed Armory project. If the proceeds paid to MOHAI, together with MOHAI's other resources available for and dedicated to the project, are sufficient to enable it to undertake the Armory project, it shall do so as soon as practicable following receipt of such proceeds. Proceeds received after project capital costs have been paid may be used to reimburse or repay other sources that may have been used to expedite completion of the Armory project.

8. Reporting. MOHAI will provide monthly briefings to the City regarding the progress of negotiations with WSDOT in such format and containing such information as the City may request. The briefings will cover all issues related to the valuation, negotiation or documentation of the compensation for the property interests identified in Section 1. MOHAI also will make materials related to such briefings (including but not limited to the materials specified in Section 13) available to the City at the City's request. The scope and distribution of any materials shall be consistent with maintaining privilege status for such materials, provided that in the event of a disagreement between the City and MOHAI concerning the scope of such reports, the City's determination shall be final.



1 9. Litigation. If MOHAI does not reach a settlement with WSDOT, MOHAI also is
2 granted exclusive authority to participate, at its own cost and expense, in any condemnation
3 action brought by the State with respect to the interests described in Section 1 above. The City
4 and MOHAI shall reasonably cooperate with each other in the preparation for and conduct of
5 such litigation by, without limitation, sharing valuation information and making witnesses
6 available to the other party.

7
8 10. Duration of Condemnation Agreement. This Condemnation Agreement shall
9 expire when MOHAI and WSDOT have (a) agreed upon a final offer of settlement or other
10 award for compensation for the property interests identified in Section 1; or (b) the amount of
11 such compensation has been resolved through a dispute resolution process including mediation,
12 arbitration or litigation and the City and MOHAI have received such compensation from
13 WSDOT.

14
15 In addition, the City may terminate this Condemnation Agreement under any of the
16 following circumstances:

17 (a) MOHAI refuses to permit the City adequate access to relevant books,
18 records and other materials as provided herein;

19 (b) Breach of this Condemnation Agreement by MOHAI, specifically
20 including derogation of the City's rights reserved under Section 2; or
21

22 (c) Material breach by MOHAI of its obligation under this Condemnation
23 Agreement to act in good faith and deal fairly with the City.

24 11. Indemnity.
25
26



1 (a) MOHAI shall indemnify and hold harmless the City from and against any
2 loss, damage, liability or claim suffered, incurred by, or asserted against the City arising out of,
3 in connection with or based upon any act or omission by MOHAI relating in any way to this
4 Condemnation Agreement or its services under this Condemnation Agreement, so long as
5 MOHAI has acted in bad faith or with negligence.

6 (b) City shall indemnify and hold harmless MOHAI from and against any los,
7 damage, liability or claim suffered, incurred by, or asserted against MOHAI arising out of, in
8 connection with or based upon any act or omission by the City relating in any way to this
9 Condemnation Agreement, so long as the City has acted in bad faith or with negligence.
10

11 12. Confidentiality. To the extent allowed by law, MOHAI and the City shall
12 maintain the confidentiality of all information and material either party receives from the other
13 party pertaining to negotiating strategy or property valuation.
14

15 13. Books and Records; Audit. While performing under this Condemnation
16 Agreement and for at least six (6) years after its termination or expiration, MOHAI shall keep, in
17 King County, Washington, separate, accurate, complete and auditable records that document the
18 basis for determining the value of the property interests described in Section 1. Such records shall
19 include, without limitation, appraisals, purchase and sale agreements, deeds, easements and
20 escrow instructions. MOHAI shall permit the City, from time to time as the Mayor or City
21 Auditor deems necessary, to inspect, audit and copy such relevant records and those of any other
22 person or entity that has performed work in connection with or related to the MOHAI's activities
23 hereunder, unless such records are protected from review by the City under attorney/client
24 privilege. MOHAI shall ensure that any subcontract, agreement or other arrangement under
25
26



1 which any other person or entity is permitted to perform work in connection with or related to
2 the MOHAI's activities under this Condemnation Agreement provides that the relevant work
3 product of any such person or entity is subject to the City's right to inspect, audit or copy, unless
4 such work product is protected from review by the City under attorney/client privilege.
5 Notwithstanding anything in this Agreement to the contrary, MOHAI agrees that it will produce
6 to the City upon request and will not assert, as against the City, any privilege with respect to the
7 work product of all architects, engineers, surveyors, appraisers and other similar consultants that
8 MOHAI engages to carry out its obligations under this Agreement, if such work product was
9 produced in the regular course of their business activities under this Agreement.
10

