



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

Ordinance 18939

Proposed No. 2019-0212.2

Sponsors Balducci, McDermott and Kohl-
Welles

1 AN ORDINANCE authorizing the executive to enter into
2 the Agreement for Implementation of the Building 4Equity
3 Program by and Between King County and 4Culture.

4 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 SECTION 1. Findings:

6 A. The Building 4Equity program will contribute to the health, vibrancy,
7 culture and welfare of the communities of the county.

8 B. The Building 4Equity program will contribute to King County's Equity
9 and Social Justice Strategic Plan by focusing resources on improving the quality
10 of life for residents whose race, place and income have persistently kept them
11 unable to participate in a wide range of opportunities. The program will bring
12 additional funds to groups in King County whose staff, boards and audiences
13 historically have faced difficulty accessing secure, long-term dedicated cultural
14 spaces.

15 C. The execution of the Agreement for Implementation of the Building
16 4Equity Program by and Between King County and 4Culture is in the best
17 interests of the county and its citizens.

18 SECTION 2. The executive is authorized to enter into the Agreement for
19 Implementation of the Building 4Equity Program by and Between King County and

20 4Culture, substantially in the form of Attachment A to this ordinance.

21

Ordinance 18939 was introduced on 5/15/2019 and hearing held/closed and passed by the Metropolitan King County Council on 7/1/2019, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn, Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci



KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Rod Dembowski, Chair

ATTEST:

Melani Pedroza, Clerk of the Council

RECEIVED
2019 JUL -8 PM 1:08
CLERK
KING COUNTY COUNCIL

APPROVED this 8 day of JULY, 2019.

Dow Constantine, County Executive

Attachments: A. Agreement for Implementation of the Building 4Equity Program, dated June 20, 2019

**AGREEMENT FOR IMPLEMENTATION OF THE
BUILDING 4EQUITY PROGRAM
BY AND BETWEEN
KING COUNTY AND 4CULTURE**

This Agreement for Implementation of the Building 4Equity Program (“Agreement”) is made by and between King County (the “County”), a municipal corporation, political subdivision of the State of Washington, and home rule charter county, and Cultural Development Authority of King County (“4Culture”), a public corporation established by the County pursuant to RCW 35.21.730, et seq., both of which may be referred to hereinafter individually as a “Party” or collectively the “Parties.”

BACKGROUND

A. Arts, culture, and heritage make this region an attractive place for new businesses that bring with them new jobs. In addition, arts and heritage businesses themselves directly add significant business activity and jobs to the central Puget Sound region. The ArtsFund 2014 Economic Impact Study found that cultural organizations are big business in our region. The study found that activity of nonprofit cultural organizations and their patrons in King, Kitsap, Pierce and Snohomish Counties generated \$2.4 billion in the Washington State economy and created 35,376 jobs, \$996 million in labor income, and \$105 million in taxes. In fiscal year 2014, the total income of nonprofit cultural organizations in the Central Puget Sound region was \$512.9 million, most of which was spent in the local economy. Patrons spent \$694 million on tickets, dining out, lodging, transportation, child care services, and other expenditures. Cultural space is a key element that ensures opportunities for residents and visitors to participate in cultural experiences. The impacts of these expenditures ripple throughout the entire state’s economy.

B. The County and 4Culture created and implemented a successful major program to support the creation and renovation of cultural space and fund preservation projects throughout the county in 2015. Building for Culture resulted in a twenty-eight million dollar investment in infrastructure, but did not meet the needs of all cultural organizations, which labored in an unprecedented climate of escalating costs and disappearing space.

C. RCW 67.28.180(3)(d)(i) requires that on and after January 1, 2021 at least thirty-seven and one-half percent of King County Hotel-Motel Tax Revenue must be used for art museums, cultural museums, heritage museums, the arts and the performing arts (“Cultural Hotel-Motel Tax Revenue”).

D. Pursuant to the terms of KCC 2.49.170.B the County transfers to 4Culture Hotel-Motel Tax Revenues “designated by the state of Washington for cultural purposes in King County”.

E. Section 4.1.A of the 4Culture Charter grants 4Culture the power to “Receive and manage all Hotel-Motel Tax Revenues designated by the state of Washington for cultural purposes in King County, in accordance with RCW 67.28.180A(3)(a) and K.C.C. chapters 4.08, 4.42 or 2.48 or by similar statutory and ordinance authority”.

