

## SECOND AMENDMENT TO OLYMPIC SCULPTURE PARK OPERATION AND MAINTENANCE AGREEMENT

**THIS SECOND AMENDMENT** to the Operation and Maintenance Agreement (the “Second Amendment”) is made this \_\_\_\_ day of \_\_\_\_\_ 2016, by and between the **SEATTLE ART MUSEUM**, a Washington not-for-profit corporation, (“SAM”), and the **CITY OF SEATTLE**, a Washington municipality (“City”), collectively referred to as the “Parties,” and consented to by the **MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE**, a public corporation chartered by the City of Seattle (“MDA”).

### RECITALS:

**WHEREAS**, SAM and the City previously entered into that certain Operation and Maintenance Agreement dated August 9, 2006 (the "Agreement"), authorized by Ordinance 122141, regarding the operation and maintenance of Alaskan Way Boulevard lying adjacent to the City’s Myrtle Edwards Park and SAM’s Olympic Sculpture Park;

**WHEREAS**, the Agreement was amended in 2011, authorized by Ordinance 123544, (the “First Amendment”) to extend SAM’s responsibilities for maintenance and planting in the Shoreline Embayment area for an additional three years from the effective date of the First Amendment and allowing subsequent extensions of the term, not to exceed the remainder of the twenty-five year term of the Operation and Maintenance Agreement;

**WHEREAS**, pursuant to Paragraph 5, second Subsection B of the Agreement as amended by the First Amendment, SAM has the right, but not the obligation, to enforce City park rules and regulations on the Boulevard; and

**WHEREAS**, the Parties now wish to further extend the term during which SAM shall maintain the Shoreline Embayment area, clarify the parties’ obligations in the Embayment area, and clarify SAM’s rights under Paragraph 5, second Subsection B to include enforcement of City park rules and regulations in the Embayment area, and to otherwise modify the Agreement as set forth below.

**NOW, THEREFORE**, in consideration of mutual covenants and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### AGREEMENT:

1. Defined Terms. Except as explicitly set forth in this Amendment, each initially capitalized term when used herein shall have the same respective meaning as is set forth in the Agreement.

2. Paragraph 5.B (second) of the Agreement is deleted in its entirety and replaced with the following:

**B. Rules and Hours of Operation:** The rules governing public conduct on the Boulevard and Embayment shall be the same as those applicable to any other City park as defined within Chapter 18.12, The Park Code, Seattle Municipal Code. SAM shall have the right to enforce rules and regulations for OSP, and, in addition to the City’s enforcement, SAM shall have the right but not the obligation to enforce rules and regulations on the Boulevard and in the Embayment area.

3. Paragraphs 10.A & 10.B of the Agreement are deleted in their entirety and replaced with the following:

#### 10. SHORELINE EMBAYMENT

- (A) SAM shall be responsible for routine maintenance of the upland vegetation and intertidal plantings related to the Embayment located in Myrtle Edwards Park, for a period of three (3) years from the Effective Date of the Agreement, and for successive one (1) year periods thereafter until the obligation is terminated by either party, but not to exceed the remainder of the twenty-five (25) year term of the Operation and Maintenance Agreement. After the initial three (3) year period, SAM shall be entitled to terminate its obligation to maintain the Embayment under this Section 10, at any time, upon providing the City with ninety (90) days written notice of its intention to terminate. The parties acknowledge that the particular plant locations, types and sizes were designed and selected, and funded by several agencies, to foster salmon enhancement. Consequently, during the term in which SAM remains responsible for maintenance of the Embayment, SAM shall maintain and replace any dead or diseased plants with the same type and size and in the same location, unless mutually agreed upon by SAM and DPR. In certain situations, SAM and DPR may reach agreement on plants that DPR should replace and/or maintain.
- (B) SAM shall also be responsible for routine custodial maintenance of the Embayment. “Routine custodial maintenance” as used in this subsection refers only to day-to-day clean-up of the Embayment that does not require SAM to use or hire any equipment to complete the clean-up (e.g. collecting litter). City shall be responsible for removing creosote logs (“Logs”) and other materials too large to be removed without equipment (“Large Materials”), beach replenishment (as needed), and all other maintenance within the confines of the Embayment and Myrtle Edwards Park.

To this end, SAM and City will regularly monitor the Embayment, and the accumulation of Logs and Large Materials in the Embayment, to ensure custodial maintenance is accomplished in accordance with this Agreement. Should removal of Large Materials or Logs be necessary, SAM or City staff (whoever first discovers the custodial need) will promptly notify the City of Seattle Parks and Recreation Department. Upon receipt of notice requesting removal of Large Materials or Logs, the City will respond by scheduling a work order to remove Large Materials or Logs as soon as possible, but in any event no later than two weeks from the date such notice is received, except that if the notice reflects a safety hazard concern City will remove the Large Materials or Logs immediately. Notices requesting the removal of Logs will not be issued until a sufficient amount of Logs have accumulated in the Embayment, generally occurring at the end of each winter season.

4. Paragraph 27 of the Agreement is deleted in its entirety and replaced with the following:

27. Integration; Amendment. This Agreement, together with its referenced Exhibits and any Amendments to the Operation and Maintenance Agreement signed by the parties (the “Amendments”), contains all the agreements of the parties hereto relating to the subject matter addressed, and cannot be amended or modified except by written instrument approved by the Seattle City Council and by SAM. Notwithstanding the foregoing, DPR approval of future improvements is not deemed an

amendment and does not require City Council approval. In the event of any conflict between this Agreement and the Amendments, the Amendments shall prevail.

5. No Other Modifications. Except as otherwise provided herein, all other terms and provisions of the Agreement shall remain in full force and effect, unmodified by this Amendment.

6. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall be taken together to constitute one and the same instrument.

7. MDA Consent. The MDA hereby consents to the modifications to the Agreement contained in this Second Amendment. In addition, the MDA hereby consents to the modifications to the Agreement contained in the First Amendment.

**IN WITNESS WHEREOF**, the Parties have entered into this Second Amendment as of the date first set forth above.

**CITY: THE CITY OF SEATTLE**  
By its Department of Parks and Recreation

**SAM: SEATTLE ART MUSEUM**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Consented to by the MDA**

**MDA: MUSEUM DEVELOPMENT AUTHORITY OF SEATTLE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_