

**AMENDMENT TO OCEAN PAVILION FUNDING AGREEMENT**

**by and between**

**THE CITY OF SEATTLE**

**and the**

**SEATTLE AQUARIUM SOCIETY**

*dated as of \_\_\_\_\_, 20\_\_*

## AMENDMENT TO OCEAN PAVILION FUNDING AGREEMENT

This AMENDMENT TO OCEAN PAVILION FUNDING AGREEMENT ("Funding Amendment"), dated as of \_\_\_\_\_, 2022, amends that certain Ocean Pavilion Funding Agreement dated June 30, 2020 ("Original Funding Agreement") by and between THE CITY OF SEATTLE (the "City"), a first class city organized under the laws of the State of Washington (the "State"), and the SEATTLE AQUARIUM SOCIETY ("SEAS"), a Washington nonprofit corporation (together, the "Parties"). Unless otherwise stated, all capitalized terms used in this Funding Amendment have the same meanings given in the Original Funding Agreement. The Original Funding Agreement, as amended by this Funding Amendment, is referred to as the "Amended Funding Agreement."

The City and SEAS enter into this Funding Amendment for the purpose of addressing increased Project costs by making an additional Twenty Million Dollars (\$20,000,000) available for eligible capital costs of the project. This additional funding commitment is contingent on execution of an amendment to the Seattle Aquarium Operations and Management Agreement setting out a new fee due to the City that is intended to reimburse the City for its costs incurred in making the additional funding available and to reflect the value of the improved facility.

This Funding Amendment is authorized by resolution of the SEAS Board of Directors adopted on \_\_\_\_\_, 2022, and by Ordinance \_\_\_\_\_ of the City passed by the City Council on \_\_\_\_\_, 2022.

### RECITALS

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

(a) SEAS and the City have previously agreed to contribute to the capital improvements to the City-owned Aquarium facility known as the Ocean Pavilion Project (the "Project"), pursuant to the Funding Agreement. The Project has encountered increased costs to completion and the Parties wish to ensure that the Project is completed such that the public benefits described below will be realized.

(b) The Parties reaffirm that the Project furthers the purposes of SEAS by providing an enhanced facility to be utilized by SEAS in fulfilling its mission in education, conservation and recreation, and serves the public interest by improving the Aquarium facilities owned by the City, providing benefits to residents of and visitors to Seattle and the region, and continuing the City's history of developing the Aquarium as an important civic asset, cultural resource, and public amenity, and as a focal point of a revitalized and redeveloped waterfront.

(c) The City and other public and private funders are providing SEAS with critical financial assistance for the development of the Project, which provides significant public benefits to the community. Both Parties reaffirm their respective commitments to carrying out the Project and ensuring the completion of the enhancements to the Aquarium facility through the use of

multiple sources of funding from both public and private sources. The respective Funding Commitments of each of the Parties, as adjusted by this Amendment, are intended to be fixed and in no way commit the City to covering any future increased costs of the Project.

(d) The City and SEAS have determined to execute this Funding Amendment to address an increase in budgeted Project costs that were not originally anticipated by the Parties in order to ensure that an important public asset is preserved and enhanced so that it may continue to provide the benefits to the public described above.

## AMENDMENT TERMS

The Parties agree as follows:

- 1. Condition Precedent.** This Funding Amendment, and the increased City funding commitment set out herein, is contingent on City and SEAS executing an amendment to the Seattle Aquarium Operations and Management Agreement, dated January 26, 2010, setting out a new Enhanced Facility Fee determined by City in its reasonable discretion reflective of the improved facility. Unless specified in a separate written agreement or subsequent amendments to the OMA and Funding Agreement, the City shall be under no obligation to issue any additional debt for the Project or any other Aquarium capital purpose.
- 2. Definitions.** Unless otherwise defined, other capitalized terms used herein have the meanings given in the Funding Agreement.
- 3. City Commitment Increased.** The City hereby increases the City's Funding Commitment from Thirty-Four Million Dollars (\$34,000,000) to Fifty-Four Million Dollars (\$54,000,000). To enact this change, Section 2.2.1 of the Funding Agreement is struck and replaced by:

2.2.1 City's Funding Commitment. The City commits to include in the City Capital Improvement Program a total of Fifty-Four Million Dollars (\$54,000,000.00) 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. The increased amount of the City Funding Commitment described in this Amendment will be made available on a reimbursement basis upon reimbursement requests submitted no more frequently than monthly, as set forth in a set of written reimbursement

procedures agreed to by the City's Director of the Office of the Waterfront and the Superintendent of Parks and Recreation or their respective designees, and SEAS. The City will fund all reimbursement requests within [30] days of approval of the request.

**4. Reaffirmation of SEAS Commitment.** Notwithstanding the increase to the Project Budget, SEAS acknowledges and reaffirms its responsibility for securing the balance of the funding, without additional City funding beyond the funding included in this agreement, needed to fully fund the Ocean Pavilion in accordance with the Final Project Design and for fully funding the Animal Care Facility.

**5. No Other Changes to Funding Agreement; Other Agreements Not Affected.** Except as otherwise expressly provided in this Funding Amendment, all of the terms and conditions of the Original Funding Agreement remain unchanged and in full force and effect. Furthermore, the Parties acknowledge that the City and SEAS have entered into, and may in the future enter into, separate agreements with SEAS relating to the Facility, the Project, or related facilities. Nothing in this Funding Amendment shall be construed as altering or limiting the terms or conditions of any such separate agreements between the City and SEAS, and such agreements, and the parties' interests thereunder, are expressly not merged with their respective interests under this Funding Amendment.

*[Signature page follows.]*

**6. Counterparts.**

This Funding Amendment may be executed in counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts together will constitute one and the same Funding Amendment.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the City and SEAS have caused this Funding Amendment to be executed in their respective names by their duly authorized officers and have caused this OMA Amendment to be dated as of the date set forth on the first page hereof.

THE CITY OF SEATTLE, a Washington municipal corporation

By \_\_\_\_\_  
Its Director of the Office of the Waterfront

and

By \_\_\_\_\_  
Its Acting Superintendent of Parks and Recreation

and

By \_\_\_\_\_  
Its [Interim] Director of Finance

Pursuant to Ordinance \_\_\_\_\_

SEATTLE AQUARIUM SOCIETY,  
a Washington non-profit corporation

By \_\_\_\_\_  
Its President and CEO

Pursuant to Resolution: \_\_\_\_\_