F. Although 4Culture does not receive Hotel-Motel Tax Revenue in 2019 or 2020, it has maintained a reserve of previously collected Hotel-Motel Tax Revenues which it uses to fund its regular cultural programs. Those funds are fully encumbered for 4Culture's regular cultural programs through 2019, 2020, and 2021.

G. The Building 4Equity Program will contribute to King County's "Equity and Social Justice Strategic Plan" by focusing resources on improving the quality of life for residents whose race, place, and income have persistently kept them unable to participate in a wide range of opportunities. The Program will bring additional funds to groups in King County whose staff, boards, and audiences historically have faced difficulty accessing secure, long-term dedicated cultural spaces.

H. 4Culture developed the Building 4Equity Program in consultation with the County Executive and Council, and it will be implemented in two phases. Phase 1 of the Building 4Equity Program will have three parts. Part A will provide funds to successful projects whose sponsors made application to 4Culture's regular Arts and Heritage Facilities Program in November of 2018, and to certain cultural organizations that have ongoing projects that 4Culture has previously funded, that have experienced unanticipated and unprecedented construction costs, and that need additional funds currently to close out their respective project(s). Part B will provide additional funds to the current 4Culture Preservation Action Fund. Part C will provide funds to the "Capital Projects Ramp-Up Initiative," an education, learning, and mentoring program for small and mid-size cultural organizations throughout King County, including, in particular, those serving marginalized communities that have not previously received substantial grant funding for capital projects to enable such organizations to better compete for capital grants.

I. Phase 2 of the Building 4Equity Program will provide funds to organizations and groups throughout King County, prioritizing those that serve geographically or otherwise marginalized communities, including those organizations that participated in the Capital Projects Ramp-Up Initiative. Phase 2 will make a portion of its funds available to the creation of cultural spaces linked to transit oriented development projects, for acquisition and protection of historic properties and cultural spaces, and for seismic reinforcement of unreinforced masonry landmark buildings containing public assembly spaces.

J. After consultation and discussion with 4Culture, the County seeks to provide up to \$20 million by advancing Cultural Hotel-Motel Tax Revenue to the Building 4Equity Program as described herein.

K. The County authorized the execution of this Agreement on _____, 2019 with Ordinance _____.

L. 4Culture authorized the execution of this Agreement on _____, 2019 with Resolution _____.

AGREEMENT

For and in consideration of the mutual covenants contained herein, the County and 4Culture agree as follows:

1. Definitions

4Culture means the Cultural Development Authority of King County, a public corporation, established by the County pursuant to RCW 35.21.730, et seq.

Advance means an advance of Cultural Hotel-Motel Tax Revenues by the County to 4Culture, consistent with the terms herein.

Advance Disbursement Schedule means the schedule set forth in Exhibit B reflecting the anticipated disbursement of proceeds for each Advance, as such schedule may be amended from time to time in accordance with Section 6.

Agreement means this agreement between the County and 4Culture.

Authorized Officer means the Executive Director of 4Culture, or such other officer or other individual as designated by the Executive Director of 4Culture.

Authorized Representatives means the Authorized Officer for 4Culture and the King County Executive or his or her designee.

Average Cash Balance means the average balance of the Lodging Tax Fund, calculated monthly based upon the daily closing balance during that month.

Building 4Equity Program means the 4Culture program to provide grant funding to arts, cultural, heritage, and preservation nonprofit organizations, local public agencies, and owners of designated historic structures within King County, as generally described in Recitals G, H and I.

Business Day means any day except: Saturday and Sunday, any day that is a federal legal holiday in the United States, and any day on which King County Superior Court is closed due to unforeseen circumstances.

Commitment means an amount not to exceed \$20 million.

County means King County, a municipal corporation, political subdivision of the State of Washington, and home rule charter-county.

County Council means the body as established by Article 2 of the King County Charter.

- *Cultural space* means specialized spaces, shared or dedicated, that house and facilitate cultural work and experiences in King County. These spaces are used by individuals, groups, non-profit organizations, and local governments who provide benefit to the public and are typically open for the public. Cultural work and experiences can include but are not limited to: community meetings or informal

gatherings, training and education, and the living expression of culture that binds and strengthens diverse communities throughout King County.

