

OCEAN PAVILION FUNDING AGREEMENT

THIS OCEAN PAVILION FUNDING AGREEMENT (this “Agreement”) is dated as of _____, 2019 (the “Effective Date”), and is by and between THE CITY OF SEATTLE (the “City”), a first class City organized under the laws of the State of Washington, and the SEATTLE AQUARIUM SOCIETY (“SEAS”), a Washington non-profit corporation. The City and SEAS may be referred to in this Agreement individually as a “Party” and collectively as the Parties.”

RECITALS

A. SEAS operates and maintains the City-owned Seattle Aquarium (the “Aquarium”) under a long-term operation and management agreement that was authorized by Seattle City Council Ordinance 123205 (the “O & M Agreement”).

B. The O & M Agreement required SEAS to prepare a master plan to guide investments in the physical development of the Aquarium and required that the master plan be approved by the City Council.

C. In 2014 and 2015, with public engagement, SEAS prepared a master plan, dated July 2015 (“2015 Master Plan”). The 2015 Master Plan defined three proposed capital projects for further assessment: Pier 59 west end renovation, Pier 60 replacement and expansion, and a new on-land “Ocean Pavilion.” Following additional public engagement and City Council approvals, the City and SEAS entered into a memorandum of understanding dated August 27, 2018 (the “2018 MOU”). The 2018 MOU recognizes the mutual interests of the City and SEAS to advance the planning and design of the Ocean Pavilion, assigns SEAS the responsibility to advance the design for the Ocean Pavilion, allocates \$4.7 million in reimbursement for 50 percent of SEAS design costs, and anticipates that the City and SEAS will negotiate a project development agreement to address project scope, comprehensive funding, construction schedule and coordination, and future operations.

D. Consistent with the provisions of the O & M Agreement, the Ocean Pavilion building, exhibits, and other infrastructure will be owned by the City, while SEAS will own the animals and other personal property. Additionally, the Ocean Pavilion will include Waterfront Related Elements (defined below) for public access and enjoyment and connections to the Seattle waterfront.

E. The Parties recognize that the successful realization of the Ocean Pavilion will increase the vibrancy of adjacent public spaces being developed by the City. In 2018, the Aquarium hosted more than 850,000 visitors, including 40,000 students and provided 69,000 free tickets to more than 300 partner organizations. Attendance is expected to increase to 1.2 million visitors a year with the opening of the Ocean Pavilion, a facility that will better accommodate the growing population in the Puget Sound region.

F. In consideration of the Waterfront Related Elements and future City ownership of the Ocean Pavilion, the City and SEAS desire to enter into this Agreement to confirm the baseline amount of City funding for construction of the Ocean Pavilion, to set out certain

prerequisites for disbursement of City funding, and to satisfy a portion of the conditions for a project development agreement between the Parties under the 2018 MOU. Following this Agreement and additional design progress for the Ocean Pavilion, the City and SEAS will enter into a separate construction agreement to satisfy the remaining obligations for a project development agreement under the 2018 MOU.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein, the City and SEAS hereby agree as follows:

1. Definitions.

1.1 “2018 MOU” means the Memorandum of Understanding between the City and SEAS contemplated by Ordinance 125630 with an effective date of August 27, 2018.

1.2 “Animal Care Center” means the off-site facility that will be secured by SEAS to address both short- and long-term animal care for the Ocean Pavilion and existing SEAS exhibits.

1.3 “Budget Director” means the Director of the City Budget Office.

1.4 “City’s Funding Commitment” is defined in Section 2.1.

1.5 “Claims” is defined in Section 7.

1.6 “Concept Design” means the Central Waterfront Concept Design and Framework Plan for the Central Waterfront Project, dated July 2012 and referenced in Resolution 31399.

1.7 “Construction Agreement” means a future agreement between the City and SEAS describing the terms and conditions under which SEAS will construct the Ocean Pavilion in accordance with the Final Project Design and the terms and conditions under which the City will disburse the City’s Funding Commitment. The Construction Agreement is further described in Section 6.

1.8 “Directors” means the SEAS Chief Executive Officer, the SPR Superintendent, and the OWCP Director.

