

Ordinance No. 123893

# The City of Seattle – Legislative Department

Council Bill No. 117466

Council Bill/Ordinance sponsored by: TB

AN ORDINANCE relating to public art museum facilities; approving and authorizing the execution of certain consents and waivers in connection with the existing guarantee and reimbursement agreement with the Museum Development Authority and other parties; and ratifying and confirming certain prior acts.

## Committee Action:

Date	Recommendation	Vote
5/11/2012	PASS	TB NL SC 3 - 0

### Related Legislation File:

Date Introduced and Referred: <u>5.7.12</u>	To: (committee): <u>Government Performance + Finance</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>05-21-2012</u>	Date Presented to Mayor: <u>05-22-2012</u>
Date Signed by Mayor: <u>5.31.12</u>	Date Returned to City Clerk: <u>5.31.12</u>
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text <input type="checkbox"/>	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

This file is complete and ready for presentation to Full Council.

## Full Council Action:

Date	Decision	Vote
May 21, 2012	Pass	9-0

*Law Department*

ORDINANCE 123893

1  
2 AN ORDINANCE relating to public art museum facilities; approving and authorizing the  
3 execution of certain consents and waivers in connection with the existing guarantee and  
4 reimbursement agreement with the Museum Development Authority and other parties;  
and ratifying and confirming certain prior acts.

5 WHEREAS, Ordinance 121950 authorized a City guarantee for the debt service reserve  
6 established in connection with the Museum Development Authority's 2005 special  
7 obligation bonds (issued to pay the cost of acquiring and equipping an addition to its  
8 downtown museum facilities), pursuant to a guarantee and reimbursement agreement  
between the City, the Museum Development Authority, and other parties, which was  
executed and dated as of November 1, 2005; and

9 WHEREAS, Ordinance 122458 authorized certain amendments to that guarantee and  
10 reimbursement agreement, memorialized in an amended and restated guarantee and  
11 reimbursement agreement, which was executed and dated as of October 1, 2007; and

12 WHEREAS, the Seattle Art Museum has secured a lease with Nordstrom, Inc that will replace  
13 revenue that was originally expected to be received under a lease with Washington  
14 Mutual Bank ("WaMu"), which revenue was lost following the rejection of that lease  
by successors to WaMu; and

15 WHEREAS, Ordinances 121950 and 122458 delegated to the Director of Finance the authority  
16 to execute certain consents and waivers and to exercise limited discretion under the  
17 guarantee and reimbursement agreement, but did not anticipate circumstances that now  
require consents, waivers and clarifications by the parties to the agreement; and

18 WHEREAS, due to reorganization, it is now deemed in the best interests of the City to redirect  
such delegation to the Director of Finance and Administrative Services; and

19 WHEREAS, it is in the interest of the City to authorize, by this ordinance, certain specific  
20 actions that require the approval of the City Council under the terms of Ordinances  
21 121950 and 122458; NOW THEREFORE,

22 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

23 Section 1. Delegation of Authority. The Director of Finance and Administrative  
24 Services, or the City officer succeeding to the duties of that office ("Director of FAS") is  
25 granted the authority to take all actions previously delegated to the Director of Finance in  
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1 Ordinances 121950 and 122458 and under the terms of the "Amended and Restated Guarantee  
2 and Reimbursement Agreement" (the "Guarantee Agreement") by and among the City, the  
3 Museum Development Authority of Seattle ("MDA"), the Seattle Art Museum ("SAM"), U.S.  
4 Bank National Association as Bond Trustee, and U.S. Bank National Association, as Lockbox  
5 Agent, dated as of October 1, 2007 and the related Security Documents. Such actions may be  
6 taken in the future by the Director of Finance only to the extent that he or she is acting as the  
7 designee of the Director of FAS or upon future delegation of such authority.  
8

9 Section 2. Approval of Lease Arrangements. The Director of FAS is authorized to  
10 grant certain consents and waivers in relation to leasing arrangements entered into by SAM, as  
11 landlord, that are deemed to be in the best interests of the parties to the Guarantee Agreement,  
12 given current market conditions. Such waivers and consents shall be given in written form  
13 executed by the Director of FAS and by authorized representatives of SAM and MDA. Those  
14 waivers and consents include the following, if deemed necessary, appropriate or desirable by  
15 the Director of FAS:  
16