Cultural Hotel-Motel Tax Revenue means the Hotel-Motel Tax Revenues collected on and after January 1, 2021 designated for use for art museums, cultural museums, heritage museums, the arts and the performing arts pursuant to RCW 67.28.180(3)(d)(i), and allocated to 4Culture by the King County Code.

Default means any event or condition that, with the giving of any notice, the passage of time, or both, as described in Section 9.

External Borrowing means any borrowing by the County from one or more sources external to the County, on a taxable or tax-exempt basis, and including but not limited to bond anticipation notes, bonds, and bank loans.

Grant means a grant of Cultural Hotel-Motel Tax Revenues made pursuant to the Building 4Equity Program.

Grant Agreement means a written agreement for Grant funding between each Grant Recipient and 4Culture.

Grant Recipient means a recipient of a Grant.

Hotel-Motel Tax Revenues means all of those revenues generated by the tax authorized by RCW 67.28.180.

Interest Payment means the payment made by 4Culture based on the Lodging Tax Fund's Average Cash Balance and at the Investment Pool's Gross Monthly Earnings Rate.

Inter-fund Loan means any inter-fund loan or loans made to the Lodging Tax Fund, consistent with County policies and procedures.

Investment Pool's Monthly Gross Earnings Rate means the gross interest rate earned on the King County Investment Pool, as determined by the County and calculated monthly.

KCC means King County Code.

Lodging Tax Fund means that fund created by the County to receive, hold, and distribute all Hotel-Motel Tax Revenues.

Outstanding Advance Balance means (i) the aggregate principal amount of the Advances received by 4Culture minus (ii) the aggregate principal amount of the Advances repaid by 4Culture.

Payment or *Payments* means the amount(s) paid to reimburse the County for all proceeds Advanced to 4Culture, in accordance with the Agreement.

Payment Date(s) means, for the years 2021 – 2024, on or around July 1, and for the years 2025 through the Termination Date, on or around January 15, in the discretion of the County,

provided that if any such date is not a Business Day, the Payment Date shall be the next Business Day following such date.

Payment Period means each January 1 through December 31 during the term of this Agreement.

Project means each of the Building 4Equity projects approved by 4Culture.

PSB means the County Office of Performance, Strategy and Budget.

RCW means the Revised Code of Washington.

Reimbursement Schedule means the anticipated reimbursement schedule set forth in Exhibit C, reflecting the anticipated timing and amounts of Payments, as amended from time to time in accordance with Section 6.

Request for Advance means a request in substantially the form of Exhibit A hereto made by 4Culture to the County for an Advance.

Termination Date means the last date of the term of this Agreement, as described in Section 3.

2. Purpose of Agreement

The purpose of this Agreement is to set forth the terms and conditions under which the County will make Advances to 4Culture of Hotel-Motel Tax Revenue to be used by 4Culture for the purpose of developing and implementing the Building 4Equity Program.

3. Term of Agreement

This Agreement shall be effective when executed by both Parties. It shall remain in effect until the Outstanding Advance Balance has been paid as provided in this Agreement, and under no circumstance more than twelve (12) years following the date of the last Advance. The last Advance may occur no later than on or before December 31, 2027.

4. County's Responsibilities

4.1 Lodging Tax Fund. The County will establish the Lodging Tax Fund, into which it will deposit all Hotel-Motel Tax Revenues it receives.

4.2 Advance Review and Approval. Upon receipt, the County will promptly review any Request for Advance. Within ten (10) Business Days of the County's approval (which shall not be unreasonably delayed, conditioned, or withheld), the County shall make the requested Advance.

4.3 Inter-fund Loan(s) and External Borrowing. If, at any time, the Lodging Tax Fund's Average Cash Balance would be negative after making an Advance, the County may establish one or more inter-fund loans for the purpose of making such Advance. The County reserves the right to fund any one or more Advances with other sources of revenue, including External Borrowing.

4.4 Standard of Care. In executing its responsibilities under this Agreement, the County shall maintain a high standard of care.

4.5 Warranty. The County warrants that it is authorized to enter into this Agreement, and any of the other agreements between 4Culture, the County, and other entities to carry out the terms of this Agreement.

5. 4Culture Responsibilities

5.1 Proposals and Grants. 4Culture will solicit and review Building 4Equity Project proposals and make and administer Building 4Equity Grants in the course of exercising its authority under RCW 35.21.730, et seq., K.C.C. and ordinances, and the 4Culture Charter.