11 14. Governing Law; Venue. This Condemnation Agreement shall be governed by
12 and construed in accordance with Washington law. Except as otherwise required by applicable
13 law, any action under this Condemnation Agreement shall be brought in King County Superior
14 Court.
15

16 15. Notices. All notices, certificates or other communications shall be in writing and
17 shall be deemed given on the business day on which the same have been transmitted by facsimile
18 or electronic mail with a telephone call by sender immediately to follow transmittal and an
19 affirmative confirmation of receipt from recipient, whether verbal or electronic, or on the
20 business day following the day on which the same have been sent using same day or overnight
21 delivery via a commercial messenger or courier service that guarantees next day delivery.
22

23 If to the City: The City of Seattle
24 Department of Parks and Recreation
25 100 Dexter Avenue North
26 Seattle, WA 98109
27 Attn: Acting Superintendent
28 Telephone: 206-684-8022



Fax: 206-233-7023
Email: christopher.williams@seattle.gov

The City of Seattle
Law Department
PO Box 94769
Seattle, WA 98124-4769
Telephone: 206-684-8200
Fax: 206-684-8284
Email: helaine.honig@seattle.gov

If to MOHAI: Museum of History and Industry
PO Box 80816
Seattle, WA 98109
Attn: Executive Director
Telephone: (206) 324-1126, ext. 132
Fax: (206) 324-1346
Email: leonard.garfield@seattlehistory.org

cc: B. Gerald Johnson
Pacifica Law Group LLP
1191 2nd Avenue, Suite 2100
Seattle, WA 98101-2945
Telephone: (206) 245-1700
Fax: (206) 245-1750
Email: gerry.johnson@pacificallawgroup.com

Either party may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

16. Entire Agreement. This Condemnation Agreement contains the entire agreement of the parties and supersedes any prior written or oral agreements with respect to the matters described herein.

17. Severability. If any provision of this Condemnation Agreement is held to be unenforceable for any reason, the remainder of the Condemnation Agreement shall nevertheless remain in full force and effect.

18. Counterparts. This Condemnation Agreement may be executed in counterparts.



19. Survival of Provisions. The provisions of Sections 11 and 13 shall survive the expiration or earlier termination of this Condemnation Agreement.

CITY OF SEATTLE DEPARTMENT OF
PARKS AND RECREATION

MUSEUM OF HISTORY AND INDUSTRY

By _____
Christopher M. Williams
Acting Superintendent

By _____
Leonard Garfield
Executive Director

Date _____

Date _____



FISCAL NOTE FOR NON-CAPITAL PROJECTS

| Department: | Contact Person/Phone: | CBO Analyst/Phone: |
|----------------------|------------------------------|---------------------------|
| Parks and Recreation | Terry Dunning/684-4860 | Jeff Muhm/684-8049 |

Legislation Title: AN ORDINANCE relating to McCurdy Park; accepting an offer from the Washington State Department of Transportation to acquire certain real property in connection with the SR 520 Project; authorizing the Superintendent of Parks and Recreation to execute a purchase and sale agreement and deed for such real property and to take other related actions; increasing appropriations in connection therewith; authorizing the Superintendent to execute a revived, amended and restated agreement with the Museum of History and Industry for the distribution of the proceeds from the conveyance such real property; superseding Ordinance 118477, which adopted Initiative 42, for purposes of this ordinance; and ratifying and confirming prior acts; all by a three-fourths vote of the City Council.

Summary of the Legislation: This legislation authorizes the Superintendent of Parks and Recreation to sign a Purchase and Sales Agreement, deed and other documents necessary for the sale of the lands formerly associated with the Museum of History and Industry (MOHAI), as it was formerly situated in McCurdy and East Montlake Parks. The legislation also revives the now expired agreement between the City and MOHAI for the distribution of proceeds from the sale to the State, appropriates the revenues to the City budget and supersedes Ordinance 118477. The proposed Ordinance also supersedes the requirements of Ordinance 118477 (Initiative 42) for this transaction.