17 A. a waiver of the application of the Coverage Requirement under Section 5.3 of the  
18 Guarantee Agreement during the period affected by the rejection of the Washington Mutual  
19 lease through the end of the bond year ending September 30, 2018. In addition to waiving past  
20 noncompliance with the Coverage Requirement through the bond year ending September 30,  
21 2012, the waiver may permit the Coverage Requirement for the bond years ending September  
22 30 of 2013, 2014 and 2015 to be equal to not less than 1.0 times Annual Debt Service; and for  
23 the bond years ending September 30 of 2016, 2017 and 2018 to be equal to not less than 1.09  
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1 times Annual Debt Service. No additional waiver of the Coverage Requirement shall be  
2 permitted under this ordinance; and

3 B. consent to a clarification that, in the context of an Office Space Lease that covers  
4 the Museum Expansion Unit space and other space in a single lease, reference to "all rent"  
5 from any Office Space Lease (as that term is used in the Guarantee Agreement and the related  
6 Security Documents) means only the rent proceeds generated from the lease of Museum  
7 Expansion Unit space, and the requirement that "all rent" from any Office Space Lease be paid  
8 to the Lockbox Agent refers to the rental proceeds allocated to the Museum Expansion Unit  
9 space, provided that rent components under such a lease are allocated on a square footage basis  
10 or on another similar basis that is reasonable in the judgment of the Director of FAS; and  
11

12 C. consent to additional indebtedness incurred by MDA and SAM under the limitations  
13 of Section 5.6 of the Guarantee Agreement in accordance with the following:  
14

15 1. SAM is permitted to have an aggregate maximum of \$28,000,000 of  
16 indebtedness outstanding at any given time, and is not required to seek additional City consent  
17 for indebtedness issued or incurred under this ceiling. Any borrowing from or secured by  
18 endowment funds shall be included in the calculation of indebtedness under this ceiling.  
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20 2. If at any time, SAM desires to incur debt in excess of this ceiling, it may  
21 do so only upon consent given in writing by the Director of FAS, acting in his sole discretion  
22 and without requiring additional authorization from the City Council, but only insofar as the  
23 aggregate amount of debt outstanding (including the proposed debt and all outstanding debt)  
24 will not exceed \$40,000,000. The consent of the Director of FAS is specific to the debt being  
25 issued and does not act to raise the ceiling described in Section 2.C.1, above. If the aggregate  
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1 amount of debt outstanding plus the debt proposed to be incurred exceeds \$40,000,000, the  
2 Director of FAS may consent only upon additional authorization by a resolution or ordinance  
3 of the City Council.

4           3. If MDA desires to incur any additional debt at any time during which  
5 SAM has any debt outstanding as described in paragraphs 1 and 2 of this Section 2.C, MDA  
6 may incur such additional debt only upon consent of the Director of FAS given upon additional  
7 authorization by a resolution or ordinance of the City Council; and  
8

9           D. at any time prior to the completion of the bond year ending September 30, 2016,  
10 upon demonstration to the satisfaction of the Director of FAS that Office Space Lease Revenue  
11 (net of any landlord expenses pass-through, if any) during the preceding twelve-month period  
12 has produced coverage of at least equal to 1.00 times Annual Debt Service, the Director of  
13 FAS, acting in his sole discretion, may give notification pursuant to Section 4.1(b)(3) of the  
14 Guarantee Agreement to the Lockbox Agent that the condition triggering the alternate flow of  
15 funds under that section no longer applies and the Lockbox Agent may resume application of  
16 lockbox funds in accordance with Section 4.1(b)(2), including the release of any amounts that  
17 may have accumulated in the Lockbox and are not necessary for debt service. However, such  
18 notice shall not constitute or be construed as a waiver of the Coverage Requirement, which  
19 may be waived only in accordance with Section 2A of this ordinance, nor shall it limit any  
20 remedy available to the City for future noncompliance with covenants under the Guarantee  
21 Agreement.  
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24           E. The Council further authorizes the Director of FAS (1) to cooperate with SAM,  
25 the MDA, the Lockbox Agent and the Bond Trustee to take such actions as may be necessary  
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1 or convenient to reconcile the Lockbox Account such that all amounts which, as of the  
2 effective date of this ordinance, are on deposit in the Lockbox and represent overpayments of  
3 SAM's obligations under the applicable lease agreements and Guarantee Agreement are  
4 returned to SAM, and (2) to consent to the release by the Lockbox Agent, to be applied in  
5 accordance with the Lockbox Agent's procedures under Section 4.1(b)(2)(v) of the Guarantee  
6 Agreement, of that amount of Office Space Lease Revenue that is attributable to landlord  
7 expenses pass-through, which amount is to be equal to the difference between the "gross rent"  
8 (Column A) and the "net rent" (Column B), as shown on the substitute Exhibit A-3 to the  
9 Guarantee Agreement, which is attached to this Ordinance as Attachment 1 and incorporated  
10 by this reference. The Director of FAS shall not provide the consents allowed under this  
11 paragraph unless and until SAM has provided the Lockbox Agent with a monthly schedule of  
12 gross and net rents due, reflecting the annualized data shown in Attachment 1, which monthly  
13 schedule shall be in a form acceptable to the Director of FAS and the City's bond counsel.  
14  
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16 Section 3. Execution of Waivers, Consents and Clarifications on Behalf of City. The  
17 Director of FAS is authorized to sign such documents on behalf of the City as he determines,  
18 prior to execution, are necessary, appropriate, or desirable to grant the waivers, consents,  
19 clarifications and interpretations described in this ordinance and to carry out the terms and  
20 provisions of this ordinance.  
21