5.2 Grants and Contracts. All Grant Agreements shall include the County's required nondiscrimination provision as follows:

During the performance of this Grant Agreement, Grantee agrees that it shall not discriminate on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualifications. Notwithstanding the definition of contract as set forth in KCC. chapter 12.19, the provisions of that chapter and related administrative rules shall apply to this Grant Agreement and are incorporated herein by this reference. They are also available online at:

http://kingcounty.gov/operations/procurement/services/equal_benefits.aspx

The Grant Recipient shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit such discrimination. These laws include, but are not limited to, chapter 49.60 RCW and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Grant Agreement and shall be grounds for cancellation, termination, or suspension, in whole or in part, of the Grant Agreement and may result in ineligibility for further agreements with King County and/or 4Culture.

5.3 Standard of Care. In exercising its responsibilities under this Agreement, 4Culture shall maintain a high standard of care.

5.4 Warranty. 4Culture warrants that it is authorized to enter into this Agreement, and any of the other agreements between 4Culture, the County, and other entities to carry out the terms of this Agreement.

6. Advances and Payment.

6.1 The Commitment. Subject to the terms and conditions of this Agreement, the County shall make available to 4Culture for the Building 4Equity Program up to \$20 million in one or more Advances.

6.2 The Advances. The County agrees to make one or more Advances to 4Culture from time to time, but no more than twice annually and with preference for each June 1 and December 1, in an aggregate principal amount not to exceed the Commitment, consistent with the Advance Disbursement Schedule, as may be revised or updated from time to time by the Authorized Representatives. The County shall have no obligation to make any Advances on or after the Termination Date.

6.3 Procedure for Advances.

(a) Request for Advance. No more than twice annually, and preferably on each May 1 and November 1, any Request for Advance may be made by an Authorized Officer for 4Culture to the County. Each request shall be submitted in writing via electronic mail and/or personal delivery in the form of Exhibit A.

(b) Availability of Advances. The County shall make Advances available to 4Culture in immediately available funds.

6.4 Interest. Consistent with Section 4.3, the Interest Payment with respect to the Outstanding Advance Balance will be calculated monthly based on the Lodging Tax Fund's Average Cash Balance and at the King County Investment Pool's Monthly Gross Earnings Rate. Interest will accrue and be computed on an actual rate/actual day basis. Prior to each Payment Date, the County shall notify 4Culture of the applicable Interest Payment and at least annually and if necessary, update the Reimbursement Schedule. For the avoidance of doubt, the Interest Payment will only accrue in any given month when and only to the extent the Lodging Tax Fund's Average Cash Balance for such month is negative. Any interest earnings on a positive balance will remain with the Lodging Tax Fund. For example, if the Lodging Tax Fund had a negative Average Cash Balance of \$100,000 for a month of 30 days and the Monthly Gross Earnings Rate for the month was 3.25%, then the Interest Payment for that month would be \$267.12 ($\$100,000 \times .0325/365 \times 30$). If the Lodging Tax Fund had a positive Average Cash Balance for the month, no Interest Payment would accrue for that month.

6.5 Payment of Principal and Interest.

(a) Payment Date. On each Payment Date, starting in 2021 and through Termination, 4Culture agrees to pay the principal of the Outstanding Advance Balance and interest on the monthly Lodging Tax Fund's Average Cash Balances by making payments in accordance with the provisions of this Agreement.

(b) Interest Commencement Date. The Interest Payment shall accrue and be payable to the extent any one or more Advances cause a monthly Lodging Tax Fund's Average Cash Balance during a Payment Period to be negative.

(c) Manner of Payments. Payments under this Agreement shall be made on each Payment Date by the County withholding Cultural Hotel-Motel Tax Revenue received during the current Payment Period.