1.9 “Day” means a calendar day, inclusive of Saturdays, Sundays, and City Holidays. If the last day of any time period set out in this Agreement falls on a Saturday, Sunday, or City Holiday, then the time period shall be deemed to expire at 5:00 p.m. PST on the next day that is not a Saturday, Sunday, or City Holiday.

1.10 “Final Project Design” refers to the construction documents for the Ocean Pavilion approved by the SPR Superintendent and Office of the Waterfront as further described in Section 4.3 and 4.4.

- 1.11 “Fundraising Plan” is defined in Section 2.3.
- 1.12 “Indemnitee” is defined in Section 7.3.
- 1.13 “Indemnitor” is defined in Section 7.3.
- 1.14 “Main Corridor Project” refers to the City’s project to construct Alaskan Way and Elliott Way from South King Street to Bell Street including the park promenade and referenced by City bid documents as PW#2018-085.
- 1.15 “Mediation Period” is defined in Section 8.
- 1.16 “O & M Agreement” is defined in Recital A.
- 1.17 “Ocean Pavilion” means the new aquarium building, including the Waterfront Related Elements, to be constructed by SEAS in accordance with the Final Project Design and the Construction Agreement.
- 1.18 “Overlook Walk Project” means the project to be constructed by the City that includes the bridge from the Pike Place Marketfront over Alaskan Way to the roof of the Ocean Pavilion, stairs extending west towards Pier 62, and stairs wrapping the north side of the Ocean Pavilion.
- 1.19 “OWCP” means the City’s Office of the Waterfront and Civic Projects.
- 1.20 “Parties” means SEAS and the City.
- 1.21 “Project” refers to SEAS’ project to secure, design, and construct the Ocean Pavilion and Animal Care Center.
- 1.22 “Project Budget” is defined in Section 2.
- 1.23 “Project Permits” are defined in Section 4.1.
- 1.24 “Project Premises” is defined in Section 6.1.
- 1.25 “SEAS” means the Seattle Aquarium Society.
- 1.26 “SDCI” means the Seattle Department of Construction and Inspections.
- 1.27 “SDOT” means the Seattle Department of Transportation.
- 1.28 “SPR” means the Seattle Department of Parks and Recreation.
- 1.29 “Waterfront Related Elements” means the accessible rooftop on the Ocean Pavilion that includes public open space at the Overlook Walk deck level with landscape consistent with the design, character and quality of the Overlook Walk, the public stair on the west façade of the Ocean Pavilion, and the public stair and elevator on the south façade of the

Ocean Pavilion. The Waterfront Related Elements are more fully depicted and described in attached Exhibit B.

2. **Project Cost; Funding; Term of Agreement.**

2.1 **Project Cost.** The total Project cost is approximately One Hundred Thirteen Million Dollars (\$113,000,000.00), consistent with the current “Project Budget” as more fully described in attached Exhibit C. The Project Budget encompasses all available funding sources, including the City’s Funding Commitment. The Construction Agreement shall include an updated exhibit that reflects the then-current Project Budget.

2.2 **City Funding and Other City-Related Support.**

2.2.1 **City’s Funding Commitment.** The City commits to include in the City Capital Improvement Program a total of Thirty-Four Million Dollars (\$34,000,000.00) for the Ocean Pavilion (the “City’s Funding Commitment”). The City’s Funding Commitment is inclusive of the amounts paid to SEAS under prior agreements for the design and development of the Ocean Pavilion including the 2018 MOU. Proceeds of the City’s Funding Commitment may be used solely to reimburse SEAS for Project costs for the Ocean Pavilion including the associated costs of planning, design, and construction. The parties acknowledge that the City’s Funding Commitment is conditioned, in part, upon the over-all scope of the Project as reflected in the Project Budget attached as Exhibit C and SEAS construction of the Waterfront Related Elements consistent with Exhibit B as refined through the design review process under Section 4.3. If the Project Budget were to be significantly reduced by SEAS, the City reserves the right to adjust the City’s Funding Commitment.

2.2.2 **1% for the Arts.** The Project Budget shall include an amount equal to one percent of the City’s Funding Commitment for public art to be installed by SEAS in a publicly accessible location. The siting, ownership, and selection process for the art program shall follow a process agreed to between SEAS, SPR, OWCP, and the City’s Office of Arts and Culture.