22 Section 4. Amendment or Modification of Guarantee Agreement. This ordinance does  
23 not authorize modifications or amendments to the Guarantee Agreement, except (A) to the  
24 extent of the clarifications of interpretation expressly set forth herein which clarifications are  
25 memorialized in writing executed by or on behalf of the City, SAM and MDA; (B) the  
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1 schedule attached as Exhibit A-3 thereto shall be modified to reflect the aggregate revenues  
2 from the leases for all tenants consented to, consistent with this ordinance (which substitute  
3 Exhibit A-3 shall be in the form that is attached to this Ordinance as Attachment 1); and (C) to  
4 substitute for term "Director of Finance" in the Guarantee Agreement and the related Security  
5 Documents the term "Director of Finance and Administrative Services."

6 Section 5. Ratify and Confirm. Any act taken consistent with the authority of this  
7 ordinance taken prior to its effective date is hereby ratified and confirmed.  
8

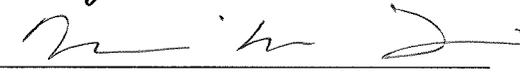
9 Section 6. Headings and Definitions. The section headings in this ordinance are used  
10 for convenience only and shall not constitute a substantive portion of this ordinance.  
11 Reference is made to the Guarantee Agreement for the definitions of terms capitalized and not  
12 defined in this ordinance.  
13

14 Section 7. Effective Date. This ordinance shall take effect and be in force 30 days  
15 from and after its approval by the Mayor, but if not approved and returned by the Mayor within  
16 10 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

17 Passed by the City Council the 21 day of May, 2012, and signed by me in  
18 open session in authentication of its passage this 21 day of May, 2012.  
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22 President \_\_\_\_\_ of the City Council

23 Approved by me this 31<sup>st</sup> day of May, 2012.  
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26 Michael McGinn, Mayor  
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Filed by me this 4<sup>th</sup> day of June, 2012.

  
\_\_\_\_\_  
Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Substitute Exhibit A-3 to Amended and Restated Guarantee Agreement



