

**MEMORANDUM OF UNDERSTANDING**

**CONCERNING DEVELOPMENT OF NEW  
SEATTLE AQUARIUM FACILITIES**

**Dated: \_\_\_\_\_, 2018**

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**MEMORANDUM OF UNDERSTANDING  
CONCERNING DEVELOPMENT OF NEW  
SEATTLE AQUARIUM FACILITIES**

This Memorandum of Understanding Concerning Development of New Seattle Aquarium Facilities (“**2018 MOU**”) is dated as of \_\_\_\_\_, 2018 (the “**Effective Date**”), and is by and between the City of Seattle (“**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 (collectively, the “**Parties**”). This 2018 MOU addresses (1) the preliminary scope of the SEAS Ocean Pavilion Project, the City’s Overlook Walk Project, and related civic improvements, (2) the Parties’ shared goals, (3) the allocation of design responsibilities between the Parties, (4) the allocation of responsibilities for design management, review and approvals between the Parties. (5) the current funding plan for the Ocean Pavilion Project, and (6) preparation of a project development agreement, in regard to development of the SEAS Ocean Pavilion Project (the “**Project**”).

**SECTION 1. SCOPE.**

Under this 2018 MOU, SEAS will undertake engineering, design, and planning to develop alternatives and conduct environmental review for a proposed Ocean Pavilion project (the “**Ocean Pavilion**” or “**Ocean Pavilion Project**”). The Ocean Pavilion will be a part of the Seattle Aquarium and will provide new exhibitry and educational programming addressing the marine ecosystems of the Puget Sound and the Pacific Ocean, providing the public with insights and information on critical issues such as ocean health and impacts of climate change on marine ecosystems. The proposed location and footprint, subject to environmental review, of the Ocean Pavilion Project is depicted on EXHIBIT A attached hereto. It is currently intended to be integrated with the Overlook Walk element of the Central Waterfront design (the “**Overlook Walk**” or “**Overlook Walk Project**”). The Ocean Pavilion will include a series of public benefit components compatible with the Central Waterfront Concept Design and Framework Plan (Resolution 31399) as represented on EXHIBIT B and referred to in this MOU as the “**Waterfront Related Elements.**”

## **SECTION 2. SHARED GOALS.**

The Parties share the following goals for the Ocean Pavilion: the project (i) shall complement the City's Waterfront Plan (Exhibit C), (ii) shall be integrated into the general public's overall experience of the City's waterfront and the Aquarium, (iii) shall enhance the experience of parks and public spaces on the Seattle waterfront, (v) shall be consistent with and complement the adjacent elements of the Central Waterfront Concept Design (contained in Seattle City Clerk File Number 312468), including but not limited to the function of the Overlook Walk, Promenade and the new Elliott Way Connection, and (vi) shall be compatible with the existing Aquarium facilities. The following understandings are intended to reflect the City's and SEAS's priorities with respect to the development of the Ocean Pavilion Project.

(a) The City and SEAS recognize that the successful realization of the Ocean Pavilion Project will increase the vibrancy of public spaces being developed by the City. Accordingly, SEAS and the City will work closely to align design efforts to support seamless pedestrian access from the MarketFront Project through the Overlook Walk to the roof of the Ocean Pavilion and down to the Central Waterfront and Pier 62/63.

(b) To the maximum extent possible, the planning and design of the Ocean Pavilion Project shall be undertaken on a schedule that maximizes opportunities for meaningful coordination with the Overlook Walk Project in order to help ensure successful integration of the Parties' respective projects.

(c) Planning for the Ocean Pavilion Project shall be continuously evaluated by the Parties for cost-effectiveness, taking into consideration both initial development costs, ongoing costs for operation and maintenance, compatibility with the existing Aquarium facilities and potential cost savings that can be realized through managing to the defined project scope and cost, as well as opportunities to streamline schedule and construction sequencing between the Ocean Pavilion Project and the Overlook Walk Project.