(d) Amount of Payments. On each Payment Date, 4Culture authorizes the County to withhold the lesser of (i) \$2 million or (ii) the Outstanding Advance Balance plus unpaid accrued Interest as Payment. If, for any reason there are insufficient Cultural Hotel-Motel Tax Revenues in the Lodging Tax Fund on any Payment Date, then 4Culture authorizes the County to withhold an amount on the first day of the month following any Payment Date and, to the extent necessary, on the first day of subsequent months, until the County has withheld the amount of the insufficiency, but in no event may the County withhold more than \$2 million as Payment in any Payment Period. For example, if on a Payment Date the Outstanding Advance Balance, together with unpaid accrued Interest is \$2,400,000, then the County will withhold the lesser amount of \$2,000,000. If only \$1,900,000 of Cultural Hotel-Motel Tax Revenues is in the Lodging Tax Fund on the Payment Date, then the County will withhold \$1,900,000 and will withhold the remainder, \$100,000, on the first day of the next month following the next Payment Date. If, on a Payment Date the Outstanding Advance Balance is \$1,400,000 and the unpaid accrued Interest is \$1,525.45, then the County will withhold \$1,401,525.45 (which is an amount lesser than \$2,000,000) on that Payment Date.

(e) Reconciliation. If, as of December 31, the Payment made that year is more than 15% of the Cultural Hotel-Motel Tax Revenues received during that Payment Period, then the County shall decrease the next Payment by an amount equal to the difference; provided, however, no Payment shall be less than the lesser of (i) \$1.5 million or (ii) the Outstanding Advance Balance plus unpaid accrued Interest. If, for example, the Payment made that year is \$200,000 more than 15% of the Cultural Hotel-Motel Tax Revenues received during that Payment Period, then the County will decrease the next Payment by \$200,000, subject to the minimum. Consequently, assuming that the Payment otherwise due on that next Payment Date is \$2,000,000, the Payment actually due would be \$1,800,000. If, on a Payment Date the Outstanding Advance Balance together with unpaid accrued Interest is \$1,300,000, then the County will withhold \$1,300,000 rather than \$1,500,000. If only \$1,000,000 of Cultural Hotel-Motel Tax Revenues is available in the Lodging Tax Fund on the Payment Date, then the County will withhold \$1,000,000 on the Payment Date and will withhold the remainder, (\$800,000 in the first example; \$300,000 in the second example) on the first day of the next month following the next Payment Date. If, for any reason there are insufficient Cultural Hotel-Motel Tax Revenues in the Lodging Tax Fund on any Payment Date to make this minimum Payment as reconciled, then, as in Section 6.5(d), 4Culture authorizes the County to withhold the difference an amount on the first day of the month following any Payment Date and, to the extent necessary, on the first day of subsequent months, until the County has withheld the amount of the insufficiency.

(f) Allocation of Payments. The County shall have sole discretion to allocate each payment to the principal of any portion of the Outstanding Advance Balance and interest on the Lodging Tax Fund's Average Cash Balance.

(g) Outstanding Advance Balance. Any Outstanding Advance Balance as of the date that is twelve (12) years following the date of the last Advance shall be repaid by the County

withholding all Cultural Hotel-Motel Tax Revenues from that date until the Outstanding Advance Balance is zero.

6.6 Optional Prepayments. 4Culture may prepay the Outstanding Advance Balance in whole or in part (and, if in part, the amounts thereof to be repaid shall be determined by the County), at any time or from time to time, without penalty or premium, by paying the County such principal amount of the Outstanding Advance Balance, together with the unpaid interest accrued on the Lodging Tax Fund's Average Cash Balance to the date of such prepayment.

7. Building 4Equity Program Administration

7.1 Program Creation and Management. 4Culture shall create and manage all phases of the Building 4Equity Program, which will require providing training, education, and technical expertise to the cultural community. 4Culture may recover the cost of such Program creation and management through Advances.

7.2 Grant Agreements. 4Culture shall negotiate and enter into a written Grant Agreement with each Grant Recipient for its Project(s) that shall be consistent with all equal opportunity and other legal requirements of the County.

7.3 Grant Funding. Upon receiving an Advance, 4Culture shall distribute Grant funding consistent with its Grant Agreement(s).

8. Reporting

8.1 Reports. Annually, beginning June, 2020, 4Culture shall submit a report to the PSB and the County Council detailing the overall status of the Building 4Equity Program to date.

8.2 Access to Records; Audits. The County and its designated agents shall have access at any time during normal business hours and as often as necessary to any bank account and 4Culture books, records, documents, accounts, files, reports, and other property and papers of 4Culture relating to the Projects funded by the Building 4Equity Program as described in this Agreement for the purpose of making audits, surveys, examinations, excerpts, and transcripts.