**Attachment 1**  
**Substitute Exhibit A-3 to Amended and Restated Guarantee and Reimbursement Agreement**

*Dated April 27, 2012*

Bond Year (ending Sept. 30)	A	B	C	D	Coverage Ratio	
	Gross Rent <sup>(1)</sup>	Net Rent <sup>(2)</sup>	MDA Lease Revenue <sup>(3)</sup>	Annual Debt Service <sup>(4)</sup>	<sup>(5(a))</sup>	<sup>(5(b))</sup>
2011	\$ 298,464	\$ 176,637	\$4,423,974.96	\$4,423,975.00	1.00 x	0.04 x <sup>(6)</sup>
2012	3,645,166	3,151,890	4,425,225.00	4,425,225.00	1.00	0.71 <sup>(6)</sup>
2013	4,996,404	4,438,856	4,427,475.00	4,427,475.00	1.00	1.00
2014	5,122,564	4,548,032	4,425,474.96	4,425,475.00	1.00	1.03
2015	5,299,188	4,707,671	4,424,225.04	4,424,225.00	1.00	1.06
2016	5,299,188	4,901,357	4,428,474.96	4,428,475.00	1.00	1.11
2017	5,299,188	4,962,226	4,427,964.96	4,427,725.00	1.00	1.12
2018	5,299,188	5,212,433	4,426,974.96	4,426,975.00	1.00	1.18
2019	5,299,188	5,299,188	4,425,975.00	4,425,975.00	1.00	1.20
2020	5,299,188	5,299,188	4,424,475.00	4,424,475.00	1.00	1.20
2021	5,299,188	5,299,188	4,427,225.04	4,427,225.00	1.00	1.20
2022	5,299,188	5,299,188	4,428,725.04	4,428,725.00	1.00	1.20
2023	6,102,092	6,102,092	4,428,725.04	4,428,725.00	1.00	1.38
2024	6,503,544	6,503,544	4,426,974.96	4,426,975.00	1.00	1.47
2025	6,503,544	6,503,544	4,428,225.00	4,428,225.00	1.00	1.47
2026	6,503,544	6,503,544	4,426,974.96	4,426,975.00	1.00	1.47
2027	6,503,544	6,503,544	4,428,875.04	4,428,875.00	1.00	1.47
2028	6,503,544	6,503,544	4,427,062.56	4,427,062.50	1.00	1.47
2029	6,503,544	6,503,544	4,426,281.24	4,426,281.26	1.00	1.47
2030	6,503,544	6,503,544	4,426,018.80	4,426,018.76	1.00	1.47
2031	4,335,696	4,335,696	4,425,978.48	4,425,762.50	1.00	0.98 <sup>(7)</sup>

(1) "Gross Rent" equals total Office Space Lease Revenue.

(2) "Net Rent" equals gross Office Space Lease Revenue, less landlord expense pass-throughs. This is the amount available for calculation of the coverage ratio under the Coverage Requirement.

(3) "MDA Lease Revenue" is rent paid by SAM to the MDA, as reflected in Exhibit A-2 to the Guarantee Agreement.

(4) "Annual MDA Bond Debt Service" is reflected in Exhibit A-1 to the Guarantee Agreement.

(5) "Coverage Requirement" is defined in the Guarantee Agreement, to require, in each Bond Year:

(a) an amount of MDA Lease Revenue equal to at least 1.0 times Annual Debt Service [Column C ÷ Column D]; and

(b) Office Space Lease Revenue at least equal to 1.09 times Annual Debt Service (for so long as WAMU is the sole Office Space Tenant) or, in the event that any party other than WAMU enters into an Office Space Lease, an amount of Office Space Lease Revenue equal to at least 1.2 times Annual Debt Service. For purposes of calculating the Coverage Requirement, MDA Lease Revenue and Office Space Lease Revenue exclude landlord expense pass-throughs, if any. [Column B ÷ Column D].

(6) Shortfall anticipated to be made up from SAM resources other than Office Space Lease Revenues, which may include the approximately \$581,000 in the Suspended Rents account within the "Lockbox," gifts, other revenues, borrowing against the Endowment, if necessary, and other resources at its disposal.

(7) Amounts on deposit in the Reserve Account will be used for the final principal and interest payment on the Bonds.



**Attachment 1**  
**Substitute Exhibit A-3 to Amended and Restated Guarantee and Reimbursement Agreement**

Dated April \_\_, 2012

Bond Year (ending Sept. 30)	A	B	C	D	Coverage Ratio	
	Gross Rent <sup>(1)</sup>	Net Rent <sup>(2)</sup>	MDA Lease Revenue <sup>(3)</sup>	Annual Debt Service <sup>(4)</sup>	<sup>(5(a))</sup>	<sup>(5(b))</sup>
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2015	5,299,188	4,707,671	4,424,225.04	4,424,225.00	1.00	1.06
2016	5,299,188	4,901,357	4,428,474.96	4,428,475.00	1.00	1.11
2017	5,299,188	4,962,226	4,427,964.96	4,427,725.00	1.00	1.12
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2019	5,299,188	5,299,188	4,425,975.00	4,425,975.00	1.00	1.20
2020	5,299,188	5,299,188	4,424,475.00	4,424,475.00	1.00	1.20
2021	5,299,188	5,299,188	4,427,225.04	4,427,225.00	1.00	1.20
2022	5,299,188	5,299,188	4,428,725.04	4,428,725.00	1.00	1.20
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2024	6,503,544	6,503,544	4,426,974.96	4,426,975.00	1.00	1.47
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2028	6,503,544	6,503,544	4,427,062.56	4,427,062.50	1.00	1.47
2029	6,503,544	6,503,544	4,426,281.24	4,426,281.26	1.00	1.47
2030	6,503,544	6,503,544	4,426,018.80	4,426,018.76	1.00	1.47
2031	4,335,696	4,335,696	4,425,978.48	4,425,762.50	1.00	0.98 <sup>(7)</sup>