2.3 **SEAS Funding.** SEAS will be responsible for securing the balance of funding needed to fully fund the Ocean Pavilion in accordance with the Final Project Design and for fully funding the Animal Care Facility, approximately Seventy-Nine Million Dollars (\$79,000,000.00) in 2019 dollars, which may be increased or decreased commensurate with changes to the scope, design, and schedule for the Project and any cost overruns or increases. SEAS agrees to use its best efforts to secure commitments from private individuals, corporations, foundations, and governmental sources (other than the City of Seattle), consistent with the Fundraising Executive Summary attached as Exhibit D. SEAS’ success in achieving its fundraising objectives shall be evaluated by the Budget Director when making his or her determinations under Section 2.4.5. No later than June 30, 2020, SEAS shall submit to the City Budget Director for his or her review and approval SEAS’ complete plan for raising the remaining approximately \$79,000,000.00 in funds in the current Project Budget (the “Fundraising Plan”). Thereafter SEAS shall submit an updated Fundraising Plan to the City Budget Director no later than October 1 of each subsequent year. The Fundraising Plan shall include: (i) annual targets for amounts to be raised and pledges secured; (ii) sequential

solicitation strategies; (iii) recognition opportunities; (iv) assumptions as to when the pledge payments shall be made; (v) collection strategies and internal resources needed to secure pledges sufficient to meet the fundraising schedule; (vi) a proposed progress reporting mechanism to provide quarterly updates to the City on accomplishment of fundraising milestones; (vii) financing arrangements in place or under development to ensure timely availability of funding as needed to meet SEAS obligations to provide funds consistent with Exhibit D, including sources and timelines for repayment of financing; (viii) updates as needed to address strategies to raise additional funds to address any increase in the Project Budget; and (ix) and any other issues the Parties mutually agree to include in the Fundraising Plan. SEAS donor pledges will be reviewed by Budget Director under procedures to protect the confidentiality of donors and the SEAS donor-related information to the extent allowed by law. SEAS will submit to the Budget Director copies of the pledges in a form acceptable to the Budget Director, with donor names verified by the Budget Director but omitted from the copy submitted. The Budget Director will approve a pledge for the purposes of the Fundraising Plan review if it is from a person or entity with sufficient net worth in relation to the amount pledged and the Budget Director knows of no reason the pledge would not be honored. Notwithstanding anything to the contrary in the O & M Agreement, including Section 6.7 of that Agreement, SEAS may obtain construction loan bridge financing for the Project in amounts greater than One Million Dollars (\$1,000,000.00) to assist in meeting cash-flow milestones during construction with no obligation to obtain separate approval of the City or the Budget Director for any financing consistent with the Fundraising Plan and Project Budget. **Collateral for such loan shall not include City of Seattle assets.**

2.4 **Conditions for Commencement of Construction.** SEAS shall not begin any construction on the site until each of the conditions under Sections 2.4.1 through 2.4.5 are met:

2.4.1 Issuance of the Project Permits reflecting the Final Project Design;

2.4.2 A final, fully executed Construction Agreement between the City and SEAS;

2.4.3 A final construction coordination and delivery plan that ensures efficient and cost-effective delivery of the Project and adjacent coordinated projects proposed by the City in accordance with the Concept Design;

2.4.4 Documentation demonstrating to the City that SEAS' general contractor has agreed: (a) to a guaranteed maximum price to construct the Ocean Pavilion as represented in the 100% construction documents that are consistent with the Final Project Design; and (b) SEAS contract with its general contractor provides for the requirements in Section 5.3; and

2.4.5 Determination by the Budget Director, based on review of the status of SEAS fundraising efforts against the Fundraising Plan, that SEAS has timely access to sufficient funds from all available sources, including the City's Funding Commitment and funding from other public and private sector sources, to fully fund the cost of completing Project construction as reflected in the Project Budget.