Background: The former MOHAI site consisting of approximately 182,468 square feet is required by WSDOT for the 520 Bridge Replacement and HOV project. The MOHAI building occupying the site was acquired by WSDOT pursuant to Ordinance 123408 adopted October 7, 2010 for \$40,000,000. Prior to that transaction the City adopted Ordinance 123132 pertaining to a "Project Development Agreement" regarding the new MOHAI facility at Lake Union Park. That Agreement authorized the lease of the current building location at Lake Union Parks and the City's grant of the proceeds from the sale of the old MOHAI building, \$40,000,000 to MOHAI for use at Lake Union and other sites for capital purposes. That agreement also set out that MOHAI would be entitled to 40% (but not to exceed \$7,000,000) of the proceeds from the sale of subsequent real property interests (the land) in the MOHAI Use Area. The authorizing ordinance also superseded Ordinance 118477 as is also requested in the current legislation.

The original \$40,000,000 transaction was to be paid by WSDOT in two payments, each \$20,000,000. Prior to the receipt of the second payment, MOHAI agreed to defer payment of \$8,500,000 until February of 2013 in order to assist the City to balance its 2011-2012 budget. Since negotiations were still underway in February, MOHAI deferred re-payment of the \$8.5

million until the present. This Ordinance also revives that agreement to re-pay the \$8.5 million since, technically it expired in February.

The MOHAI Use Area consists of portions of McCurdy and East Montlake Parks and includes DNR Harbor Area lands to which the City holds use rights pursuant to the State Sessions Laws of 1925, Chapter 127. The DNR property also falls within the Section 6 (f) area defined by WSDOT in its EIS for the project. These various areas are shown on the attached map. The City's rights in the DNR property within the MOHAI Use Area will be relinquished and the property will be transferred from DNR to WSDOT as part of a subsequent transaction related to 6(f) properties. A small part of the MOHAI Use area, 6,788 square feet will be used by WSDOT during construction pursuant to a Temporary Construction Easement and returned to City ownership at the conclusion of the project.

The portion of the MOHAI Use Area that is owned by the City in fee that will be sold to WSDOT consists of 127,666 square feet. The sale price of all City interests in the MOHAI Use Area will be \$14,192,700. MOHAI has agreed that the Temporary Construction Easement area value should go to the City. Since the City already owes \$8.5 million to MOHAI and is also obligated to pay 40% of the proceeds from the land sale (minus the small Temporary Construction area) the total amount due MOHAI is 40% of the land value or \$5,677,080 less 4.88% for a reduced MOHAI use area acquisition = \$5,400,038. The City's share of the proceeds is \$14,192,700 - 5,400,038 (8,792,662) - 8,500,000 (previously deferred) or \$292,662. The City will also receive \$57,300 for Temporary Construction Easements, for a combined total of \$349,962. These levels of compensation were negotiated by the City and WSDOT, both of whom had access to a variety of appraisal information. The agreed price was slightly above the midway point between the City's appraisal and the highest of the several WSDOT appraisals reviewed by the City.

(Include a brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable.)

Please check one of the following:

_____ This legislation does not have any financial implications.

(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

x This legislation has financial implications.

(If the legislation has direct fiscal impacts (e.g., appropriations, revenue, positions), fill out the relevant sections below. If the financial implications are indirect or longer-term, describe them in narrative in the "Other Implications" Section. Please delete the instructions provided in parentheses at the end of each title and question.)

Appropriations:

(This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation please provide details in the Appropriation Notes section below. If the appropriation is not supported by revenue/reimbursements, please confirm that there is available fund balance to cover this appropriation in the note section.)

| Fund Name and Number | Department | Budget Control Level* | 2013 Appropriation | 2014 Anticipated Appropriation |
|---|----------------------------|---------------------------------------|---------------------|--------------------------------|
| Cumulative Reserve Subfund - Unrestricted (00164) | Cumulative Reserve Subfund | MOHAI Replacement Facilities (KMOHAI) | \$13,900,038 | 0 |
| TOTAL | | | \$13,900,038 | 0 |

*See budget book to obtain the appropriate Budget Control Level for your department.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

(This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.)

| Fund Name and Number | Department | Revenue Source | 2013 Revenue | 2014 Revenue |
|---|----------------------------|---|---------------------|--------------|
| Cumulative Reserve Subfund - Unrestricted (00164) | Cumulative Reserve Subfund | Washington State Department of Transportation | \$14,250,000 | 0 |
| TOTAL | | | \$14,250,000 | 0 |