(1) "Gross Rent" equals total Office Space Lease Revenue.

(2) "Net Rent" equals gross Office Space Lease Revenue, less landlord expense pass-throughs. This is the amount available for calculation of the coverage ratio under the Coverage Requirement.

(3) "MDA Lease Revenue" is rent paid by SAM to the MDA, as reflected in Exhibit A-2 to the Guarantee Agreement.

(4) "Annual MDA Bond Debt Service" is reflected in Exhibit A-1 to the Guarantee Agreement.

(5) "Coverage Requirement" is defined in the Guarantee Agreement, to require, in each Bond Year:

(a) an amount of MDA Lease Revenue equal to at least 1.0 times Annual Debt Service [Column C ÷ Column D]; and

(b) Office Space Lease Revenue at least equal to 1.09 times Annual Debt Service (for so long as WAMU is the sole Office Space Tenant) or, in the event that any party other than WAMU enters into an Office Space Lease, an amount of Office Space Lease Revenue equal to at least 1.2 times Annual Debt Service. For purposes of calculating the Coverage Requirement, MDA Lease Revenue and Office Space Lease Revenue exclude landlord expense pass-throughs, if any. [Column B ÷ Column D].

(6) Shortfall anticipated to be made up from SAM resources other than Office Space Lease Revenues, which may include the approximately \$581,000 in the Suspended Rents account within the "Lockbox," gifts, other revenues, borrowing against the Endowment, if necessary, and other resources at its disposal.

(7) Amounts on deposit in the Reserve Account will be used for the final principal and interest payment on the Bonds.



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Finance and Administrative Services	Michael Van Dyck (684-8347)	Jennifer Devore (615-1328)
Legislative	Ben Noble 684-8160	

**Legislation Title:**

AN ORDINANCE relating to public art museum facilities; approving and authorizing the execution of certain consents and waivers in connection with the existing guarantee and reimbursement agreement with the Museum Development Authority and other parties; and ratifying and confirming certain prior acts.

**Summary of the Legislation:**

The debt guarantee agreement (Ordinances 121950 and 122458) between the City of Seattle and the Museum Development Authority (MDA) and Seattle Art Museum (SAM) grants the Director of Finance certain authority to execute consents and waivers under the guarantee agreement. This ordinance reassigns that authority to the Director of Finance and Administrative Services (Director of FAS). It also provides authorization for the Director of FAS to execute additional consents and waivers related to the new lease arrangements with Nordstrom and other tenants and clarifies the limitations on additional MDA and SAM debt going forward.

**Background:**

In 2005, when SAM redeveloped and expanded its downtown facility in conjunction with Washington Mutual's (WAMU) construction of a new 42-story company headquarters, the City provided a guarantee for \$60.7 million of special obligation bonds issued by the Museum Development Authority (MDA) through Ordinance 121950. This agreement was amended and restated through Ordinance 122458. The agreement is based on the assumption that the MDA would use rent revenues received by SAM from the rental of floors 5-12 of the SAM building (which are owned by SAM) to repay the debt on these bonds. In the event that SAM and the MDA are unable to pay, a draw would be made on the debt service reserve established by the MDA, which is held by the bond trustee. If that reserve was drawn upon and neither SAM nor the MDA were able to replenish it prior to the next debt service payment, the City has guaranteed that it will do so. The City would be reimbursed by SAM and the MDA for any amounts advanced to replenish the reserve, plus interest.