2.5 Disbursement of City Funding Commitment. Except for that portion of the City’s Funding Commitment which has been or will be disbursed under the 2018 MOU, the City’s obligation to disburse the City’s Funding Commitment to SEAS is conditioned upon: (i) the existence of a valid Construction Agreement which includes the material terms under Section 5; and (ii) appropriations consistent with the yearly funding plan identified in the City’s Capital Improvement Program. Subject to the requirements of this Agreement and procedural requirements for disbursement in the Construction Agreement, the City’s Funding Commitment will be allocated to reimburse SEAS for Ocean Pavilion costs before SEAS has an obligation to use funding from other sources.

2.6 Final Allocation of City Funding. After receiving a final certificate of occupancy for the Ocean Pavilion, SEAS shall provide the City with a final allocation and summary of the use of the City’s Funding Commitment, demonstrating that an amount equal to the total City Funding Commitment was expended for eligible Project costs.

2.7 Term. This Agreement shall be effective on the date when signed by an authorized representative of each Party and shall automatically expire on the date of termination of the Construction Agreement. If the Parties have not entered into a Construction Agreement on or before five (5) years from the effective date of this Agreement, this Agreement shall automatically terminate without further action by either Party and the City shall have no further obligation to disburse the City’s Funding Commitment, other than any amounts payable under the 2018 MOU prior to termination of this Agreement.

3. Project Cost Overruns Responsibility. SEAS shall complete the Project consistent with the Final Project Design and the Construction Agreement. SEAS shall be responsible for any cost overruns and the City’s obligation to reimburse SEAS for any Project-related costs shall not exceed the City’s Funding Commitment. SEAS responsibility for cost overruns notwithstanding, the City shall bear financial responsibility for any costs resulting from changes to the scope of the Ocean Pavilion requested by the City after the City approves the Final Project Design, provided the City shall not be responsible for the costs associated with any changes required to make the Final Design constructable or any changes required to satisfy permitting or other regulatory requirements.

4. Project Design Review and Approval.

4.1 Environmental Review and Permitting. State Environmental Policy Act review for the Project was completed with publication of a Final Environmental Impact Statement on November 15, 2018, with SPR as the lead agency. Prior Environmental Review for the Waterfront Related Elements was completed with publication of a Final Environmental Impact Statement for the Alaskan Way, Promenade, and Overlook Walk on October 31, 2016. SEAS shall be responsible for obtaining additional permits required to construct the Project. Such permits may include a Master Use Permit with a Shoreline Substantial Development Permit component, building and construction permits, utilities permit, and other minor permits (collectively, “Project Permits”).

4.2 Project Design Management. SEAS shall undertake and be responsible for the management of all aspects of the design of the Project, including coordination of City

proprietary reviews in accordance with the process described below and with City regulatory reviews for Project Permits. SEAS shall engage and manage, without limitation, project managers, architects and other design professionals and a general contractor necessary for the Project.

4.3 **City Proprietary Design Review and Approval.** SEAS shall provide to SPR and OWCP the 50% design development drawings and 60% and 90% construction documents (each a “Milestone”) for the Ocean Pavilion for approval, which approval shall not be unreasonably denied, conditioned or delayed. The Parties acknowledge that the scope, materials, design, and systems for the Ocean Pavilion may be modified and reduced as it progresses through the Milestone phases in response to budget and other constraints. The following reviews shall occur for each Milestone: (a) SPR proprietary review for the benefit of the City in its capacity as the ultimate owner of the Ocean Pavilion; and (b) OWCP proprietary review for compatibility with the Central Waterfront Project elements.

4.4 **Review Timeline.** SPR and OWCP shall have 60 days to review and request modifications or approve each Milestone (the “City Review Timeline”). SEAS shall respond to any requested modifications within 21 days by either: (x) incorporating changes into the Milestone Plan, or (y) providing a written response explaining why requested modifications will not be incorporated into the Milestone Plan. Thereafter, within 14 days (the “City Response Timeline”), SPR and OWCP may either accept SEAS response or trigger the dispute resolution procedure described in Section 8. OWCP and SPR shall coordinate their review comments prior to transmission to SEAS. Should SPR and OWCP approve the 90% construction documents, the approved 90% construction documents shall constitute the “Final Project Design.” The reviews provided for in this Section are for the benefit of the City in its proprietary capacity as the owner of the existing Aquarium facility, the future Ocean Pavilion, and the owner of the future Waterfront Park. Nothing in this Section is intended to in any way alter or modify the regulatory role or regulatory reviews of City departments.