4Culture shall have an annual audit of its operations conducted. The audit will be conducted by the Washington State Auditor's Office or an independent certified public accountant, and the auditor shall determine whether:

A. The financial statements of 4Culture present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

B. 4Culture has internal accounting and other control systems to provide reasonable assurance that it is managing funds in compliance with applicable laws and regulations; and

C. 4Culture has complied with laws and regulations that have material effect on its financial statements.

The audit shall be submitted to the County within 30 days after 4Culture receives the audit report.

8.3 Annual Certification. Commencing with the date of the first Advance and until Termination of this Agreement, 4Culture shall submit an annual certification to PSB to the effect that 4Culture is not in default of any of its obligations under this Agreement, or alternatively if 4Culture is in default of any of its obligations under this Agreement, explaining the nature thereof and specifying the steps being taken to remedy the same.

9. Default

9.1 Default of 4Culture.

(a) A Default shall be deemed to occur if:

(i) 4Culture fails to perform any of the obligations of this Agreement for more than 30 days after receipt of written notice of such failure; provided, however, if the default is of such a nature that it cannot reasonably be cured within such 30-day period, then 4Culture shall not be in default, so long as it commences a cure within such 30-day period and thereafter diligently pursues cure to completion within a time period acceptable to the County; or

(ii) 4Culture dissolves or becomes insolvent.

(b) Default Remedies. In the event of a Default, the County may institute suit for damages for specific performance and nothing herein shall be deemed to impair or limit in any way any legal rights or remedies of the County.

9.2 Default of the County.

(a) A Default shall be deemed to occur if:

(i) The County fails to perform any of the obligations of this Agreement for more than 30 days after receipt of written notice of such failure; provided, however, if the default is of such a nature that it cannot reasonably be cured within such 30-day period, then the County shall not be in default, so long as it commences a cure within such 30-day period and thereafter diligently pursues cure to completion within a time period acceptable to the County; or

(ii) The County dissolves or becomes insolvent.

(b) Default Remedies. In the event of Default, 4Culture may institute suit for damages for specific performance and nothing herein shall be deemed to impair or limit in any way any legal rights or remedies of 4Culture.

10. General Provisions

10.1 Relationship of the Parties. The Parties have entered into this Agreement only for the purpose set forth in Section 2. Neither of the Parties is an employee, agent, partner, or joint venture with the other. None of the Grant Recipients or other entities with whom 4Culture may

contract or be associated in any way is an employee, agent, partner, or joint venture with the County.

10.2 Binding on Successors and Assigns. This Agreement shall be binding upon the successors and assigns of 4Culture and the County respectively.

10.3 Notices. Any notice, consent, demand, or other communication hereunder shall be in writing and shall be deemed to have been given if delivered in person or deposited in any United States Postal Service mailbox, sent by registered or certified mail, return receipt requested and first-class postage prepaid, addressed to the Party for whom it is intended as follows (as may be changed by written notice to the other Party pursuant to this provision):

4Culture: 4Culture Executive Director, 101 Prefontaine Pl S, Seattle, WA 98104

4Culture Email: Brian.Carter@4culture.org (or his delegate)

County: Dwight Dively, Director of PSB, 401 5th Avenue, CNK-EX-0810, Seattle, WA 98104

County Email: Dwight.Dively@kingcounty.gov (or his delegate)

Any Requests for Advance may be made by electronic mail to the addresses listed above.

10.4 Interpretation. The section and subsection captions in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

10.5 Severability. Each provision of this Agreement is severable from all other provisions. In the event any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable for any reason, all remaining provisions will remain in full force and effect.

10.6 Amendment. This Agreement may not be amended or modified except by written instrument signed by the Parties and approved by the King County Council. Revisions and updates to the Advance Disbursement Schedule or the Reimbursement Schedule approved by the Authorized Representatives pursuant to Section 6 hereof shall not be considered an amendment to this Agreement.

10.7 Non-waiver. No failure or delay on the part of the County in exercising any of its rights and remedies hereunder or otherwise shall constitute a waiver thereof, and no single or partial waiver by the County of any default or other right or remedy which it may have shall operate as a waiver of any other default, right, or remedy or of the same default, right, or remedy on a future occasion.

10.8 Entire Agreement. This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior oral and written understandings, agreements, or other undertakings between the Parties relating specifically and exclusively to the Building 4Equity program.

10.9 Time. Time is of the essence with respect to the performance of all obligations of this Agreement.

10.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any suit or arbitration arising under this Agreement shall be in King County, Washington and if a lawsuit, in King County Superior Court.