Revenue/Reimbursement Notes:

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

(This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.)

| Position Title and Department | Position # for Existing Positions | Fund Name & # | PT/FT | 2013 Positions | 2013 FTE | 2014 Positions* | 2014 FTE* |
|-------------------------------|-----------------------------------|---------------|-------|----------------|----------|-----------------|-----------|
| NA | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| TOTAL | | | | | | | |

* 2014 positions and FTE are total 2014 position changes resulting from this legislation, not incremental changes. Therefore, under 2014, please be sure to include any continuing positions from 2013.

Position Notes:

NA

Do positions sunset in the future?

(If yes, identify sunset date)

NA

Spending/Cash Flow:

(This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.)

| Fund Name & # | Department | Budget Control Level* | 2013 Expenditures | 2014 Anticipated Expenditures |
|---------------|------------|-----------------------|-------------------|-------------------------------|
| | | | | |
| TOTAL | | | | |

* See budget book to obtain the appropriate Budget Control Level for your department.

Spending/Cash Flow Notes:

Other Implications:

- a) **Does the legislation have indirect financial implications, or long-term implications?**
(If yes, explain them here.) When the Freeway project is completed, portions of this property will return to City use. Operation of those areas may require resources unneeded during the interim.

- b) **What is the financial cost of not implementing the legislation?**
(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs.)

The cost is unknown, however the Freeway construction [project would be delayed and the City would risk potential litigation that could result in smaller proceed accruing to the City.

- c) **Does this legislation affect any departments besides the originating department?**
(If so, please list the affected department(s), the nature of the impact (financial, operational, etc), and indicate which staff members in the other department(s) are aware of the proposed legislation.) Law Department –additional processing of agreements and possible additional negotiation through close of escrow - Helaine Honig 684-8222, Seattle Public Utilities-this -property is underlain by a sewer line which will require relocation during the course of WSDOT's project – Bill Benzer - 684-7845.

- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** (Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)None

- e) **Is a public hearing required for this legislation?**
(If yes, what public hearing(s) have been held to date, and/or what public hearing(s) are planned for the future?)No

- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
(For example, legislation related to sale of surplus property, condemnation, or certain capital projects with private partners may require publication of notice. If you aren't sure, please check with your lawyer. If publication of notice is required, describe any steps taken to comply with that requirement.)No

- g) **Does this legislation affect a piece of property?**
(If yes, and if a map or other visual representation of the property is not already included as an exhibit or attachment to the legislation itself, then you must include a map and/or other visual representation of the property and its location as an attachment to the fiscal note. Place a note on the map attached to the fiscal note that indicates the map is intended for illustrative or informational purposes only and is not intended to modify anything in the legislation.) Yes

h) Other Issues:

List attachments to the fiscal note below: Attachment A – MOHAI Use Area Sale to WSDOT