(d) The City and SEAS recognize that a significant pedestrian connection from the waterfront to Pike Place Market and the Pike/Pine corridor is a fundamental objective of the Waterfront Concept Design, and as such it is imperative that the City's Overlook Walk and pedestrian connection can be constructed and opened for public use independent of the Ocean Pavilion, so that the overall connection from the Central Waterfront to Pike Place Market can be achieved regardless of the ultimate timing of the construction of the Ocean Pavilion. The City and SEAS have a shared goal of well-integrated projects and will continue to pursue creative strategies to advance their respective projects concurrently.

(e) The design processes for the Ocean Pavilion Project and the Overlook Walk Project shall advance in a collaborative and integrated fashion. Those processes are expected to yield a design for the Ocean Pavilion Project that is consistent with the mission of SEAS and supports the goals of the City for the Central Waterfront Project and is acceptable to the Parties for incorporation into a future project development agreement (the "**Project Development Agreement**") which will address in detail the terms and conditions for funding, final design and construction of the Ocean Pavilion.

(f) Both parties recognize that the construction and opening of the new Alaskan Way roadway (the "**Main Corridor Project**") is a critical path schedule item for achieving the goals of the Central Waterfront Project and the City and State of Washington transportation systems. Neither Party shall permit their respective projects to materially delay the critical path schedule for the Alaskan Way roadway completion, currently planned for mid-2021. Recognizing that constraint, both parties share the objective of having each of their respective projects opened at the earliest reasonable opportunity.

(g) Approval of this 2018 MOU by the Seattle City Council does not constitute approval of funding for construction or of future permits for use of the public right-of-way or construction. Future actions to approve funding or permits for the Ocean Pavilion Project will only be made following completion of environmental review of the project, required permit reviews and

review of a reasonable plan to fund the project via a range of public and private sources by the Director of the City Budget Office.

### **SECTION 3. ALLOCATION OF DESIGN RESPONSIBILITIES.**

(a) SEAS Responsibilities. The Ocean Pavilion and Waterfront Related Elements, designated on Exhibits A and B, represent an appropriate and mutually acceptable baseline for ongoing design refinement by SEAS's design team. The Waterfront Related Elements to be included in the design of the Ocean Pavilion Project by SEAS shall include: (1) a public stair and elevator on the south face of the Ocean Pavilion, unless an alternate location for the stair and elevator are mutually agreed otherwise; (2) an accessible rooftop open space at the Overlook Walk deck level, with an accessible landscape consistent in design, character and quality with the Overlook Walk; and (3) the lower stair along the west side of the Ocean Pavilion. SEAS will also advance design of shared foundation and shoring systems to allow for potential early construction of these components prior to the completion of the **Main Corridor Project**.

(b) City Responsibilities. The City shall be responsible for design of the Overlook Walk Project to include the bridge over the roadway, the connection to the Ocean Pavilion roof, the amphitheater-type space including stairs from the Overlook Walk wrapping the north and west facades of the Ocean Pavilion, the stair extending west towards Pier 62, and public restrooms and maintenance facilities at the ground level.

### **SECTION 4. ALLOCATION OF RESPONSIBILITIES FOR DESIGN MANAGEMENT, REVIEW AND APPROVALS.**

(a) Planning and Design. SEAS has selected a design team and shall continue with the planning and design for the Ocean Pavilion and SEAS Waterfront Related Elements, subject to environmental review, permitting requirements and the City's continuing review and approval, as provided herein. SEAS shall engage a landscape architect to develop a landscape plan for the

Ocean Pavilion roof in partnership with other members of the design team, and shall develop a strategy and approach for the inclusion of public art into the final project. The Parties will develop and observe procedures for continued close collaboration between their respective design teams.

(b) Environmental Review and Permitting.

(1) The Seattle Department of Parks and Recreation Department (“SDPR”) shall be the City’s designated Lead Agency for addressing the environmental review requirements for the Ocean Pavilion Project. Accordingly, SDPR shall have final authority to approve the final environmental impact statement (FEIS) and may direct SEAS to make edits to the DEIS/FEIS. The City’s Office of the Waterfront and Civil Projects (“OWCP”) shall have the opportunity to review SEAS’ draft environmental review documents and permitting documents at least once, prior to their publication or submission to SDPR.