10.11 Third Parties. Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the Parties hereto and their successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of any nonperformance hereunder.

10.12 Compliance with Laws. 4Culture and the County shall, and shall require any Grant Recipients to comply in all material respects with all applicable federal, state, and local laws.

11. **Liability.**

11.1 Disclaimer. The Cultural Development Authority of King County is organized pursuant to King County Ordinance 14482 and RCW 35.21730 through 35.21.755, RCW 35.21.757 and RCW 35.21.750. RCW 35.21.750 provides as follows: “[All] liabilities incurred by such public corporation, commission, or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission or authority and no creditor or other person shall have any right of action against the city, town, or county creating such corporation, commission, or authority on account of any debts, obligations, or liabilities of such public corporation, commission, or authority.”

11.2 Insurance. 4Culture and the County must maintain crime insurance with minimum limits of \$2,500,000. Fidelity, theft, disappearance, destruction liability, and employee dishonesty coverage must be included in addition to a "joint loss payable" ISO Form CR 20 15 10/10 or its substantive equivalent; and "provide required notice of cancellation to another entity" ISO form CR 20 17 10/10.

11.3 Mutual Indemnification. 4Culture and the County agree to defend, indemnify and hold harmless each other, their respective officials, agents, and employees from and against any and all claims, damages, injuries, liabilities, actions, fines, penalties, costs, and expenses (including reasonable attorney fees) that arise out of or are related to the negligent acts or omissions of the indemnifying party (and its officials, agents, employees acting within the course and scope of their employment and in the performance of said party's obligations under this Agreement or the exercise of a party's rights and privileges under this Agreement). In the event any such liability arises from the concurrent negligence of the indemnifying party and the other party, the indemnity obligation of this section shall apply only to the extent of the negligence of the indemnifying party and its respective officials, agents, and employees. The foregoing provisions specifically and expressly intend to constitute a waiver of each party's immunity under industrial insurance, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

IN WITNESS WHEREOF, authorized representatives of the Parties have signed their names in the spaces below.

KING COUNTY

4CULTURE

King County Executive

Executive Director

Date: _____

Date: _____

EXHIBIT A
REQUEST FOR ADVANCE

KING COUNTY

SENT VIA EMAIL AND REGULAR MAIL

401 5th Avenue, CNK-EX-0810, Seattle, WA 98104

Date: _____,

Attention: [Dwight Dively], Director of PSB

This refers to the Agreement for Implementation of the Building 4Equity Program dated as of _____, _____ (the "Building 4Equity agreement") (capitalized terms used herein and not otherwise defined have the meanings given to them in the Building 4Equity Agreement), between the undersigned, 4Culture and the County, and hereby gives the County notice, irrevocably, pursuant to Section 6.3 of the Building 4Equity Agreement that 4Culture requests an Advance under the Building 4Equity Agreement, and in that connection sets forth below the information relating to such Advance, as required by the Building 4Equity Agreement:

ADVANCES

The aggregate amount of the requested Advance is \$ _____.

CERTIFICATIONS

The undersigned certifies the following statements are true on the date hereof, and will be true on the date the requested Advance is disbursed:

(A) The representations and warranties of 4Culture contained in the Building 4Equity Agreement are true and correct as though made on and as of such dates, unless such representations and warranties are expressly stated to be made as of an earlier date;

(B) 4Culture is in full compliance with all covenants of 4Culture contained in the Building 4Equity Agreement; and

(C) No event has occurred and is continuing, or would result from such requested Advance, which constitutes or would constitute a Default of 4Culture under the Building 4Equity Agreement.

Very truly yours,

CULTURAL DEVELOPMENT AUTHORITY OF
KING COUNTY (4CULTURE)

By _____
Executive Director

EXHIBIT B

ADVANCE DISBURSEMENT SCHEDULE

2019: \$3.8 million

2020: \$3.2 million

2021: \$7.0 million

2022: \$4.0 million

2023: \$2.0 million

EXHIBIT C

REIMBURSEMENT SCHEDULE

2021: \$2.0 million

2022: \$2.0 million

2023: \$2.0 million

2024: \$2.0 million

2025: \$2.0 million

2026: \$2.0 million

2027: \$2.0 million

2028: \$2.0 million

2029: \$2.0 million

2030: \$2.0 million

2031: \$0.5 million