5. **Construction Agreement.** The City and SEAS will use good faith efforts to negotiate and agree upon a Construction Agreement by August 30, 2020. The Construction Agreement shall supplement this Agreement and together with this Agreement shall satisfy the requirement in Section 6 of the 2018 MOU for a project development agreement. Accordingly, the Construction Agreement shall include the material terms in this Section 5 along with other appropriate provisions agreed upon by the Parties.

5.1 **Project Scope and Site Plan.** The Construction Agreement shall rely on the approved Final Project Design for the Ocean Pavilion as the detailed scope and site plan for the Agreement. The Construction Agreement will also include a written description of the Ocean Pavilion and Waterfront Related Elements relationship to the Overlook Walk and other components of the Central Waterfront Project to be constructed by the City.

5.2 **Procedures for City Funding Commitment Disbursement.** Provisions describing eligible costs and allowing SEAS to request disbursements of the City’s Funding Commitment no more frequently than monthly to reimburse eligible costs. SEAS shall request disbursement of funds only for payment of such costs already incurred and each request must be limited to the amount needed to reimburse SEAS for expenditures for the Ocean Pavilion. The

Construction Agreement shall also contain an updated projection for quarterly spending of the proceeds of the City’s Funding Commitment until such proceeds are projected to have been fully disbursed.

5.3 Project Management and Coordination. The Construction Agreement shall include SEAS obligations with respect to ongoing project management, construction coordination and site management between the City’s projects, including Main Corridor, Overlook Walk projects and the Ocean Pavilion, insurance requirements for SEAS contractor and SEAS, and a process for review of material design changes after Final Project Design approval. The Construction Agreement shall also include requirements for construction contracting with SEAS general contractor and others as appropriate to comply with the City’s standard contracting and social equity requirements, including: (a) payment of prevailing wages and reporting; (b) City of Seattle Community Workforce Agreement; (c) Women and Minority Business Inclusion and Social Equity Plan; (d) retainage; (e) Acceptable Work Site Policy requirements; and (f) Prompt Pay.

5.4 Schedule. The Construction Agreement shall include a “Construction Timeline” for the Ocean Pavilion, which will be an update to the “Anticipated Construction Timeline” attached as Exhibit E that contains preliminary sequencing and milestones for on-site construction of the Ocean Pavilion, and the Overlook Walk in relation to the Main Corridor Project.

5.5 Project Budget. The Construction Agreement shall include the then-current Project Budget.

5.6 O & M Agreement Amendments. The Construction Agreement shall include a term sheet containing general points of agreement for revising the O & M Agreement to account for operations, maintenance and management of the Ocean Pavilion, the public spaces immediately adjacent to the existing Aquarium facility and the Ocean Pavilion, and the public amenities to be provided in the Waterfront Related Elements, and any other revisions that are mutually agreed upon by the Parties. The O & M Agreement term sheet shall include terms consistent with the requirement that the Waterfront Related Elements serve the purpose of public open space, public access and public amenities complementing and connecting to the parks and public spaces to be built as part of the Waterfront Seattle Program and extending for the life of the Ocean Pavilion. The Parties shall endeavor to negotiate and finalize amendments to the O & M Agreement prior to the transfer of ownership of the Ocean Pavilion facility to the City (addressed in Section 6). Future amendments to the O & M Agreement shall be conditioned upon an authorizing ordinance of Seattle City Council.

6. Site; Ownership.

6.1 The Ocean Pavilion will be constructed on property owned by the City and currently controlled by SDOT. SDOT will work with SEAS to designate site boundaries sufficient for the purposes of SDCI’s approval of Project Permits. Anticipated site boundaries for the Ocean Pavilion are depicted in the site plan attached as Exhibit A. The final site plan

boundaries depicted on Exhibit A are subject change and refinement in the Construction Agreement as described under Section 5.1.