Until it went into FDIC receivership in 2008, WAMU had a long-term lease for floors 5-12 of the SAM building. When JP Morgan Chase (Chase) acquired WAMU's assets, it rejected the lease with SAM as was permitted by the FDIC and under applicable federal bank receivership law, and subsequently sold the portion of the building formerly owned by WAMU to Northwestern Mutual Life. Chase stopped paying rent on the SAM owned space on March 23,



2009. During the remainder of 2009 and most of 2010, floors 5-12 of the SAM-owned space were vacant.

In 2010, SAM secured a lease with Nordstrom Inc., one of the most sought after tenants looking for space in a weak real estate market, which extends through the life of the debt (2031). Nordstrom agreed to lease floors 7-12 of the SAM building, and later agreed to exercise its option to lease floors 5 and 6 as well, beginning in August 2011.

Since the time following the rejection of the WAMU lease by Chase, SAM and the MDA have paid debt service on the bonds from other available funds; and SAM expects to continue to have such resources available to supplement the rental income until that income is sufficient to cover the debt service. With the Nordstrom lease described above, SAM now expects that rental income to be received from Nordstrom will cover the outstanding debt service guaranteed by the City over the life of the debt.

However, until 2018, the Nordstrom rental income will not be at sufficient levels to provide 1.2x coverage on the debt service, as required by Section 5.3 of the Amended and Restated Guarantee and Reimbursement Agreement (Guarantee Agreement). Among other things, this legislation gives the Director of FAS authority to waive the "coverage requirement" through the bond year ending September 30, 2018, subject to certain restrictions, in order to reflect the expectations and timing of when Nordstrom will fully occupy the space and begin making full rental payments.

The legislation also does the following:

- It authorizes the Director of FAS to consent to the release by the Trustee of landlord expenses pass-through to SAM in accordance with the Guarantee Agreement. Landlord expenses are amounts paid for utilities, taxes and the like which are excluded from "net rent" for purposes of the coverage calculation. This ensures that those landlord expenses continue to be paid, but that they are not included in the "coverage" calculation because they are not technically available for debt service. This release of funds would cease when the lease (by its own terms) converts to a "triple net" lease in which the tenant pays overhead expenses).
- It gives the Director of FAS the authority to permit the rent proceeds not necessary for debt service payments to be released back to SAM. This authority is specifically linked the projected increase in rental payments that is built into the structure of the new lease with Nordstrom.
- It authorizes the Director of FAS to consent to the use of the balance in the Suspended Rents Account of the Lockbox (approximately \$581,000) only for debt service on the MDA bonds.
- It reconfirms the Director of FAS's authority and grants additional authority to approve borrowings under certain conditions. This additional authority is necessary because the new lease requires SAM to finance some tenant improvements that were not anticipated

under the original agreement, and provides additional flexibility, given that SAM's overall debt burden is much lower today than it was in 2005.

In 2005, SAM had also borrowed \$70 million through the Washington State Housing Finance Commission to pay for tenant improvements in the museum expansion space downtown and Olympic Sculpture Park (OSP) construction. These funds represented bridge financing related to gifts pledged to SAM by a variety of donors payable over a number of years. In the intervening years, most of these gifts have been received and the principal amount of the outstanding debt reduced to \$11.6 million as of June 2011. During the same time, however, SAM has sought City consent for: (1) \$3.8 million borrowed against a multi-year gift made by Chase (after rejection of the WAMU lease) to provide cash flow to support the debt service on the MDA bonds pending the Nordstrom lease, which is expected to be repaid as the Chase gift installments are received; (b) \$2.5 million borrowed from the new owner of the former WAMU tower to pay for tenant improvements related to the Nordstrom lease; and (c) up to \$10 million that has been authorized by SAM's Board (but not yet borrowed), to be secured by SAM's endowment. These three additional borrowings (including the amount authorized to be borrowed against the endowment) total \$28 million.

The legislation approves a ceiling of total SAM debt of \$28 million outstanding at any given time. No City consent is required if the aggregate outstanding amount of debt remains under that ceiling. To exceed that ceiling, SAM would need to seek approval of the Director of FAS, who may consent to a specific issue of debt if it will not cause the total then outstanding to exceed \$40 million. Consent to any debt that would cause the total to exceed \$40 million would require additional Council action. The cap on additional MDA debt would be unchanged, requiring City consent for borrowing in excess of \$1,000,000.

**X This legislation has financial implications.**

**Appropriations:**

This legislation does not affect appropriation authority.

**Anticipated Revenue/Reimbursement Resulting from this Legislation:**

There is no revenue or reimbursement to the City resulting from this legislation.