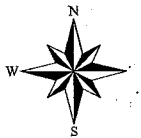
Attachment A

Terry Dunning
DPR MOHAI Use Area ATT A
June 25, 2013
Version #1



MOHAI Use Area Sale to WSDOT

- Legend**
- Use Area
 - Building outline
 - Parcel Boundary



50 0 50
Feet

1 inch = 100 feet

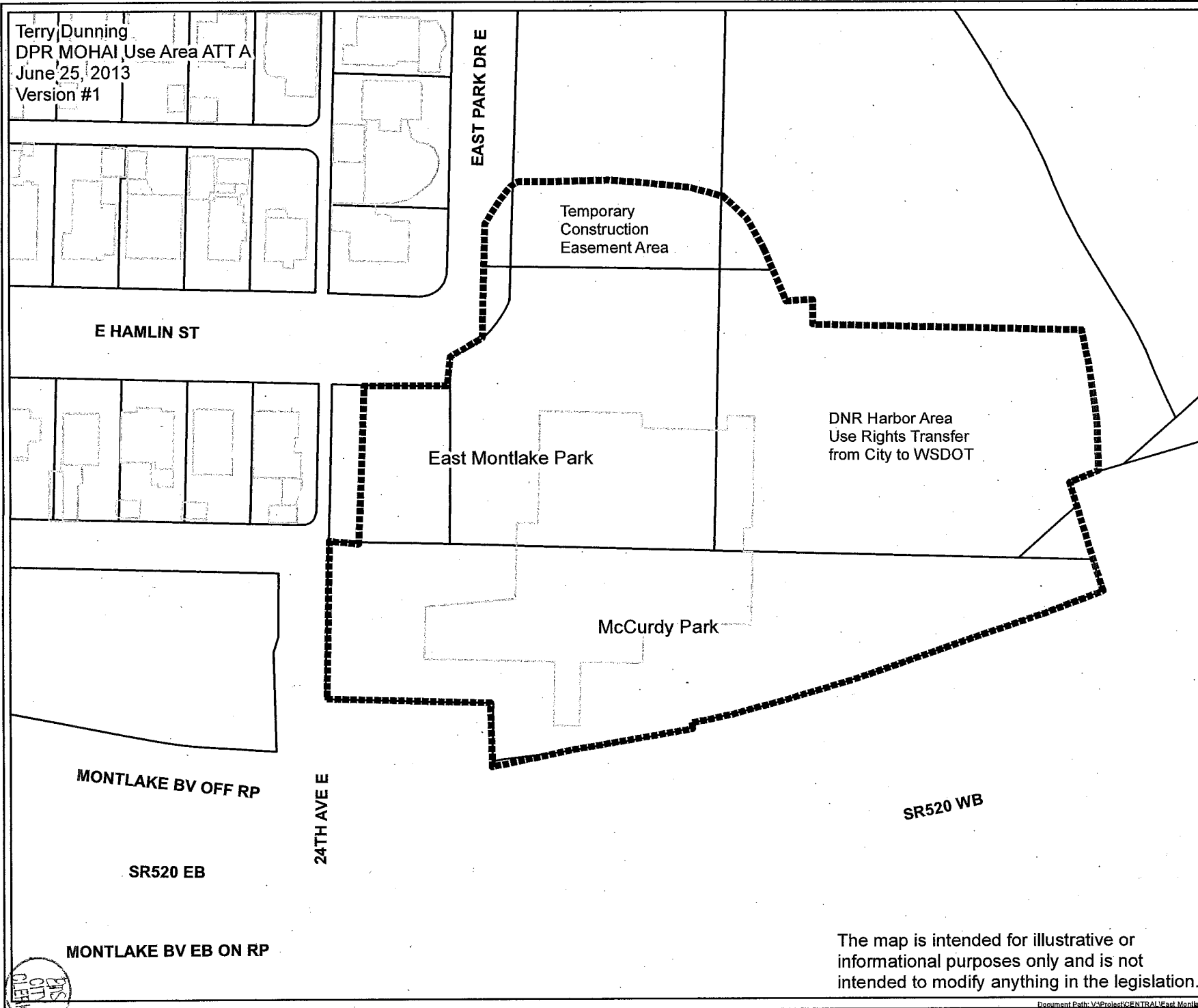
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No warranties of any sort, including accuracy, fitness or merchantability accompany this product.

Map date: June 25, 2013

Document Path: V:\Project\CENTRAL\East Montlake - McCurdy Park\MOHAI Use Area - legis (1).indd 1.mxd

The map is intended for illustrative or informational purposes only and is not intended to modify anything in the legislation.





City of Seattle
Office of the Mayor

July 16, 2013

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 that authorizes the sale of park land once occupied by the Museum of History and Industry (MOHAI) at McCurdy Park, to the Washington State Department of Transportation (WSDOT) for the SR520 Bridge Replacement and HOV lane project. This authorization will complete the property sale and subsequent payment to MOHAI that were initially approved by Ordinance 123408 and 123437 in 2010.

The 520 Bridge Replacement and HOV project requires the former MOHAI site for a detention pond associated with the new freeway improvements and for construction staging. To finalize the sale of the McCurdy Park property to the State, the proposed Council Bill:

- Authorizes the City to sell the MOHAI lands to WSDOT for \$14.25 million;
- Appropriates the proceeds from the sale;
- Authorizes payment to MOHAI as agreed to in prior legislation; and
- Authorizes the Parks Superintendent to sign a revised agreement with MOHAI.

The proposed Council Bill will conclude over five years of negotiations between WSDOT, MOHAI and the City regarding the McCurdy Park property. Thank you for your consideration of this legislation. 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