(2) SEAS shall be responsible for managing all regulatory review for the Ocean Pavilion Project, including, but not limited to, preparation of environmental review documents and compliance with the City review and permitting processes. SEAS will be responsible for performance of the financial, design and construction conditions required as part of the FEIS, obtaining permitting approval and any legal settlement thereof in regard to the Ocean Pavilion Project. SEAS intends to begin this process in early 2018, and will coordinate environmental review of the Ocean Pavilion Project with the City’s overall Central Waterfront Project processes and schedule.

(3) The City reserves all rights to conduct its legal obligations in regard to regulatory review, land-use and transportation oversight related to the Ocean Pavilion Project and nothing in this 2018 MOU shall be deemed to constitute a decision related to these obligations in advance of submittal and review of necessary project documentation.

(4) In addition to any permissions or approvals required by a regulatory agency, the OWCP shall have the right to review and approve the evolving design of the Ocean



Pavilion for cost-effectiveness and its continuing compatibility with the evolving Waterfront Concept Design, among other purposes. Such review and approval will be coordinated by the City's design lead for the Overlook Walk at each milestone. The Superintendent of Parks and Recreation shall also have the right to review the design for compatibility with existing Aquarium facilities and operations. The designated lead will consolidate comments from reviewers in OWCP at each design milestone. Such design review and consideration of approval shall be completed within sixty (60) days of delivery by SEAS of design documents, at the following specific design milestones: 30% Schematic Design (as described on Exhibit D), 60%/Design Development, 90%/Construction Documents and any subsequent design documents or addenda.

#### **SECTION 5. FUNDING.**

(a) Current Funding Plan Ocean Pavilion. The current cap on City contributions to SEAS for engineering, design and consultant services for the Ocean Pavilion Project to allow SEAS to reach the 60% Design Development stage is \$4.7 million, which includes all amounts paid to SEAS under prior agreements for the Ocean Pavilion Project.

(b) Reimbursement for Design Expenses.

(1) The City shall reimburse SEAS for up to fifty percent (50%) of its expenditures for eligible engineering, design and consultant services for the Ocean Pavilion Project as provided herein. These funds shall not be used for SEAS' general or central overhead or staffing.

(2) The Director of OWCP shall have the right to approve or disapprove any SEAS submittal for design expense reimbursement. Any disagreement between the Parties on eligible costs shall be resolved in a fair and equitable manner by the Director of the City Budget Office in collaboration with SEAS and under the authority of the City Council and the Executive.

(3) Eligible expenses shall include: (i) direct project-related services, (including architecture, engineering, system design for life support and animal care, exhibit design, legal, permitting, and project management; and (ii) reasonable travel costs directly related to the Ocean Pavilion project (to the extent normally authorized by the City for its civic projects). The City will provide the Aquarium with the current limits for travel related expenses.

(4) SEAS shall provide reimbursement invoice documentation to OWCP on a monthly basis. Ineligible expenses shall not be included in any invoice or as part of the 50%-50% match consideration for this MOU. Ineligible expenses include: general or central overhead costs, staff costs, costs related to other projects or master planning, fundraising, financial planning or accounting, lobbying of any government agency or elected body, or in-kind project related services provided by a donor.

Fully documented invoices shall include: (i) consultant invoices; (ii) proof of payment by SEAS; (iii) receipts for all project expenses; and (iv) any supplemented information which OWCP may reasonably request consistent with the City's reimbursement policies and procedures, and all costs that SEAS seeks to consider as part of the 50%-50% City match.

(5) OWCP Review. OWCP shall complete its review of invoices within 30 days after SEAS submittal and resolution of any issues with submitted costs or documentation (the **"Invoice Review Period"**).