6.2 SEAS shall own the Ocean Pavilion facility including the shell, core, and exterior spaces, and appurtenances, fixtures, improvements, equipment, and other property attached to the building (“Project Premises”) until ownership is transferred to the City through SPR. The specific timing and process for such ownership transfer shall be addressed in the Construction Agreement. All personal property attached to or installed in the Project Premises, including furniture and furnishings, animals and rights to animals, shall be and remain the property of SEAS.

7. **Indemnifications.**

As used in this Section 7, “Claims” means any and all losses, damages, liabilities, claims, judgments, settlements, fines, costs, and expenses of any kind arising from third-party personal injury or third-party property damage.

7.1 **City Indemnification.** To the extent permitted by law, SEAS agrees to indemnify, defend, and hold the City, its elected officials, employees and agents harmless from and against Claims to the extent arising from the negligence or willful misconduct of SEAS, its officers, employees, contractors and agents with respect to performance of the activities contemplated under this Agreement. The obligations to be provided pursuant to this subsection shall survive termination of this Agreement.

7.2 **SEAS Indemnification.** To the extent permitted by law, the City agrees to indemnify, defend, and hold SEAS, its officers, employees, and agents harmless from and against Claims to the extent arising from the negligence or willful misconduct of the City, including OWCP, SPR, their officers, employees, contractors and agents with respect to performance of the activities contemplated under this Agreement. The foregoing obligations to be provided pursuant to this subsection shall survive termination of this Agreement.

7.3 **Procedure.** Whenever one Party (the “Indemnitee”) shall have received notice that a Claim or demand has been asserted or threatened that is subject to the other Party’s defense and indemnification obligations, the Indemnitee shall deliver notice to the other Party (the “Indemnitor”) of such claim or demand and of the facts within the Indemnitee’s knowledge that relate thereto as promptly as reasonable under the circumstances.

8. **Dispute Resolution.** The Parties shall make their best efforts to resolve disputes as quickly as possible through direct discussions at the lowest possible decision-making level, and in the event such discussions are unsuccessful, to participate in good faith in the mediation process described below prior to either Party initiating any judicial process.

If an issue cannot be resolved by discussions between SEAS staff and consultants and City staff and consultants, then within 30 days after either SEAS or the City notify the other in writing of the existence of a dispute, or immediately upon expiration of the City Response Timeline, then the matter shall be referred to the SEAS Chief Executive Officer, the SPR Superintendent, and the OWCP Director (collectively, the “Directors”) for resolution. If the Directors are unable to

resolve the dispute within a period of 21 days after the matter has been formally submitted to them for resolution, then they shall meet in-person or telephonically during the immediately succeeding 7 days to select a mediator to assist in the resolution of such dispute. If the Directors are unable to agree on a mediator within such 7-day period, then either Party may apply to the American Arbitration Association for the appointment of a mediator according to the process that is established by such entity for such action. SEAS and the City shall share equally in the cost for mediation of any dispute.

Notwithstanding the existence of any dispute between them, the Parties shall continue to carry out, without unreasonable delay, all their respective responsibilities under this Agreement or the 2018 MOU which are not affected by the dispute. Neither Party shall commence any litigation against the other with respect to any claim or dispute arising hereunder without first participating, in good faith, in mediation as contemplated by this Section; provided, however that the Parties shall be conclusively deemed to have participated, in good faith, in mediation upon the expiration of 90 days after either the Directors agree on a mediator or either Party applies to the American Arbitration Association for the appointment of a mediator (the “Mediation Period”).

9. Miscellaneous.

9.1 **Force Majeure.** Neither the City nor SEAS shall be deemed in default of this Agreement nor liable for any damages arising from its failure to perform its duties or obligations hereunder if such is due to any cause beyond its reasonable control, including, but not limited to, an act of nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, or war.