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

N/A

**Spending/Cash Flow:**

N/A

**Other Implications:**

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



This legislation clarifies the role of the Director of FAS in providing consents and waivers to the Guarantee Agreement between the City, SAM and the MDA. These consents and waivers are required to reflect the specific terms of the new Nordstrom lease. Given the current real estate market, SAM needed to provide significant incentives to its tenant, including tenant improvements, a flexible occupancy schedule, and a rent schedule that increases over time. As a result, SAM projects it has incurred as much as a \$28 million short-term cash deficit related to the loss of the WAMU lease. To date, SAM has managed to meet all of its obligations under the Guarantee Agreement by securing funds for past and future payments from a variety of sources, including the extraordinary step of authorizing borrowing against its endowment. SAM is confident that with the new lease, it will be able to continue to make its debt service payments. The new lease provides the City with the best assurance that its obligation under the guarantee will not be called upon.

**b) What is the financial cost of not implementing the legislation?**

This legislation gives the Director of FAS authority to provide consents and waivers to the Guarantee Agreement to reflect the terms of SAM's lease with Nordstrom. There is no direct financial cost of not implementing the legislation. However, the City and SAM would be out of compliance with the Guarantee Agreement without these consents and waivers.

**c) Does this legislation affect any departments besides the originating department?**

No

**d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

Given the real estate market at the time the lease was negotiated, it is highly unlikely that SAM could have secured tenants for its space in floors 5-12 of the SAM building under better terms.

**e) Is a public hearing required for this legislation?**

No

**f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No

**g) Does this legislation affect a piece of property?**

No

**h) Other Issues:**

N/A

List attachments to the fiscal note below: None

**Cramer, Jennifer**

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**From:** Goldberg, Beth  
**Sent:** Thursday, May 24, 2012 11:48 AM  
**To:** Swanson, Susanna; Taylor, Tom; Devore, Jennifer  
**Cc:** Cramer, Jennifer; Walker, Hall  
**Subject:** RE: FYI: Passed Council Bill 117466

Thanks!

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**From:** Swanson, Susanna  
**Sent:** Thursday, May 24, 2012 9:55 AM  
**To:** Taylor, Tom; Devore, Jennifer  
**Cc:** Cramer, Jennifer; Walker, Hall; Goldberg, Beth  
**Subject:** FYI: Passed Council Bill 117466

Hi all. This is the fire station property sale with the new income fund attached. Legal said it was OK that the amended legislation has the wrong fund number as the language/fund name was correct and language trumps numbers. However, the fiscal note was not amended with the new fund information so the legislation is back at the clerk's office. - susanna

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STATE OF WASHINGTON – KING COUNTY

--SS.

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285062  
CITY OF SEATTLE, CLERKS OFFICE

No.

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123891-123894 TITLE

was published on

06/08/12

The amount of the fee charged for the foregoing publication is the sum of \$ 69.75, which amount has been paid in full.



Affidavit of Publication

*Janella G. G. G.*  
\_\_\_\_\_  
Subscribed and sworn to before me on  
06/08/12 *[Signature]*  
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle

## State of Washington, King County

### City of Seattle

The full text of the following legislation, passed by the City Council on May 21, 2012, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>. Contact: Office of the City Clerk at (206) 684-8344.

#### ORDINANCE NO. 123891

AN ORDINANCE relating to the Seattle City Employees' Retirement System; eliminating the disqualification for disability retirement due to pre-existing conditions; clarifying the requirements for disability appeals; authorizing the re-examination of persons retired for temporary total disability every 24 months; and amending Sections 4.36.145, 4.36.220 and 4.36.250 of the Seattle Municipal Code.

#### ORDINANCE NO. 123892

AN ORDINANCE authorizing the sale of real property consisting of a portion of a subsurface parcel beneath Fire Station No. 2, legally described as Lots 4, 5 and 6, Block L, Bell's Fifth Addition to the City of Seattle, located at 2320 4th Avenue, to the State of Washington for highway purposes.

#### ORDINANCE NO. 123893

AN ORDINANCE relating to public art museum facilities; approving and authorizing the execution of certain consents and waivers in connection with the existing guarantee and reimbursement agreement with the Museum Development Authority and other parties; and ratifying and confirming certain prior acts.

#### ORDINANCE NO. 123894

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by the City Clerk  
Date of publication in the Seattle Daily  
Journal of Commerce, June 8, 2012.  
6/8(285062)