(6) SDPR Payment. OWCP shall forward reviewed invoices to SDPR. SDPR shall reimburse SEAS not later than the expiration of the Invoice Review Period.

(c) Funding Plan for Capital Costs. SEAS has completed a preliminary funding plan identifying the principal sources of funding sufficient to complete final design and construction of the Ocean Pavilion Project, currently estimated to cost \$110 million. Funding for the Ocean Pavilion Project is anticipated to come from a variety of public and private sources, including City funding of \$34 million as currently described in the City's 2018 Capital Improvement Plan, which amount includes the reimbursements specified in Section 5(b) above (Exhibit E). Prior to approval of the

Project Development Agreement to reimburse construction costs, SEAS will develop a comprehensive funding plan for review by the Director of the City Budget Office, to include identification of sources and uses of funds and a schedule for securing these funds.

(d) 1% Percent for Art. SEAS will include public art in the design of the Ocean Pavilion Project, in coordination with the Seattle Office of Arts and Culture. The minimum cost of the design, construction and installation of this art may not be less than 1% of the City's total funding contribution to the Project.

#### **SECTION 6. PROJECT DEVELOPMENT AGREEMENT.**

(a) Approval. If, following environmental, permit and financial feasibility reviews, the 60% design and detailed cost estimates for the Ocean Pavilion project are approved by the Director of SDPR, with the concurrence of the Director of the OWCP, and the SEAS Board of Directors the Parties will negotiate and submit to the SEAS Board of Directors and the Seattle City Council, for their respective review and approval, the proposed Project Development Agreement and an ordinance authorizing the City's execution of the PDA for the Ocean Pavilion Project.

(b) Content. The Project Development Agreement shall include the following:

(1) A detailed scope and site plan for the Ocean Pavilion Project, including key elements of the facility and its operation, a detailed plan and set of dimensions for the SEAS Waterfront Related Elements, and a description of the Ocean Pavilion's relationship to the Overlook Walk and Waterfront Program.

(2) A cost estimate and comprehensive funding plan identifying, with reasonable specificity, the principal sources of funding sufficient to complete development and construction of the proposed Ocean Pavilion Project, as well as scope and cost reduction strategies in the event full funding is not realized.

- (3) A detailed project schedule, incorporating agreed-upon sequencing of construction and threshold requirements for commencing construction.
- (4) A capital campaign fundraising plan for any funds proposed to be raised from private philanthropy, with goals and timelines for pledges and payments to SEAS.
- (5) A revised operations and management memorandum of agreement with SDPR (the “**Amended O&M Agreement**”) regarding operations and maintenance of the SEAS Aquarium facilities, including the Ocean Pavilion and the SEAS Waterfront Related Elements.
- (7) A term sheet summarizing general points of agreement on operations and maintenance of public spaces immediately adjacent to the Ocean Pavilion.

**Section 7. Miscellaneous Provisions.**

(a) Nondiscrimination/Compliance with Laws. SEAS shall comply with all applicable laws including, without limitation, all equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code (“**SMC**”), as they may be amended, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

(b) Notices. All notices and requests required or permitted to be given in connection with this 2018 MOU shall be in writing and shall be deemed given as of the day they are received either by messenger, express delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as follows, or to such other address as the party to receive the notice or request so designates by written notice to the other consistent with this Section 7:

If to City: Marshall Foster  
Director, Office of Waterfront and Civic Projects  
Seattle Dept. of Transportation  
PO Box 34996  
Seattle, WA 98124-4996

Christopher Williams  
Acting Superintendent  
Seattle Parks and Recreation  
100 Dexter Avenue North  
Seattle, WA 98109

With a copy to: City of Seattle  
  
City Attorney's Office  
Attn: Helaine Honig, Senior Assistant City Attorney  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7097

If to the SEAS: Seattle Aquarium  
Attn: Robert Davidson, President and CEO  
1483 Alaska Way, Pier 59  
Seattle, WA 98101-2015

With a copy to: David Buck  
Fox Rothschild LLP  
1001 Fourth Avenue, Ste 4500  
Seattle, WA 98154