9.2 **Governing Law.** This Agreement is governed by the laws of the state of Washington. Venue for any action under this Agreement shall be in King County, Washington. Should any part, term, portion, or provision of this Agreement, or the application thereof to any person or circumstances, be held to be illegal or in conflict with any governmental restrictions, or otherwise be rendered unenforceable or ineffectual, then the validity of the remaining parts, terms, portions, or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

9.3 **Entire Agreement; Relationship to 2018 MOU and Other Agreements.** This written Agreement and the 2018 MOU, together with all of the exhibits attached thereto, constitute the scope of the agreements and representations between the City and SEAS with respect to the subject matter hereof. Each of the Parties hereby expressly acknowledges that it has not relied on any statement correspondence, memorandum, agreement, proposal, oral presentation, warranty or representation not contained or provided for in this Agreement and the 2018 MOU. Except as otherwise specifically contemplated in this Agreement, the 2018 MOU and the O & M Agreement remain in full force and effect. If a conflict should arise between this Agreement and the 2018 MOU, the 2018 MOU shall govern with respect to the City’s reimbursement of design costs, and this Agreement shall govern with respect to all other matters. If a conflict should arise between this Agreement and the O & M Agreement, this Agreement shall govern any matter relating to the design, construction, and funding of the Ocean Pavilion,

and the O & M Agreement shall govern all other matters relating to the operation and maintenance of the Aquarium.

9.4 **Relationship of the Parties.** This Agreement does not constitute SEAS as the agent or legal representative of the City for any purpose whatsoever. SEAS has no express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever. Nothing in this Agreement shall be construed to create any partnership or joint venture between the Parties.

9.5 **Amendments.** No alteration or modification or waiver of the terms or conditions of this Agreement shall be valid and binding unless made in writing and signed by the authorized representatives of the Parties.

9.6 **Notices.** All notices required to be given hereunder shall be in writing and either delivered personally or sent by certified mail to the appropriate address listed below, or at such other address as shall be provided by written notice. Notice shall be deemed communicated three days from the date of the notice if correspondence is provided consistent with the requirements of this Section. For the convenience of the Parties, copies of notices required by this Agreement may also be given by other means, including email; however, neither party may give official or binding notice except by personal delivery or certified mail.

If to City:

Marshall Foster, Director
Office of the Waterfront and Civic Projects
Seattle Department of Transportation
P.O. Box 34996
Seattle, WA 98124

Jesús Aguirre, Superintendent
Seattle Department of Parks and Recreation
100 Dexter Avenue N
Seattle, WA 98109

With a copy to:

City Attorney's Office
Rebecca Keith, Assistant City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097

If to SEAS:

Seattle Aquarium
Robert Davidson, President and CEO
1483 Alaska Way, Pier 59
Seattle, WA 98101

With a copy to:

Abigail P. DeWeese
Hillis Clark Martin & Peterson P.S.
999 3rd Avenue, Suite 4600
Seattle, WA 98104

9.7 **Headings.** The section headings and table of contents used in this Agreement are for the purposes of convenience and do not alter in any manner the content of the sections.

9.8 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which, taken together, will constitute one and the same instrument. Counterpart signature copies of this Agreement may be delivered by facsimile or email/.pdf and shall be deemed effective upon delivery, provided that originally executed copies shall be delivered by such party via first class mail return receipt requested.

9.9 **Time of the Essence.** Time is of the essence in this Agreement and all covenants and deadlines hereunder.

9.10 **No Waiver.** A Party's failure to complain or object to any act, omission or breach of this Agreement by the other Party shall not be deemed a waiver of the express terms of this Agreement, nor shall it operate to excuse a breach of any other provision of this Agreement. If any action of any Party requires the consent or approval of another, consent or approval given on one occasion shall not be deemed a consent to or approval of that action on any other occasion. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

9.11 **Partial Invalidity.** If any court determines that any provision of this Agreement or the application hereof is, to any extent, invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby and each other term, covenant, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Exhibits (attached):

- Exhibit A – Site Plan
- Exhibit B – Waterfront Related Elements
- Exhibit C – Ocean Pavilion Budget
- Exhibit D – Ocean Pavilion Fundraising Plan Executive Summary
- Exhibit E – Anticipated Construction Timeline

[SIGNATURE PAGES FOLLOW]

CITY OF SEATTLE
(a Washington municipal
corporation):

OFFICE OF THE WATERFRONT AND CIVIC PROJECTS,

By: _____

Name: _____

Its: _____

SEATTLE PARKS AND RECREATION DEPARTMENT,

By: _____

Name: _____

Its: _____

SEAS:

SEATTLE AQUARIUM SOCIETY,
a Washington non-profit corporation

By: _____

Name: _____

Its: _____