(c) Indemnifications. (use old MOU language)

(1) Right to Indemnification. To the extent permitted by law, SEAS agrees to indemnify, defend and hold the City, its employees and agents harmless from and against, and to reimburse the City, its employees and agents with respect to, any and all losses, damages, liabilities, claims, judgments, settlements, fines, costs, and expenses for personal injury or property damage ("**Indemnifiable Amounts**") incurred by the City to the extent caused by third party claims of negligence or willful misconduct of SEAS, its

officers, employees and agents, with respect to performance under the terms of this 2018 MOU (“**Indemnifiable Events**”). The foregoing indemnifications to be provided pursuant to this subsection shall survive the expiration or earlier termination of this 2018 MOU. SEAS agrees to obtain a CG2026 04/03 Additional Insured Endorsement to its general liability insurance policy insuring SEAS obligations under this Section 8(c)(1) for the benefit of the City of Seattle as additional insured with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in aggregate.

(2) Scope of Indemnification. To the extent permitted by law, the City agrees to indemnify and hold SEAS, its officers, employees and agents harmless from and against, and to reimburse SEAS, its officers, employees and agents with respect to, any and all Indemnifiable Amounts-incurred by SEAS, its officers, employees or agents to the extent caused by the negligence or willful misconduct of the City, including OWCP and DSPR, their officers, agents, and employees with respect to performance under the terms of this 2018 MOU (“**Indemnifiable Events**”). The foregoing indemnifications to be provided pursuant to this subsection shall survive the expiration or earlier termination of this 2018 MOU for a period of 12 months.

(3) Procedure. With respect to any claims or demands by third parties that relate to Indemnifiable Events and/or Amounts, whenever the one Party (the “Indemnitee”) shall have received a written notice that such a claim or demand has been asserted or threatened, it 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 within the earlier of: (a) fifteen (15) days after receiving written notice of the claim or demand; or (b) with respect to arbitration, litigation, or similar proceedings, not less than ten (10) days before the initial date by which the Indemnitee would be required to file its first substantive response to such action, but in no event less than the amount of time that the Indemnitee is given to respond to the action. The Indemnitor shall then have the right and the obligation to contest, defend, negotiate or settle any such claim or demand through counsel of its own selection, solely at its own cost, risk, and expense.

(d) Term and Termination. This 2018 MOU shall commence on the Effective Date and shall continue for a term of ten (10) years. Notwithstanding the foregoing, this 2018 MOU may be terminated by written notice under the following circumstances: (a) a party has breached its obligations hereunder and such breach remains uncured for one hundred twenty (120) days after the non-breaching party has given notice to the breaching party describing such breach.

(e) Legal Relationship. This 2018 MOU 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.

(f) Governing Law. This 2018 MOU shall be governed by and interpreted under the laws of the State of Washington applicable to agreements made and to be performed in Washington, exclusive of its conflict of law rules.

(g) Entire Agreement. This 2018 MOU, when executed, contains the entire understanding between the parties as of the Effective Date, and supersedes any promises or conditions in any other oral or written agreement, and without limitation, specifically replaces and supersedes the 2013 MOU from and after the Effective Date. No provision of this 2018 MOU may be amended or supplemented except by a written agreement signed by the Parties hereto or their respective successors in interest.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding as of the Effective Date.

CITY OF SEATTLE

Office of the Waterfront and Civil Projects

Seattle Department of Parks and Recreation

By \_\_\_\_\_

By \_\_\_\_\_

Marshall Foster, Director

Christopher Williams, Acting Superintendent

SEATTLE AQUARIUM SOCIETY

By \_\_\_\_\_

Robert Davidson, President

Exhibits:

- EXHIBIT A - Ocean Pavilion Site Plan
- EXHIBIT B - Waterfront Related Elements
- EXHIBIT C - Waterfront Program Diagram
- EXHIBIT D - Schematic Design Elements
- EXHIBIT E - Ocean Pavilion Funding Plan